COURT OF APPEALS
DECISION
DATED AND FILED

July 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2247

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE MARRIAGE OF:

MARY B. MOSER,

PETITIONER-APPELLANT,

V.

BRADLEY L. MOSER,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Taylor County: GARY L. CARLSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Mary Moser appeals her divorce judgment from Bradley Moser, challenging the denial of maintenance and the valuation of Bradley's veterinary practice. She argues that the court erroneously exercised its

discretion when it denied maintenance, given the length of the marriage, the disparity in income, and her contribution to the marital estate. She further contends that the court erroneously valued the goodwill of the veterinary practice at zero. Because the record demonstrates a rational basis for the court's decision, we affirm the judgment.

BACKGROUND

¶2 At the time of the divorce, Bradley and Mary were both forty-five years old and had two children who had reached adulthood. They had married in 1976. The year before they were married, Mary completed her bachelor's degree in English and worked as an English teacher until after their first child was born in June 1977.

¶3 During the first two years of their marriage, Bradley completed his four-year veterinary program. After he graduated in 1978, the parties moved to Phillips, Wisconsin, where Bradley obtained employment with another veterinarian.

¶4 Mary returned to teaching high school English until April 1979 when their second child was born. She returned to teaching in 1980, but did not finish the school year. She developed rapid heartbeats, and resigned from teaching. Since that time, she has not had rapid heartbeats. Although later diagnosed with a mitral valve prolapse, it does not impair her functioning.

¶5 In 1980, the parties purchased the veterinary practice where Bradley worked. Between 1981 and 1983, Mary assisted Bradley with bookkeeping at the veterinary clinic. From 1983 to 1986, Mary attended the University of Minnesota to obtain a bachelor of arts degree in interior design. After one semester, she

resided on campus Monday to Friday, returning home on weekends to help with the children and bookkeeping. The parties hired help to cook and care for the children during the week. Between 1986 and 1997, Mary worked full time at her own interior design business.

¶6 Bradley testified that Mary spent more time with the children when they were young. However, when Mary was attending college in Minnesota, Bradley would wake them up and get them ready for school. The housekeeper would make dinner and be available to care for the children if Bradley was called out for work at night.

¶7 In 1997, Mary obtained her present position as director of the governor's northern office, where she works sixty to eighty hours per week and currently earns approximately $43,000 per year. Bradley, as a self-employed veterinarian in solo practice, works approximately sixty hours per week and earns about $90,000 per year. He testified that if he were to work forty hours per week, his earnings would correspondingly drop by one-third.

¶8 Bradley is diagnosed with Huntington's Chorea, a genetic disorder. Bradley testified that the disease is progressive, starting with motor coordination problems, disability, and progressing at variable rates until death. Although showing no symptoms at the time of the divorce, the symptoms' most likely onset will be in his late forties or early fifties. It is undisputed that the motor coordination difficulties will disable him from his veterinary practice approximately one year from onset. At the time of the divorce hearing, Bradley was taking daily medication for anxiety and severe depression related to a great degree to his diagnosis. There is no dispute that the disease is incurable and, unless he dies first from something else, Bradley will succumb to it.

¶9 The parties entered into a comprehensive marital settlement agreement that resolved all issues in their divorce action with the exception of maintenance and the value of the veterinary practice. The court made extensive findings and, for reasons described in a lengthy written decision, it denied maintenance to both parties. It valued the goodwill of the veterinary practice at zero and, pursuant to stipulation, divided its tangible assets equally. Mary appeals the judgment. Additional facts with respect to maintenance and property division will be discussed in our review of each issue.

