

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 24, 2006

Cornelia G. Clark
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. 2006AP312

Cir. Ct. No. 2004FA271

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

HARRY BRUCE POMEROY,

PETITIONER-APPELLANT,

v.

JENNIFER ANN POMEROY,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Portage County:
THOMAS T. FLUGAUR, Judge. *Affirmed.*

Before Dykman, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Harry Pomeroy appeals the maintenance component of his divorce judgment. We affirm for the reasons discussed below.

BACKGROUND

¶2 Harry and Jennifer Pomeroy were married for approximately twenty-one years and had no children. Both had earned college degrees prior to the marriage. By the time of the divorce, Harry was fifty-two years old and earning \$146,876 per year as the president of a bank. He submitted a proposed monthly budget of \$7,917. Jennifer was forty-five years old and earning \$52,291 per year working four days a week as a claims representative for the Social Security Administration. She submitted a proposed monthly budget of \$4,520. The parties agreed on a property division that gave each of them assets worth over a million dollars.

¶3 The trial court awarded Jennifer \$2,250 per month in maintenance. It determined that amount would give Jennifer monthly disposable income of \$4,783 and leave Harry with monthly disposable income of \$6,629.

DISCUSSION

¶4 Maintenance determinations lie within the sound discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. Therefore, we will affirm maintenance awards when they represent a rational decision based on the application of the correct legal standards to the facts of record. *Id.*

¶5 A typical starting point for a maintenance evaluation following a long-term marriage is to award the dependent spouse half of the total combined earnings of both parties. *See Bahr v. Bahr*, 107 Wis. 2d 72, 85, 318 N.W.2d 398 (1982). This amount may then “be adjusted following reasoned consideration of the statutorily enumerated maintenance factors.” *Id.*

¶6 WISCONSIN STAT. § 767.26 (2003-04)¹ lists a number of factors for a trial court to consider when determining the amount and duration of a maintenance award, including the length of the marriage, the age and health of the parties, the property division, the parties' respective educational levels and earning capacities, the contributions of one party to the education or earning power of the other, tax consequences, and the standard of living enjoyed during the marriage. These factors

are designed to further two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective).

LaRocque v. LaRocque, 139 Wis. 2d 23, 33, 406 N.W.2d 736 (1987).

¶7 Here, the trial court acknowledged that this was a long-term marriage, but the court decided not to equalize the parties' incomes because both were self-supporting and neither had left the workforce to raise children or supported the other through college. Nonetheless, the court decided that because Harry was earning about three times as much as Jennifer, the fairness objective required some amount of maintenance in order for both parties to maintain a standard of living comparable to that enjoyed during the marriage, including being

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

able to travel and set aside money toward retirement.² The court determined that an award of \$2,250 per month would allow Jennifer to maintain the standard of living enjoyed during the marriage without liquidating any of her property settlement. The court further explained that it was setting the term of maintenance at ten years because each of the parties would be eligible for early retirement at that time.

¶8 Harry first argues that the trial court erred in awarding any maintenance absent any showing that Jennifer needed maintenance to be self-supporting. Maintenance payments, however, are neither based solely on need nor limited to situations where one spouse is not self-supporting. *See Lundberg v. Lundberg*, 107 Wis. 2d 1, 12-13, 318 N.W.2d 918 (1982). To the contrary, a trial court erroneously exercises its discretion when it “constru[es] the support objective too narrowly and disregard[s] the fairness objective.” *LaRocque*, 139 Wis. 2d at 34. Here, the trial court plainly stated that it was awarding maintenance based on the fairness objective, not the support objective. Therefore, we do not further address Harry’s arguments that an analysis of certain statutory factors does not show that Jennifer was in need of support.

¶9 Harry next challenges the trial court’s determination that fairness considerations support the maintenance award. He claims that the only fairness factor supporting the award was the length of the marriage, and that the property

² The court did not explicitly state whether it was imputing full-time income to Jennifer. Based on its discussion, however, it appears the court decided not to impute additional earnings to Jennifer because it found it was reasonable for her to work four days a week when she had to commute over thirty-five miles to work each day and was beginning to experience some mild health problems. Because the trial court did not find that Jennifer was shirking by working only four days a week, it was not required to impute additional income to her.

division and contributions of the parties weighed against the award. We disagree. First, we note that the trial court did take the property division into account when deciding not to fully equalize the parties' income. In addition, a significant portion of Jennifer's property division was the marital residence, which would not produce monthly income. The court also determined that Jennifer had made some contributions to Harry's career by being involved in the local community and by commuting to her own job. Although the maintenance award leaves Harry with somewhat less than his proposed monthly budget, the trial court was not required to find that all of the items in his budget were reasonable in comparison to Jennifer's budget. The court could properly determine that disposable income of \$6,629 per month would be sufficient to allow Harry to maintain a standard of living reasonably comparable to that enjoyed during the marriage.

¶10 In sum, we are satisfied that the trial court rationally considered the facts of record under the correct theory of law when awarding maintenance. It explained why it was awarding maintenance (to promote the fairness factor), why it was setting the amount at \$2,250 per month (to allow Jennifer to meet her monthly budget without resort to the property division), and why it was setting the duration at ten years (to bring the parties up to an age when they could begin to draw upon significant retirement assets if they so chose). Harry's arguments on appeal consist of little more than disagreement with the weight the trial court awarded to various factors. However, weighing the relevant factors is the essence of a discretionary determination. We conclude there is no basis to set aside the trial court's maintenance award.

By the Court.—Judgment affirmed.

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

