

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 21, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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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.

No. 00-1616

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

SUSAN M. FROMM,

PETITIONER-RESPONDENT,

V.

WAYNE B. FROMM,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed.*

Before Brown, P.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Wayne B. Fromm appeals from the maintenance provision of the judgment divorcing him from Susan M. Fromm.¹ Because we conclude that the circuit court did not misuse its discretion in awarding Susan maintenance for an indefinite period, we affirm.

¶2 The Fromms were married in 1977; Susan commenced divorce proceedings in 1999. At the time of the divorce, the parties did not have any minor children. Susan is a high school graduate and does not have any specialized vocational training or job skills. She was unemployed at the time of the divorce. Before she and Wayne married, Susan worked as a legal secretary. During the marriage, Susan's primary responsibility was caring for the parties' child and maintaining the parties' home. During her employment in the eight or nine years preceding the divorce, Susan earned the minimum wage.

¶3 The court found that Susan could perform light office work or relatively unskilled positions and would be able to earn approximately \$8.50 per hour or \$17,680 per year (\$1473 per month). The court imputed this income to Susan for purposes of determining maintenance. The court found that Susan's budget overstated her needs for food, clothing and hobbies. The court set Susan's monthly budget at approximately \$2100.

¶4 The court found that Wayne is securely employed as a nuclear engineering manager at a utility company and earns a base salary of \$100,775 per year with periodic bonuses. The court found Wayne's monthly budget was also

¹ The parties do not dispute the property division, which netted each party approximately \$305,000 in property.

inflated in the areas of food, auto expenses and hobbies. The court found that Wayne's monthly budget was approximately \$2500.

¶5 Before awarding maintenance, the circuit court summarized the law of maintenance. The court viewed maintenance as a means of maintaining a party at an appropriate standard of living under the facts of the case until the recipient, exercising reasonable diligence, reaches an income level where maintenance is no longer necessary. The court noted the maintenance factors set forth in WIS. STAT. § 767.26 (1999-2000),² and the support and fairness objectives of maintenance set forth in *LaRocque v. LaRocque*, 139 Wis. 2d 23, 33, 406 N.W.2d 736 (1987). The court noted that the goal of maintenance is to provide support at the marital standard of living and a court must look at the recipient's need, the payor's ability to pay and the parties' income-producing abilities. The court correctly stated the law governing maintenance.

¶6 In awarding maintenance, the court made the following findings. The Fromms were married for almost twenty-three years and enjoyed good health. Susan could seek full-time employment even though she did not possess any specialized skills. The disparity in the parties' budgets was insignificant and the marital estate was divided equally in the property division. The court considered the length of the marriage, Susan's contributions as a homemaker and the person primarily responsible for caring for the parties' child, the disparate earning capacities of the parties, and Susan's present, limited ability to meet her financial needs.

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶7 The court found that during their twenty-three year marriage, the Fromms' joint efforts achieved increased earnings. Therefore, the court determined that it was reasonable to consider an equal division of their total income as the starting point in setting maintenance. Using Wayne's income and Susan's imputed income, the court arrived at a figure of \$37,200 for annual maintenance (or \$3100 monthly). The court found that Wayne could pay this amount to Susan and that this would permit Susan to live postdivorce at a standard of living reasonably comparable to the marital standard. The court found that the maintenance award satisfied the support and fairness objectives of maintenance.

¶8 The court then considered the term of maintenance. It noted that Wayne had the ability to pay support for an indefinite period and that Susan's financial future was uncertain because the court could not predict when Susan would become self-supporting at a standard of living reasonably comparable to the marital standard. Therefore, the court awarded maintenance for an indefinite period.

¶9 On appeal, Wayne argues that the circuit court erroneously awarded permanent maintenance after considering only the length of the marriage and the disparity in the parties' incomes. He argues that the court failed to apply the statutory maintenance factors and insufficiently considered the support and fairness objectives of maintenance. We disagree with Wayne's characterization of the circuit court's decision on maintenance.