STANDARD OF REVIEW

¶10 The determination of maintenance and property division are addressed to trial court discretion. ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981); ***Sharon v. Sharon***, 178 Wis. 2d 481, 488, 504 N.W.2d 415 (Ct. App. 1993). A discretionary decision is upheld if the trial court gives rational reasons for its decision. ***Littmann v. Littmann***, 57 Wis. 2d 238, 250, 203 N.W.2d 901 (1973). A rationale based upon factual errors or no facts in the record is an erroneous exercise of discretion. ***Thorpe v. Thorpe***, 108 Wis. 2d 189, 195, 321 N.W.2d 237 (1982).

¶11 A trial court's findings of fact will not be upset on appeal unless they are clearly erroneous. WIS. STAT. § 805.17(2). When the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility of the witnesses. ***Id.*** When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact. ***Bank of Sun Prairie v. Opstein***, 86 Wis. 2d 669, 676, 273 N.W.2d 279 (1979).

¶12 Consistent with these standards, an appellate court will generally look for reasons to sustain a discretionary determination, ***Steinbach v. Gustafson***, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993), and we may independently search the record to determine whether additional reasons exist to support the trial court's exercise of discretion. ***Stan's Lumber v. Fleming***, 196 Wis. 2d 554, 573, 538 N.W.2d 849 (Ct. App. 1995).

MAINTENANCE

¶13 Mary argues that based upon the length of the marriage, the disparity in incomes and her contributions, the trial court erroneously denied her maintenance. We disagree. In deciding to award maintenance, the trial court must consider the factors in WIS. STAT. § 767.26.[1] On review, the question is whether

[1] WISCONSIN STAT. § 767.26 provides:

> Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:
>
> (1) The length of the marriage.
>
> (2) The age and physical and emotional health of the parties.
>
> (3) The division of property made under s. 767.255.
>
> (4) The educational level of each party at the time of marriage and at the time the action is commenced.
>
> (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
>
> (6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
>
> (7) The tax consequences to each party.
>
> (8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future,

(continued)

the trial court's application of the factors achieves both the support and fairness objectives of maintenance. ***Forester v. Forester***, 174 Wis. 2d 78, 84-85, 496 N.W.2d 771 (Ct. App. 1993). The support objective is to support the recipient spouse in accordance with the needs and earning capacities of the parties. "The goal of the support objective of maintenance is to provide the recipient spouse with support at pre-divorce standards." ***Fowler v. Fowler***, 158 Wis. 2d 508, 520, 463 N.W.2d 370 (Ct. App. 1990). The fairness objective is to ensure a fair and equitable financial arrangement between the parties in each individual case. ***King v. King***, 224 Wis. 2d 235, 249, 590 N.W.2d 480 (1999).

¶14 In a long-term marriage, "[i]t is reasonable to begin maintenance evaluation with [the] proposition that [the] dependent partner may be entitled to fifty percent of the parties' total earnings." ***Fowler***, 158 Wis. 2d at 520-21. However, "[t]here is no rule of law in Wisconsin stating that a recipient spouse is entitled to one-half of the other's salary for the rest of his or her life." ***Enders v. Enders***, 147 Wis. 2d 138, 145, 432 N.W.2d 638 (Ct. App. 1988). ***LaRocque v. LaRocque***, 139 Wis. 2d 23, 406 N.W.2d 736 (1987), mandates that the trial court consider the parties' gross incomes at the time it determines maintenance, not that the gross income be used to calculate maintenance in some mechanical way. ***Enders***, 147 Wis. 2d at 145. ***LaRocque*** is not a limitation on the trial court's

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> where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
>
> (9) The contribution by one party to the education, training or increased earning power of the other.
>
> (10) Such other factors as the court may in each individual case determine to be relevant.

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

exercise of discretion as long as the court properly considers the appropriate factors. ***Enders***, 147 Wis. 2d at 145.

