

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 10, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP260

Cir. Ct. No. 2013FA373

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

CHRISTINA MICHELLE ERICKSEN,

PETITIONER-APPELLANT,

V.

LAWRENCE MICHAEL ERICKSEN,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Douglas County:
KELLY J. THIMM, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Christina Ericksen, pro se, appeals a divorce judgment, arguing the circuit court erred by declining to award her maintenance. For the reasons set forth below, we affirm.

BACKGROUND

¶2 Christina and Lawrence Ericksen were married in September 1996. Christina petitioned for divorce on December 17, 2013, after seventeen years of marriage.

¶3 A final divorce hearing was held on November 3 and December 10, 2014. As relevant to this appeal, Christina asked the circuit court to award her maintenance of \$1500 per month for five years. The court found that Christina earned \$454 per month working as a cashier at K-Mart, while Lawrence earned \$6208 per month working as a mechanic at Viant Crane. Despite this income disparity, the court declined to award Christina maintenance, and she appeals.

DISCUSSION

¶4 Maintenance determinations are committed to the circuit court's discretion. *See Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). We will affirm a circuit court's discretionary decision as long as the court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Long v. Long*, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995).

¶5 Maintenance awards at divorce are governed by WIS. STAT. § 767.56.¹ *McReath v. McReath*, 2011 WI 66, ¶43, 335 Wis. 2d 643, 800 N.W.2d 399. When deciding whether to award maintenance, a court should begin with the proposition that the dependent partner may be entitled to fifty percent of both

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

parties' total earnings and should then make any necessary adjustments after considering the factors enumerated in § 767.56(1c). *McReath*, 335 Wis. 2d 643, ¶45. Any maintenance award should aim to achieve two goals: (1) support of the payee spouse at the predivorce standard of living; and (2) fairness to the parties. *Id.*, ¶44.

¶6 Christina does not dispute that the circuit court addressed the appropriate statutory factors during its oral ruling denying maintenance. The court began by highlighting several factors that weighed in favor of awarding Christina maintenance, in particular the length of the marriage, the fact that Lawrence had been the primary breadwinner while Christina cared for the children, and the “large income disparity” between the parties. *See* WIS. STAT. § 767.56(1c)(a), (e), (i), and (j). However, the court then observed it had assigned Lawrence a disproportionate share of the parties' debt, including a portion of Christina's student loan debt. *See* § 767.56(1c)(c). The court further observed it had assigned the marital home to Lawrence so he could continue living there with the parties' minor child, and, accordingly, Lawrence would be responsible for the mortgage payments on that property. *See id.* Under these circumstances, the court stated it did not think Lawrence could afford to pay the \$1500 in monthly maintenance that Christina requested. *See* § 767.56(1c)(j).

¶7 The court next noted that both parties were young and had the ability to work for many more years, and neither party had any significant health problems. *See* WIS. STAT. § 767.56(1c)(b).

¶8 Finally, the court considered the parties' education, their respective earning capacities, and Christina's ability to become self-supporting. *See* WIS. STAT. § 767.56(1c)(d), (e), and (f). The court stated a “key factor” in its decision

was that Christina had a bachelor's degree, while Lawrence did not.² The court further found that Christina had "a higher earning capacity than what she is showing, and it's just not coming to fruition," while Lawrence had "topped out at his earning capacity, and, in fact, is making less ... than he previously did." Based on these considerations, the court stated a maintenance award would be a "crutch" to Christina because it would limit the pressure for her to become financially independent. *See* § 767.56(1c)(j). The court concluded, "So in light of all those factors, I'm denying maintenance. I don't think there is an ability to pay. I don't think she is working up to her capacity to earn, and I just—I don't think that maintenance is appropriate in this circumstance."³

¶9 Christina argues the circuit court erred by concluding her earning capacity was higher than the \$454 per month she earned working as a cashier at K-Mart. We agree with Christina that the court failed to adequately explain why it believed her earning capacity was higher than her actual income. The court noted Christina had a bachelor's degree. However, it did not explain what type of job it believed Christina could obtain based on her degree or how much that hypothetical job would pay. Moreover, the court failed to address whether any such jobs were

² The record shows that Christina earned her bachelor's degree during the marriage. However, the circuit court did not expressly rely on that fact during its oral ruling.

³ The circuit court did not address the tax consequences of a maintenance award, *see* WIS. STAT. § 767.56(1c)(g), or any mutual agreement by the parties with respect to financial support, *see* § 767.56(1c)(h). However, Christina does not argue on appeal that either of those factors was relevant. "In making a maintenance decision, the court is not obliged to consider all of the statutory factors, but must consider those factors that are relevant." *Brin v. Brin*, 2014 WI App 68, ¶11, 354 Wis. 2d 510, 849 N.W.2d 900.

Lawrence contends that, although he was awarded primary physical placement of the parties' minor child, Christina was not ordered to pay child support. He asserts the circuit court considered this fact when denying maintenance. However, the transcript of the court's oral ruling on maintenance does not support this assertion.

available within a reasonable distance of Superior, where Christina, Lawrence, and their minor child lived.

¶10 When a court erroneously exercises its discretion by failing to explain its reasoning, we independently review the record to determine whether it supports the court's decision. *See Long*, 196 Wis. 2d at 698. Here, however, the record is insufficient for us to undertake this review because it does not contain a full transcript of the final divorce hearing; it contains only the exhibits introduced at the hearing and a transcript of the circuit court's oral ruling. Without access to the testimony provided at the final hearing, we cannot determine whether the circuit court erred by concluding Christina's earning capacity exceeded her actual income.

¶11 As the appellant, it was Christina's responsibility to ensure the record was sufficient for us to decide the issues raised by her appeal. *See State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). When the record is incomplete, "we must assume that the missing material supports the trial court's ruling." *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Consequently, we must assume in this case that the missing transcript of the final divorce hearing supports the circuit court's conclusion that Christina's earning capacity exceeded her actual income. Aside from failing to explain its conclusion with respect to Christina's earning capacity, the circuit court properly considered the relevant statutory factors and, based on those factors, reasonably declined to award Christina maintenance. We therefore affirm the court's maintenance determination.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