¶10 We will uphold the circuit court's determination of the amount and duration of maintenance unless the court misused its discretion in setting the award. *Bisone v. Bisone*, 165 Wis. 2d 114, 118, 477 N.W.2d 59 (Ct. App. 1991). The purpose of maintenance is "to support the recipient spouse in accordance with

the needs and earning capacities of the parties and to ensure a fair and equitable financial arrangement between the parties in each individual case.” *Id.* at 119-20. If the court reaches a result ““which a reasonable judge or court could arrive at by the consideration of the relevant law, the facts, and a process of logical reasoning,’ we will not disturb it.” *Siker v. Siker*, 225 Wis. 2d 522, 543, 593 N.W.2d 830 (Ct. App. 1999) (quoted source omitted).

¶11 Contrary to Wayne’s characterization, the court did not consider only the length of the marriage and the disparity in the parties’ incomes. The court considered other factors as well, including the parties’ ages, education, health, earning capacities and Susan’s contribution to the marriage as the primary caretaker of the parties’ child and home. Susan’s contribution to the marriage is a statutory factor, WIS. STAT. § 767.26(9), and under *LaRocque*, 139 Wis. 2d at 37-38, a proper consideration in awarding maintenance.³ The weight to be given to the various maintenance factors was within the court’s discretion. *Metz v. Keener*, 215 Wis. 2d 626, 640, 573 N.W.2d 865 (Ct. App. 1997).

¶12 Wayne complains that Susan has not made an effort to secure employment. The court noted Susan’s employment status when it imputed annual income to her as part of the maintenance determination. Susan’s “lack of initiative” is accounted for in the maintenance award which is predicated upon Susan’s imputed income.

³ Wayne views Susan’s contribution to the marriage too narrowly. Even though Wayne obtained his engineering degree and began his career prior to the marriage, courts have recognized the contribution of the nonwage earning spouse in maintaining the parties’ home and caring for children and how those functions contribute to the wage earning spouse’s ability to perform in the workplace. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 38, 406 N.W.2d 736 (1987).

¶13 Wayne argues that an indefinite term of maintenance effectively awards Susan permanent maintenance and gives her no incentive to seek employment. The court addressed the issue of Susan's employment by imputing income to her even though she was unemployed at the time of the divorce. Furthermore, indefinite maintenance is not necessarily permanent maintenance. *Hefty v. Hefty*, 172 Wis. 2d 124, 138, 493 N.W.2d 33 (1992). Wayne may seek a modification in the maintenance award if he can show a substantial change in the parties' financial circumstances. See *id.*; *Johnson v. Johnson*, 217 Wis. 2d 124, 127, 576 N.W.2d 585 (Ct. App. 1998).

¶14 Wayne argues that the maintenance award exceeds Susan's budget. A circuit court may, in the service of the fairness objective of maintenance, award maintenance in an amount which exceeds the recipient's budget. *Hefty*, 172 Wis. 2d at 135-36. The court found that Wayne was able to pay maintenance to Susan and that this level of maintenance would permit Susan to live postdivorce at a standard of living reasonably comparable to the marital standard. *Johnson v. Johnson*, 225 Wis. 2d 513, 518, 593 N.W.2d 827 (Ct. App.), *review denied*, 225 Wis. 2d 492, 594 N.W.2d 385 (Wis. Apr. 27, 1999) (No. 98-2141). These are correct considerations under the law, and the court considered the proper facts in reaching this determination.

¶15 Wayne argues that the court did not properly analyze whether it should deviate from the presumed equal division of income in a long-term marriage. Again, we disagree. While it is appropriate in a long-term marriage to consider an equal division of total income as a starting point for maintenance, the court must still consider the statutory maintenance factors and the support and fairness objectives of maintenance. *Olson v. Olson*, 186 Wis. 2d 287, 294, 520 N.W.2d 284 (Ct. App. 1994). Here, the court considered various maintenance

factors in ruling that an equal division of postdivorce income was warranted in this case.

¶16 Wayne suggests that the circuit court must indicate how each maintenance factor contributed monetarily to the maintenance award. A court need not state how each factor impacts the financial award.⁴

By the Court.—Judgment affirmed.

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

⁴ To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1977) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

