

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 6, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 01-0167-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

ANN MARIE JAHIMIAK,

PETITIONER-APPELLANT,

V.

DAVID RALPH JAHIMIAK,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County:
JOHN A. DAMON, Judge. *Affirmed.*

Before Vergeront, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Ann Marie Jahimiak appeals an order denying her motion for increased maintenance from her ex-husband David Ralph Jahimiak. The dispositive issue is whether Ann demonstrated a substantial change in the

parties' financial circumstances. We conclude that she did not and therefore affirm.¹

¶2 The parties divorced in January 1999 after twenty-seven years of marriage. The trial court found David's income was \$176,000 and Ann's income potential was \$10,000 per year, including \$5,000 earned and \$5,000 unearned income. The parties' net marital estate totaled almost \$1,700,000. One child of the marriage, aged 18, was scheduled to graduate from high school four months after the divorce.

¶3 The court ordered David to pay Ann \$54,000 per year in maintenance, somewhat less than one-half the parties' total anticipated income as found by the trial court. The court justified David's larger share of the couple's income by noting the very substantial debts he was assuming. The court also noted that Ann would receive an \$840,000 property settlement, including the parties' unencumbered residence worth \$250,000 and liquid assets totaling some \$500,000 (with no debts).

¶4 One-and one-half years later Ann moved for increased maintenance. She principally relied on: (1) David's increase in his annual income by \$32,000; (2) David's payment of most of the debts he assumed after the divorce; (3) David's sale of assets awarded to him for substantially more than the trial court's valuation; and (4) David's capital losses on assets that substantially reduced his income taxes. She did not argue a substantial change in her own financial circumstances.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (1999-2000). All further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶5 The trial court concluded that David's improved financial condition did not meet the threshold requirement of a substantial change in circumstances and denied Ann's motion. On appeal, she contends that the trial court's conclusion is erroneous.

¶6 A party seeking to modify maintenance must show a substantial change in the parties' financial circumstances. *Haeuser v. Haeuser*, 200 Wis. 2d 750, 764, 548 N.W.2d 535 (Ct. App. 1996). A substantial change in circumstances is such that it renders the original maintenance award unjust or inequitable. *Rosplock v. Rosplock*, 217 Wis. 2d 22, 33, 577 N.W.2d 32 (Ct. App. 1998). The trial court's findings of fact on the issue are reviewed under the clearly erroneous standard. *Id.* However, whether the change in circumstances is substantial is a question of law that we review *de novo*. *Id.*

¶7 Ann failed to show a substantial change in the parties' circumstances justifying increased maintenance for her. Notwithstanding the fact that David still owes debts of at least \$160,000, he has undeniably improved his financial position from that existing at the time of the divorce. However, Ann's situation has also substantially improved. In calculating maintenance, the trial court credited Ann with \$5,000 in potential unearned income. In the ensuing property division, however, she received liquid assets totaling some \$500,000 with no debts. She cannot reasonably dispute that her potential income from \$500,000 is far greater than \$5,000.² Both parties, at least potentially, are considerably better off than the court contemplated at the time of the divorce. We cannot conclude that the

² Ann conceded that she had not wisely used her liquid assets, and was therefore receiving much less income from them than she potentially could. However, maintenance is not a vehicle to compensate a party for imprudent or unwise financial decisions. *Murray v. Murray*, 231 Wis. 2d 71, 82, 604 N.W.2d 912 (Ct. App. 1999).

financial balance between them has substantially changed. Therefore, the trial court properly denied increased maintenance.

By the Court.—Order affirmed.

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

