

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 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. 00-2325

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

EDWIN C. SAUEY,

**PETITIONER-APPELLANT-CROSS-
RESPONDENT,**

V.

BEVERLY A. SAUEY,

**RESPONDENT-RESPONDENT-CROSS-
APPELLANT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court
for Sauk County: VIRGINIA WOLFE, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Edwin C. Sauey (Ed) appeals from the maintenance component of his judgment of divorce from Beverly A. Sauey (Ann). Ann cross-appeals from the property division. We affirm both aspects of the judgment for the reasons discussed below.

BACKGROUND

¶2 Ed and Ann were married in 1983. Each party had been married previously and they had no children during the marriage. Prior to the marriage, they executed a prenuptial agreement which was to be in effect for five years, and then be renegotiated. At that time, Ed had assets worth about \$1,855,000. In the prenuptial agreement, Ann waived all claims to maintenance and agreed that the assets and debts brought to the marriage by each party would remain separate and that Ann would receive the greater of \$50,000 or half of the community property acquired during the marriage if a divorce action were filed more than three years after the marriage.

¶3 In 1992, several years after the prenuptial agreement had lapsed, the parties executed a postnuptial agreement. They were both represented by counsel. The agreement specified that each party would retain the assets he or she had brought to the marriage. It treated the increased value of Ed's assets during the marriage as his individual property. It specified that if a divorce action were filed less than five years after the date of the agreement, Ed would pay Ann \$350,000. If a divorce action were filed more than five years after the agreement, Ann would receive the greater of \$350,000 or 25% of the parties' combined assets. In addition, Ed paid Ann \$350,000 at the time the agreement was signed, half in cash and half in an annuity payable to Ann from age sixty-two to life. Ann again

waived any claim to maintenance. However, the agreement also provided that its terms could be reevaluated in the event that either party were to become disabled.

¶4 Ann began having chronic back pain due to an infection in 1994. She stopped working in 1998, and was eventually awarded social security disability benefits.

¶5 The parties separated in 1995, and Ed petitioned for divorce in 1997, a few weeks less than five years after the date of the postnuptial agreement. By the time of the divorce hearing, Ed was seventy-four years old, in relatively good health and still operating his own business, with an annual income in excess of \$450,000. Ann was sixty-one and disabled due to her back, with a monthly income of \$3,963 from investments and disability payments. She submitted a budget of \$1,241 per month, not including items such as health insurance, uninsured medical expenses, and vacations. The parties' combined assets were in excess of \$6,500,000.

¶6 The trial court divided the property in accordance with the postnuptial agreement, awarding Ed property worth \$5,994,435 and Ann property worth \$511,345, and ordering Ed to pay Ann \$350,000. It deviated from the agreement, however, by awarding Ann maintenance in the amount of \$6,000 per month.

STANDARD OF REVIEW

¶7 Maintenance and the valuation and division of the marital estate are both within the sound discretion of the circuit court. *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996); *Long v. Long*, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995). Therefore, we will affirm maintenance and

property division awards when they represent a rational decision based on the application of the correct legal standards to the facts of record. *Id.*

ANALYSIS

Maintenance

¶8 WISCONSIN STAT. § 767.26 (1999-2000)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, the standard of living enjoyed during the marriage, and any mutual agreement by the parties. 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, 32-33, 406 N.W.2d 736 (1987). Thus, maintenance payments are not based solely on need or limited to situations where one spouse is not self-supporting. *Lundberg v. Lundberg*, 107 Wis. 2d 1, 12-13, 318 N.W.2d 918 (1982). 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 33-34.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶9 Ed argues that maintenance was not needed to fulfill the support objective in this case, given that Ann’s projected income exceeded the budget she submitted to the court. However, the trial court noted that the “meager” budget submitted by Ann reflected her attempt to live within her means after the parties’ separation, and thus did not necessarily reflect the pre-separation marital standard of living, which included several timeshare condominiums and multiple vacations each year. In any event, the trial court was not limited to awarding Ann the bare minimum necessary for her support. While the trial court recognized that the record was vague with regard to the marital standard of living, we see nothing which would preclude it from making a fair inference about the parties’ lifestyle based on their income and investments.

¶10 Ed also argues that it was unfair to impose maintenance after Ann signed the agreement waiving maintenance. The record shows that the trial court took the agreement into account when refusing Ann’s request for half of the parties’ combined income. However, the trial court placed considerable weight on the fact that Ann had substantial medical difficulties and substantial medical costs which would not be decreasing. We see nothing unreasonable about its conclusion that it would be fair to award Ann an amount of maintenance that would “give her the ability to be free from the anxiety of being able to receive the appropriate medical care for her various disabilities and medical conditions ... [and] to enjoy a comfortable lifestyle” while having a minimal impact on Ed’s available income.

Property Division.

¶11 Under WIS. STAT. § 767.255(3)(L), “[a]ny written agreement made by the parties before or during the marriage concerning any arrangement for property distribution” shall be considered binding, unless its terms are inequitable.

A party wishing to challenge such an agreement bears the burden of showing it to be inequitable. *Gardner v. Gardner*, 190 Wis. 2d 216, 230, 527 N.W.2d 701 (Ct. App. 1994). Equitable considerations include whether each party made fair and reasonable financial disclosures; whether each party entered into the agreement freely and voluntarily; and whether the substantive provisions of the agreement are fair. *Id.* at 229.

¶12 Ann claims that Ed misrepresented the status of property acquired during the marriage as his individual property rather than marital property, and that there were a number of mathematical errors contained in the agreement. The trial court found that the errors were not substantive, and that they could have been verified based on the information which had been presented. This finding was supported by deposition testimony showing that Ann had told her attorney she did not want to have independent appraisals on figures supplied by Ed because Ann believed that she knew more about their finances than he did. The trial court characterized Ann's claim that she had no idea that the accumulated value of Ed's assets after the expiration of the premarital agreement constituted marital property as "inconceivable" given the six months of negotiations engaged in by the parties, and counsel's assertion that she explained Ann's rights to her in detail. This finding was supported by a letter which counsel had sent to Ann confirming that they had discussed that Ann might have a claim on \$1,400,000 of the marital estate in a divorce setting.

¶13 Ann claims that her signing of the agreement was coerced by a threat from Ed that he would divorce her if she did not sign the agreement. In addition to noting that Ann's assertion was uncorroborated, the trial court correctly pointed out that a threat to terminate a relationship does not constitute duress under Wisconsin law. *Id.* at 233.

¶14 Finally, Ann claims that the agreement was substantively unfair both at the time it was made and at the time of the divorce because it failed to provide Ann with support and because it provided Ann with less than an equal share of the property accumulated during the marriage. The trial court, however, took note of the premarital agreement in finding that the intent of the parties was to preserve the substantial assets Ed brought to the marriage and the proceeds therefrom, and that Ann had received significant assets in comparison to her pre-marital net worth.

¶15 In sum, we are satisfied the trial court reasonably applied the relevant law to the facts of record when it concluded that the postnuptial agreement was procedurally equitable because Ann had been given reasonable disclosure of the parties' assets and had entered into the agreement voluntarily, and it was substantively equitable given the disparity of assets which the parties brought to the marriage.

By the Court.—Judgment affirmed.

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