¶15 The case of ***Gerth v. Gerth***, 159 Wis. 2d 678, 465 N.W.2d 507 (Ct. App. 1990), is instructive. There, the trial court held that while the spouses' incomes were different, the wife worked throughout the marriage and suffered no loss of earnings or earning capacity as a result of the marriage. ***Id.*** at 682. It was "not a situation where one spouse left either school or the work force to raise their children or take care of their home." ***Id.***

¶16 The ***Gerth*** court found that the wife's efforts did not increase the husband's earning capacity. ***Id.*** "The court determined that it was fair for the parties to have different income levels if those levels were unaffected by the marriage and obtained only through their own natural abilities and hard work." ***Id.*** at 682-83. After divorce, a disparity in income is unfair when the disparity is attributable at least in part to one party's sacrifice of his or her earning capacity. ***Id.*** at 683. "Where a spouse has subordinated his or her education or career to devote time and energy to the welfare, career or education of the other spouse or to managing the affairs of the marital partnership, maintenance may be used to compensate for those nonmonetary contributions to the marriage." ***Id.***

¶17 Applying this standard, the facts in ***Gerth*** did not compel a maintenance award. ***Id.*** "To the extent [a spouse] contends that maintenance is required in every case where there is disparate earnings between parties to a long-term marriage, we reject such a hard and fast rule." ***Id.*** at 684. Because the trial court exercised its discretion in determining whether maintenance should be paid, its judgment was affirmed. ***Id.***

¶18 Here, the trial court considered various factors pursuant to WIS. STAT. § 767.26 with particular attention to the parties' respective contributions to the marital estate and earning capacities. The court observed that Mary unquestionably contributed to the success of the veterinary practice. It found that she assisted throughout the marriage with bookwork, accounting, and payroll duties. She provided homemaking and child care services, allowing Bradley to devote more time to his practice. Bradley, it found, helped at home and was an active parent, but Mary appears to have provided more parenting.

¶19 The court further observed:

> It should be noted, however, that Mary's attention to homemaking and child care duties does not appear to have interfered with her ability to pursue her own career. Despite her responsibilities at home, Mary was able to pursue further education in interior design during the marriage. After completing that course of education, she pursued a career in interior design, and later, her present career as a representative of the Governor.

¶20 The court also found that Bradley provided the sole source of support for the family while Mary attended college. In contrast, when Bradley was in veterinary school, he worked in the summer and obtained student loans that were mostly forgiven due to his work in a veterinary deficient region. Consequently, the court found that each party contributed to the education and increased earning power of the other. The court stated that although Bradley enjoys a somewhat higher earning capacity than Mary, "[t]his fact is not due primarily to an unequal contribution on Mary's part to Bradley's education or earning power. *It is due primarily to Bradley's career choice and hard work ….*" (Emphasis added.)

¶21 The court stated: "Although each party has contributed in some measure to the other's education and earning power, neither has been disadvantaged in his or her own career choice by reason of such contribution …." It determined that by virtue of her own career choices, hard work and initiative, Mary presently enjoys earnings that, while less than those of Bradley, permit her to support herself at a standard of living reasonably comparable to that enjoyed during the marriage. "She has not shown that she was disadvantaged economically as a result of the marriage or by virtue of her contributions to the marriage and to Bradley's career."

¶22 The court found that Mary's net monthly income of $2,500 per month after taxes, health, life, dental and income insurance is sufficient to meet her budgeted needs of $2,150 and provides her with a standard of living reasonably comparable to that enjoyed during the marriage. The record supports this finding.

¶23 We conclude that the trial court's careful findings of fact and reasoned application of proper legal principles render its maintenance decision virtually unassailable. Whether maintenance payments are required vary from case to case and require the exercise of discretion. ***Gerth***, 159 Wis. 2d at 684. Here, the record supports the trial court's finding that the support and fairness objectives do not require that maintenance be paid. The trial court was entitled to find that this is not a case where one spouse left school or the workplace to subordinate her career to that of her spouse. *See* ***id.*** at 682. Because the court exercised its discretion in making this determination, we do not overturn its decision on appeal.

