

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 24, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 02-0645  
STATE OF WISCONSIN**

**Cir. Ct. No. 01-FA-3**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE MARRIAGE OF:**

**DARLA J. KRAUS,**

**PETITIONER-RESPONDENT,**

**V.**

**TIMOTHY J. KRAUS,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Portage County:  
THOMAS T. FLUGAUR, Judge. *Affirmed.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Timothy Kraus appeals from a judgment divorcing him from Darla Kraus. The issues relate to maintenance and child support. We affirm.

¶2 The court ordered Timothy to pay maintenance of \$325 per month for eighteen months. The court further ordered that maintenance would remain open for five years after that. Timothy first argues that the court did not properly exercise its discretion in awarding maintenance because it did not state any reason why maintenance was necessary, or how it arrived at \$325, or why maintenance was held open for an additional five years.

¶3 This argument is contrary to the record. Although the court did, as Timothy argues, recite many of the factors without expressly analyzing them, the court then stated: “The Court does believe that because of the length of the marriage and what the Court has found to be the imputed income of the respective parties, that trying to equalize monthly disposable income for a period of time is appropriate.” The court further stated: “The first 18 months, the dollar amount is \$325 to equalize the monthly disposable income.” The court then said that after eighteen months, “it will be held open for that period only because of the uncertainties that there are in this particular case.” The mention of “uncertainties” appears to be a reference to questions about the predictability of Timothy’s future income, which we discuss further below. The court stated that it doesn’t “like to be revisited by cases, but this is a case that is probably ripe for that because of the uncertainties, also because of allegations of shirking and gamesmanship and whatnot.” Finally, the court said: “Out of fairness principles, I think that is the fairest arrangement that the Court can come up with. After 18 months, when child support is no longer being paid by Mrs. Kraus, she has more than enough disposable income to live without maintenance.”

¶4 Timothy next argues that a proper balancing of the relevant factors would lead to denial of maintenance. The decision to award maintenance, and the amount, is a discretionary one that we affirm if the court makes a rational,

reasoned decision and applies the correct legal standard to the facts of record. *Hokin v. Hokin*, 231 Wis. 2d 184, 190, 605 N.W.2d 219 (Ct. App. 1999).

¶5 In making this argument, Timothy states that the parties are in an equal position on many of the factors set forth in the maintenance statute, WIS. STAT. § 767.26 (1999-2000).<sup>1</sup> However, we reject his view of some of the most relevant factors. He claims that the parties' incomes "are very similar." However, the circuit court found that Darla's income was \$44,000, while Timothy's projected income was more than 50% greater, at \$67,729. Timothy disputes the finding as to his projected income, but we affirm it below. He asserts that the parties' seventeen-year marriage, which produced two children aged twelve and sixteen at the time of divorce, was "a relatively short-term marriage." Income disparity and the significant length of the marriage were the two factors the court relied on most in ordering maintenance, and we conclude this was a reasonable decision.

¶6 Timothy next argues that the circuit court erred in its finding of his projected income for child support and maintenance purposes. In addition to maintenance, the court ordered him to pay monthly child support of \$959. The court wrote that this amount was based on "the percentage guidelines for one child in each parent's custody at their respective incomes." The court found that Timothy's commission income fluctuates, and it arrived at the projected income figure we stated above by averaging his income from the past three years. Timothy's argument appears to be that the circuit court, instead of attempting to

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

predict his income by averaging, should have simply set child support as a percentage amount of whatever he actually earns in the post-divorce period. Darla argues that the court's decision was proper.

¶7 Both parties appear to be unaware that the child support statute, WIS. STAT. § 767.25(1)(a), was amended in 2001 to provide that support amounts “must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income” and certain other requirements are satisfied. 2001 Wis. Act 16, § 3786f. This amendment applies to judgments and orders granted on or after September 1, 2001. 2001 Wis. Act 16, § 9358(8ck)(a); WIS. STAT. § 991.11. The judgment in this case was entered in January 2002, and therefore was covered by this amendment. It does not appear that the parties stipulated to expressing support as a percentage of their incomes, and therefore the circuit court was required by this amendment to set support as a fixed sum.

¶8 In determining a fixed support amount, the circuit court is required to use the percentage guidelines in most cases, under WIS. STAT. § 767.25(1j), and the court did so in this case. If a court is going to both set a fixed amount of support and use the percentage guidelines, the court necessarily must begin by establishing a firm income figure to which it can apply the percentage guideline and produce a fixed sum. In other words, a court must reject Timothy's proposed response to his fluctuating income, which is to simply avoid making any finding of his projected income and order support as a percentage figure from future income. Timothy does not argue that there was some method other than averaging that the court should have used to determine his projected income. Given his fluctuating income, it would not have been reasonable to use only his current year's projected income, which was the lowest among the six years of record. Accordingly, we conclude that the finding of his projected income was not clearly erroneous.

¶9 Timothy also argues that the court should have used his current year's income, rather than averaging, to decide whether maintenance was appropriate. He argues that if the court had used his current income, maintenance would not be appropriate, or should have been set as a percentage figure. We conclude it was reasonable for the court to use a method, such as averaging, that takes into consideration the payer's fluctuating income. It might well have been reasonable for the court to set maintenance as a percentage amount, but that does not mean it was unreasonable to set a fixed sum based on averaging.

*By the Court.*—Judgment affirmed.

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

