

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2004

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. 03-1064
STATE OF WISCONSIN**

Cir. Ct. No. 98FA000630

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

CARROLL S. PIEPIORA,

PETITIONER-APPELLANT,

v.

SUSAN PIEPIORA,

RESPONDENT-RESPONDENT,

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

Before Anderson, P.J., Brown and Snyder, JJ.

¶1 SNYDER, J. Carroll S. Piepiora appeals a judgment of divorce requiring him to pay temporary maintenance payments to Susan Piepiora. He contends that the circuit court erred in determining that he could afford to pay

Susan \$100 per month for twenty-four months. We disagree and affirm the judgment of the circuit court.

¶2 Carroll and Susan married in 1993 and had two children together. In 1998, they filed for divorce. During the marriage they encountered ongoing financial problems, some due to medical bills, and filed for bankruptcy twice. Susan worked as a housekeeper at a local hotel from 1997 to 2000, with an annual income of approximately \$13,000. She lost that job and began selling candles through in-home parties, earning about \$800 in 2002. Susan has her GED and states she would like to obtain further training to pursue a career in computers or the medical field.

¶3 Carroll currently works full time and his gross monthly income is \$2100. He pays child support in the amount of \$498.34 per month for the two minor children, and \$125 per month for the children's health insurance. Carroll also invests \$45 from each biweekly paycheck in savings bonds for the children's education.

¶4 At the divorce hearing in January 2003, the court ordered Carroll to pay Susan maintenance of \$100 per month for twenty-four months. On appeal, Carroll argues that his income cannot accommodate the \$100 per month maintenance without abandoning the education savings plan for his children. He further argues that the court erred because it took these funds from the children to enrich Susan without making a finding of fact regarding Carroll's ability to pay the maintenance.

¶5 The determination of the amount and duration of maintenance is entrusted to the sound discretion of the circuit court, and a reviewing court will uphold the award absent an erroneous exercise of discretion. *Bisone v. Bisone*,

165 Wis. 2d 114, 118, 477 N.W.2d 59 (Ct. App. 1991). We will disturb the circuit court's determination only when the court failed to consider the proper factors, has based the award upon a factual error, or when the award itself was, under the circumstances, either excessive or inadequate. *Id.* at 118-19.

¶6 When ordering maintenance, a circuit court must consider several factors under Wis. Stat. § 767.26 (2001-02),¹ including:

(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.

....

(10) Such other factors as the court may in each individual case determine to be relevant.

Section 767.26.

¶7 Carroll contends that the circuit court did not consider the appropriate factors and the result was an excessive, unfair award of maintenance. Carroll cites our supreme court, which stated that “[a] divorced husband should be allowed a fair choice of a means of livelihood and to pursue what he honestly feels are his best opportunities even though he might for the present, at least, be

¹ All statutory references are to the 2001-02 version unless otherwise indicated.

working for a lesser financial return.” *Edwards v. Edwards*, 97 Wis. 2d 111, 118, 293 N.W.2d 160 (1980). He argues that:

Carroll has a net income of \$1,908.04 per month while his monthly expenses are \$1,972.21, including his monthly child support obligation of \$498.34, twenty-five percent of Carroll’s gross income. He is unable to obtain additional hours of work as his employer will not permit him to work overtime. It is not possible for Carroll to include the extra \$100 per month ordered by the court. The court’s disregard for Carroll’s ability to pay was an erroneous exercise of discretion.

¶8 We disagree. The circuit court did not require Carroll to work overtime or find a higher paying job in order to pay Susan maintenance. Rather, Carroll’s voluntary savings bond purchases from each paycheck demonstrate that he could afford a short-term minimal maintenance payment.

¶9 A circuit court properly exercises its discretion when it reaches a rational, reasoned decision applying the correct legal standard to the facts of record. *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481, (Ct. App. 1996). The record demonstrates that the circuit court considered the relevant factors under WIS. STAT. § 767.26 when fashioning the maintenance award. The court (1) recognized the dire financial situation of the parties, including the couple’s two prior bankruptcy proceedings; (2) reviewed Carroll’s current income and expenses, and his employer’s restriction on overtime; (3) considered Susan’s income earning potential in light of current child care and transportation concerns; and (4) considered Susan’s goal of obtaining training to improve her prospects for employment. The court determined that the proper short-term use of the money that Carroll was putting into a speculative education fund for the children would be as maintenance for Susan for a period of twenty-four months.

¶10 The court ordered the maintenance based on findings of fact articulated in the record, balancing the needs of Susan and the children with Carroll's ability to pay. *Id.* The minimal amount of the award reflects the circuit court's understanding that both parties are in a difficult financial situation. The limited term of the award demonstrates that the court considered Susan's estimate that, by attending school part-time, she would finish her training in approximately three years. We conclude that there was no erroneous exercise of discretion by the circuit court in fashioning this award.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