¶24 Mary argues that the denial of maintenance is unfair because the court stated that according to the parties' stipulation, she will share in one-half of the sale proceeds of the veterinary practice, thus reflecting her contribution to the business. She claims that because the practice did not sell and, because the court valued the goodwill of the veterinary practice at zero, the court's failure to award maintenance resulted in a lack of compensation for her efforts at building the veterinary practice. She points to the trial court's following pronouncement:

> [T]o the extent that the present, successful state of the veterinary practice represents the joint efforts of both parties, those efforts will, presumably, be reflected in the value of the practice *upon sale*. Mary's efforts in building the practice will, thus, be recognized in the form of one-half of the proceeds *of sale* of the practice." (Emphasis added.)

For the reasons that follow, in our discussion of the property division, we reject this argument.

PROPERTY DIVISION

¶25 Mary argues that valuing the goodwill at zero departed from the "fair market value rule," resulting in an erroneous valuation of the veterinary practice. There is no dispute that absent a noncompete agreement, the value of goodwill would be zero. Mary contends, however, that according to the parties' stipulation, the fair market value of the practice must be determined as if Bradley had signed a noncompete agreement. We are not persuaded that the parties' stipulation contemplated that the court was to value the practice as if Bradley had entered into a noncompetition agreement. Nonetheless, even if the stipulation contains an ambiguity in this regard, its resolution is inessential to our analysis.

¶26 The record provides an independent basis to support the trial court's finding that the veterinary practice goodwill should be valued at zero. Based on expert testimony, the court was entitled to conclude that due to the nature of the practice, it possessed no value apart from its tangible assets and Bradley's personal reputation and skills. Accordingly, we conclude that the trial court correctly refused to include goodwill as an asset in the marital estate subject to division.

¶27 To better understand the parties' arguments, further background is necessary. At the beginning of the trial on maintenance, in addition to their written comprehensive stipulation, the parties reached an agreement that was reduced to a handwritten exhibit read into the record. It stated that the veterinary practice, including the "real estate, building, inventory, equipment & business personalty, client lists [and] goodwill will be marketed until sold or for a period not to exceed 6 months." If the practice did not sell at the end of six months, the parties would return to court for litigation and "determination of its value and distribution of that value" in accordance with the marital settlement agreement.

¶28 The marital settlement agreement, attached to the findings and judgment, states: "The veterinary business consists of the real estate where the veterinary office is situated; the furnishing, tools and equipment that are part of the veterinary business; the inventory of the veterinary business; and the 'goodwill' *if any* of the veterinary business, less the balance owed on the mortgage secured by the real estate where the veterinary business is situated." (Emphasis added.)

¶29 The parties agreed on the record that the only thing that would be litigated would be the value of the veterinary practice. They stated further:

> [Bradley's counsel]: My understanding is that Exhibit 2 is what the agreement between us is on the sale of this veterinarian business, and I just want to make perfectly clear a noncompete agreement is not part of what's for sale because my client still needs to support himself if the business is sold.
>
> ….
>
> [Mary's counsel]: I would agree that the noncompete agreement would not be considered part of the sale for the practice; but because the noncompete, whatever monies were paid for the noncompete agreement, would be to take the place of income my position is it would have a bearing on maintenance at that time.
>
> [Bradley's counsel]: My point is my client is not required to provide a noncompete.

¶30 Consistent with their agreement, the court ordered:

> The veterinarian practice will be marketed until sold or for a period not to exceed six months.
>
> ….
>
> … A noncompete agreement by the Respondent, Bradley L. Moser, is not part of what's for sale with the veterinarian practice and Bradley L. Moser is not required to provide a noncompete agreement.
>
> If the practice isn't sold in six months and the matter is referred back to court, the question to be litigated at that time is the value of the practice. The value of the practice is what it is that is to be sold. The Court would also retain the discretion to decline to value the veterinarian practice and order some other method of sale or disposition and division that way.

