

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 16, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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. 00-2615

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

NANCY A. WEBB,

PETITIONER-RESPONDENT,

V.

ANDREW J. WEBB,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Wood County:
VIRGINIA WOLFE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Andrew Webb appeals the judgment divorcing him from Nancy Webb. He claims that the trial court erred in its valuation of the marital estate and that it should have awarded him either maintenance or a larger

portion of the marital estate. We disagree and affirm for the reasons discussed below.

BACKGROUND

¶2 Andrew and Nancy were married on June 28, 1979. They separated in 1996. They had two children, one of whom was still a minor and living with Andrew at the time of the divorce. Andrew had a high school diploma; Nancy did not. Although the parties earned similar incomes early in the marriage, by the time of the hearing Nancy was earning about \$37,774 per year at Consolidated Papers, subject to layoff periods, while Andrew, whose employment had been sporadic in the nine years preceding the divorce, was earning \$18,720 as a cranberry laborer.

¶3 The trial court awarded Andrew primary placement of the parties' minor child, who was a senior in high school, and ordered Nancy to pay 17% of her income, not including overtime, for child support. The trial court valued the net marital estate at \$55,013, awarded the residence and the bulk of the marital estate to Andrew, and ordered Andrew to pay Nancy \$27,106.50 to equalize the property division. In valuing the marital estate, the trial court assigned several collector's vehicles the value given to them by Andrew at his deposition, despite subsequent expert opinion giving them a lower value, and it gave no value to a pension fund in Nancy's name. The trial court denied Andrew's request for maintenance.

STANDARD OF REVIEW

¶4 Maintenance and the division of the marital estate lie 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. *Sellers*, 201 Wis. 2d at 585. In addition, even if the trial court’s analysis is flawed in some manner, we may affirm the decision if we can determine for ourselves that the facts of record provide a basis for the trial court’s decision. *State v. Gray*, 225 Wis. 2d 39, 51, 590 N.W.2d 918 (1999).

¶5 We will not disturb a factual finding regarding the valuation of an asset unless it is clearly erroneous. *Weiss v. Weiss*, 122 Wis. 2d 688, 698, 365 N.W.2d 608 (Ct. App. 1985).

ANALYSIS

Maintenance

¶6 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, 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

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

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).

¶7 The trial court did not specifically enumerate each of the statutory maintenance factors in its analysis. Instead, the trial court observed that the parties had had similar incomes until the last few years of the marriage when Andrew’s periods of unemployment and part-time employment had begun. It further noted that there was nothing preventing Andrew from resuming full-time employment. This finding was supported by expert testimony regarding the availability of jobs in the area. The trial court then concluded that there was “no reason for the current disparity in income,” which we understand to mean that the parties had substantially similar earning capacities, despite the actual disparity in their incomes at the time of the divorce.

¶8 Given the trial court’s implicit determination that the parties had equivalent earning capacities, we see nothing in the other statutory factors which would have required an award of maintenance. Andrew contends that he is entitled, under fairness considerations, to be compensated for his homemaking contributions while the parties were separated. Alternatively, he asserts that the trial court should have awarded him a disproportionate share of the marital estate in consideration of his homemaking and child care services. WIS. STAT. § 767.255(3). His arguments are flawed in several respects, however. First, the parties had two households to maintain during the period of separation. Therefore, it is not accurate to say that Andrew was the only homemaker during that period. Furthermore, there was no evidence that Andrew was the primary homemaker while the parties were living together and the children were young. Finally, since

the trial court determined that Andrew's earning capacity had not been adversely affected by his periods of unemployment, his claim that he sacrificed his stream of income for the sake of the children fails.

¶9 In sum, we are satisfied that the trial court could reasonably deny maintenance based upon the record before it. For similar reasons, we conclude the trial court was not required to deviate from the presumption of an equal property division in order to compensate Andrew for his homemaking contributions while the children were in high school.

Valuation of the Marital Estate

¶10 Nancy and Andrew gave conflicting testimony regarding the value of the automobiles in Andrew's possession. Nancy testified that her values were based upon Andrew's deposition testimony. Andrew introduced appraisals of the vehicles, but admitted that he thought the appraisal was low for the 1929 Dodge, and that he would not sell it for that amount. The trial court concluded that Andrew's deposition testimony was more reliable than the subsequent appraisals. Its valuation was supported by evidence in the record and was not clearly erroneous.

¶11 Andrew also disputes the trial court's failure to assign any value to Nancy's pension, which he had valued at \$1,680.48. Nancy's employer provided a separate statement concerning the status of her pension. That statement does not support the assumptions in Andrew's valuation and is sufficient to show that the trial court's valuation is not clearly erroneous. However, the trial court interrupted testimony to verify that the pension was not vested. Therefore, the trial court's valuation of zero for the pension was supported by the record and is not clearly erroneous.

By the Court.—Judgment affirmed.

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