¶31 The practice did not sell within six months, and the parties returned to court. The parties stipulated that each party was to receive one-half the value of the practice. They also agreed that the real estate, building and equipment, minus the mortgage, was worth $92,867. Thus, the only issue for the court to determine was the value of the practice beyond its hard assets.

¶32 At the evidentiary hearing, each party relied upon an expert witness to give an opinion of value. Both experts agreed that without a noncompete agreement, the goodwill of the practice would be zero. Mary's witness, a certified public accountant, believed that based upon the income stream, the sum of $166,000 should be added to the value of the tangible assets to reach a fair market value.

¶33 Bradley's expert witness, William Wenger, a business consultant to veterinary practices, took a different approach. Wenger testified that the term "goodwill" really represented two things: one was the goodwill of the practice. He gave the example of a McDonald's franchise, where "you don't really care who is running McDonald's, you are expecting a standard when you go in there …."

¶34 Wenger explained that the other thing goodwill represented was Bradley's own personal style of management. Bradley had no in-house x-ray services, laboratory, boarding, grooming or long-term certified technicians, which is not typical today. Bradley, "a mixed animal practitioner," works solo and is available to his clients twenty-four hours per day, seven days a week. Wenger determined that Bradley's average transaction amount is $51 and that most average veterinary transactions are considerably higher.

¶35 Wenger pointed out that due to the nature of Bradley's practice, a lot of driving is required. "Large animal practice, you have less productive time when you are behind the windshield; the bigger the radius of practice, the more hours you are going to work just because you have to get there." Bradley's radius is twenty-five to thirty miles, and a typical veterinary dairy practice in Wisconsin would be smaller than that.

¶36 Wenger explained that it is best to sell a veterinary practice to someone who has worked with the owner to develop veterinary skills and rapport with clients. "If you were to hire a new graduate … they would not come here and buy this practice with him walking out the door the next day. … [T]hey would want him to stay here … at least a year or two to transition the practice and teach him how to do veterinary medicine." Also, Wenger testified that most practitioners prefer to work in groups where they can take time off. A one-person practice like Bradley's would not be as attractive to a potential buyer as an opportunity with a multi-staff clinic.

¶37 Wenger also testified that Bradley's health concerns play a big role in finding potential buyers. "Somebody that is coming to look at the area … or … to work for him and they know he has a health issue … would hesitate paying goodwill." He believed that if there were a noncompete agreement and no health concerns, the goodwill and the client list could be valued at $29,000 or $30,000. Wenger testified, however, that Bradley would be bound to disclose his health problem, which will take him out of practice at some point.

¶38 Based on credentials and experience, the trial court found Wenger's testimony the most credible. The court stated:

> The testimony of both of the experts is that the sale of a business like this is a bit problematic in the first place because of the type of the business that [Bradley] runs. A large versus a small animal business, although shifting now over time to more small animal, the number of hours that he puts into this business, the number of miles he puts on his vehicles; and the testimony is basically it is very difficult, if not impossible, to find someone, a new veterinarian for example, who would come up, put in these hours, that much time and that much work for that little consideration.

¶39 The court found that had there been a noncompete clause and no health concerns, the goodwill or client list could have been worth approximately $28,000. However, because of the health concerns and the lack of a noncompete clause, the court found that it was not appropriate to put any value on the practice beyond the stipulated value of the hard assets. Bradley was awarded the practice and ordered to pay one-half the stipulated sum of $92,867 to Mary.

¶40 Mary claims that the court erred by giving weight to the fact that Bradley has certain future health problems by virtue of his gene for Huntington's Chorea. She further argues that every notion of fair market value carries with it the concept of goodwill as a matter of law. We disagree. We conclude that whether goodwill exists and has value is a question of fact. For reasons that follow, we are satisfied that the record supports the trial court's determination.

¶41 To respond to Mary's argument, we begin with some general concepts regarding the division of professional practice upon divorce. Property to be divided at divorce is to be valued at its fair market value. ***Liddle v. Liddle***, 140 Wis. 2d 132, 138, 410 N.W.2d 196 (Ct. App. 1987). Fair market value assumes sale by one who desires but is not obligated to sell and purchase by one willing but not obligated to buy. ***Id.*** The goodwill of a going concern can be a marketable asset. ***Peerenboom v. Peerenboom***, 147 Wis. 2d 547, 552, 433 N.W.2d 282 (Ct. App. 1988).

¶42 In ***Spheeris v. Spheeris***, 37 Wis. 2d 497, 503, 155 N.W.2d 130 (1967), our supreme court observed that courts have had great difficulty in defining the concept of "goodwill."

> In its broadest sense the intangible asset called good will may be said to be reputation; however, a better description would probably be that element of value "which inheres in the fixed

> and favorable consideration of customers arising from an established and well-conducted business."
>
> No rigid and unvarying rule for the determination of the value of good will has been laid down by the courts; therefore, each case must be determined on its own facts and circumstances.

Id. at 504 (footnotes omitted).

¶43 "Goodwill is at best intangible." ***Peerenboom***, 147 Wis. 2d at 551. "[B]y general definition, [goodwill is] speculative and uncertain except to the extent that it has already been established by an arms-length bargaining in the open market place." ***Id***. (citation omitted).

¶44 In the context of a divorce action, our supreme court observed that goodwill was originally recognized in a commercial business and not in a professional practice, which depends upon the skill and reputation of a particular person. ***Holbrook v. Holbrook***, 103 Wis. 2d 327, 346, 309 N.W.2d 343 (Ct. App. 1981). "We are not persuaded that the concept of professional goodwill as a divisible marital asset should be adopted in Wisconsin." ***Id.*** at 350. ***Holbrook***, however, involved the division of an individual lawyer's interest in a large law firm. The court explained that due to ethical and contractual considerations, an interest in a law firm's goodwill could not be exchanged or sold on the open market. The court therefore concluded that it would be inequitable to compel "a professional practitioner to pay a spouse a share of intangible assets at a judicially determined value that could not be realized by a sale or another method of liquidating value." ***Id.*** at 351.

¶45 One court has held that if goodwill is tied to "certain individuals, it is not subject to equitable distribution because the value thereof does not survive the disassociation of those individuals from the business." ***Butler v. Butler***, 663 A.2d 148, 155 (Pa. 1995). An important factor indicating the absence of goodwill

separate from reputation is the fact that the practitioner is solo. *See* ***In re Marriage of Maxwell,*** 876 P.2d 811, 813 (Ore. Ct. App. 1994). It has been held that expert testimony that no one would buy an accounting practice without a noncompete clause was "telling evidence of a lack of separate goodwill." ***Williams v. Williams***, 667 So. 915, 916 (Fla. Dist. Ct. App. 1996).

¶46 In ***Peerenboom***, we adopted a case-by-case approach to the valuation of goodwill, stating: "[T]o the extent that the evidence shows that the goodwill exists, is marketable, and that its value is something over and above the value of the practice's assets and the professional's skills and services, it may be included as an asset in the marital estate and be subject to division." ***Id.*** at 552.[2] As a result, in ***Peerenboom***, we remanded to the circuit court for factual determination of these issues.

¶47 Accordingly, the determination whether goodwill exists and its value presents questions of fact. *See* ***Spheeris***, 37 Wis. 2d at 504; *see also* ***Taylor v. Taylor***, 386 N.W.2d 851, 859 (Neb. 1986) ("Whether goodwill exists and whether goodwill has any value are questions of fact."). Because reasonable minds may differ on how to value goodwill, it is for the trial court to determine what weight should be given to the testimony. ***Spheeris***, 37 Wis. 2d at 506.

¶48 In these situations, it is the duty of the trier of fact to determine the credibility of witnesses and resolve the conflicting testimony. ***Id.*** at 505. When the testimony of experts conflicts, the issue becomes one of weight of testimony

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[2] *See* Helga White, *Professional Goodwill: Is It A Settled Question Or Is There "Value" in Discussing It?* 15 J. AM. ACAD. MATRIM. L. 495 (1998); *see also* Martin J. McMahon, Annotation, *Divorce and Separation: Goodwill in Medical or Dental Practice as Property Subject to Distribution on Dissolution of Marriage*, 76 A.L.R.4th 1025 (1990).

and credibility of witnesses, which is within the province of the trier of fact. ***Schorer v. Schorer***, 177 Wis. 2d 387, 396-97, 501 N.W.2d 916 (Ct. App. 1993). When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact. ***Id.*** at 397. "Therefore, if a finder of fact accepts the testimony of one expert over that of another expert, who testified differently, and the first expert's testimony is sufficient to support the fact finder's conclusion, it must be sustained." ***Id.***

¶49 Here, the trial court was persuaded by Bradley's expert witness, from whose testimony the court could find that whatever value the goodwill had, it exclusively reflected Bradley's personal reputation and skills. The court was entitled to accept Wenger's testimony that Bradley's genetic disorder would detract from the selling price. That Bradley was a solo practitioner further supports a finding that there is no goodwill separate from his professional skills, which are not an asset subject to division. *See* ***Peerenboom***, 147 Wis. 2d at 551; ***Butler***, 663 A.2d at 156. As a result, regardless of the interpretation given to the parties' stipulation concerning the valuation of the practice, the court could find that the evidence would not support a finding that the goodwill of the practice itself was a valuable asset. Because the record supports the court's finding of fact, we do not reverse its decision on appeal.

¶50 The parties' briefs devote considerable attention to their conflicting interpretations of their stipulation's meaning with regard to the valuation of the practice upon returning to court. In light of the court's credibility determinations, we conclude that it is unnecessary to resolve their dispute. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983). Wenger's testimony contrasting the difference between the goodwill of a practice versus the goodwill of the reputation and skill of the practitioner provides a sufficient basis to uphold

the finding that the goodwill of the practice should be valued at zero. *See* ***State v. Echols***, 175 Wis. 2d 653, 672, 499 N.W.2d 631 (1993) ("An implicit finding of fact is sufficient when the facts of record support the decision of the trial court.").

¶51 Mary also argues that the effect of the court's maintenance and property division decision is to "whipsaw" her. First, by denying her maintenance, she claims she is denied her equitable share of Bradley's increased earning power. Second, by refusing to divide goodwill, she contends she is denied a fair share in the value of the business. She implies that the trial court's refusal to award her maintenance rested, in part, on its ruling that she would be awarded one-half the practice's goodwill. We disagree.

¶52 The trial court's maintenance decision specifically states that Mary's contribution to the veterinary practice would be recognized upon its *sale*. There is no dispute that by virtue of the stipulation, Bradley would not have been required to enter a noncompete agreement if he were to sell the practice (as opposed to returning to court to have it valued). It is also undisputed that if Bradley would have not provided a noncompete agreement, the value of the practice's goodwill would be zero. Therefore, it cannot reasonably be argued that the trial court's maintenance decision contemplated a division of the practice's goodwill as a basis to deny maintenance.

¶53 In addition, the record reflects that the parties stipulated to an equal division of approximately $100,000 in marital assets. Bradley was also ordered to pay Mary $43,823.50, representing one-half the net equity of the tangible assets of the veterinary practice. The court could reasonably infer that the value of the tangible assets reasonably represented the parties' efforts at building the practice. Consequently, the court could find that this sum would adequately compensate

Mary for her contribution. Because the record reflects the trial court's application of correct legal principles to facts properly found to reach a reasoned result, we do not overturn its decision on appeal.

By the Court.—Judgment affirmed.

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