

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 23, 2005**

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. 04-0574  
STATE OF WISCONSIN**

**Cir. Ct. No. 92FA289**

**IN COURT OF APPEALS  
DISTRICT III**

---

**IN RE THE MARRIAGE OF:**

**EDWARD J. SEIS,**

**PETITIONER-RESPONDENT,**

**V.**

**CATHERINE A. SEIS,**

**RESPONDENT-APPELLANT.**

---

APPEAL from an order of the circuit court for Langlade County:  
JAMES P. JANSEN, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Catherine Seis appeals an order terminating Edward Seis's obligation to pay maintenance. Catherine contends the court erroneously exercised its discretion because it based its decision solely on the ratio between the length of the marriage and the length of time Edward had been paying

maintenance. The record reflects the court's decision encompasses much more than what Catherine suggests and based on that record, we conclude the circuit court properly exercised its discretion. Accordingly, we affirm the order.

### **Background**

¶2 Edward and Catherine were married in 1976. They had two children, born in 1977 and 1979. The parties' divorce was final in 1993. At the time of the divorce, the court ordered Edward to pay \$200 per month maintenance for five years, starting in June 1993.<sup>1</sup> In 1994, the amount was increased to \$300 per month. In 1997, on Catherine's motion, the court extended the maintenance indefinitely, citing specific concern for Catherine's ongoing battle with depression, but did not increase the amount. These orders were never appealed.

¶3 In 2003, Edward brought the underlying motion to terminate maintenance. He argued that Catherine's depression had improved to a point where it was manageable with medication and she had not seen her therapist in the two years preceding his motion. This meant Catherine could and did work full time. Catherine responded that she would be unable to meet her monthly expenses while Edward's standard of living had improved upon his remarriage. The court agreed with Edward, finding a significant change in circumstances, and terminated the maintenance as of June 30, 2004. Catherine appeals.

---

<sup>1</sup> This was in addition to his child support obligation.

## Discussion

¶4 Maintenance awarded in a divorce under WIS. STAT. § 767.26 may be subsequently modified pursuant to WIS. STAT. § 767.32, provided the party seeking modification demonstrates a substantial change in circumstances warranting the alteration.<sup>2</sup> *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶30, 269 Wis. 2d 598, 676 N.W.2d 452. The decision to modify a maintenance award is committed to the circuit court’s discretion and will be reversed only upon an erroneous exercise of that discretion. *Id.*, ¶17.

¶5 It is not necessary for this court to agree with the decision, provided it is arrived at by a consideration of relevant law, the facts, and a process of logical reasoning. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). And, while the proper exercise of discretion contemplates the circuit court will explain its reasoning, when it does not do so, we may search the record to determine if it supports the court’s decision. *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

¶6 The “change in circumstances” must relate to a change in the financial circumstances of one or both parties. *Kenyon v. Kenyon*, 2004 WI 147, ¶13, \_\_\_ Wis. 2d \_\_\_, 690 N.W.2d 251. When the court considers a request for modification of maintenance under WIS. STAT. § 767.32 and examines whether there has been a change in circumstances, it must reconsider the factors of WIS. STAT. § 767.26.<sup>3</sup> *Id.* “When the circuit court has previously entered an order

---

<sup>2</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

<sup>3</sup> The WIS. STAT. § 767.26 factors are:

(continued)

modifying maintenance, it would be inappropriate to use the facts surrounding the original divorce judgment as a baseline for an evaluation” of a change in circumstances. *Id.*, ¶16. Rather, “the appropriate comparison regarding any change in the parties’ financial circumstances is to the set of facts that existed at the time of the most recent maintenance order ....” *Id.*, ¶21.

---

(1) The length of the marriage.

(2) The age and physical and emotional health of the parties.

(3) The division of property made under s. 767.255.

(4) The educational level of each party at the time of marriage and at the time the action is commenced.

(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.

(7) The tax consequences to each party.

(8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.

(9) The contribution by one party to the education, training or increased earning power of the other.

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

¶7 While we defer to the court’s factual findings, whether the different facts constitute a substantial change is a question of law. *See Keller v. Keller*, 2002 WI App 161, ¶7, 256 Wis. 2d 401, 647 N.W.2d 426. Once a sufficient change is demonstrated, the circuit court must again consider the dual maintenance objectives of support and fairness. *Rohde-Giovanni*, 269 Wis. 2d 598, ¶31.

¶8 Catherine argues the circuit court erred when it terminated maintenance after considering Edward had been paying for eleven years following a sixteen-year marriage. We conclude that the court’s decision was properly based on that as well as other considerations, and there is adequate evidence from which the court could have found a substantial change in circumstances.

¶9 The most recent maintenance decision was in 1997. In that decision, the court rejected the notion that it should equalize the parties’ incomes.<sup>4</sup> It considered that a sixteen-year marriage was “close” in determining whether the length merits any maintenance payments. *See* WIS. STAT. § 767.26(1). The court noted that Catherine had been primarily responsible for the children and that she continued to maintain some responsibility for them even though both had reached adulthood. *See* WIS. STAT. § 767.26(5). The court further noted that because she had been responsible for the children, she had been absent from the workforce for some time, causing her secretarial training to become stale and meaning that she likely would never make the same level of income as Edward. *See id.*

¶10 The court was, at that time, deeply concerned by Catherine’s mental health status and its effect on her employment opportunities. She had developed

---

<sup>4</sup> Although Catherine tangentially argues for equalization on appeal, she did not appeal the 1997 determination rejecting that same request.

depression during the marriage. The evidence in 1997 led the court to believe that the depression was a condition of indefinite length which would require medication for an indefinite period. The court also found that this diagnosis indefinitely impaired her ability to work, since the evidence suggested she needed to avoid stressful employment. *See* WIS. STAT. § 767.26(2), (6).<sup>5</sup> Indeed, Catherine's mental health appears to be the main reason the court indefinitely extended the maintenance term.

¶11 When the court revisited its decision in 2003, it noted that its primary concern had always been Catherine's ability to function in a job given the effects that stress has on her. At that time, however, the court found that Catherine was able to support herself in a manner consistent with the lifestyle of the marriage.<sup>6</sup> It noted that while Catherine might have some struggle with her expenses, there was a similar financial difficulty during the marriage.

¶12 Key to the court's decision, however, was its finding that Catherine's depression was no longer a significant factor adversely impacting her ability to hold a job. Indeed, the evidence shows that Catherine can work thirty-five to forty hours in a week, that her depression is controlled by medication, and that two years had passed without her needing to see her therapist.

---

<sup>5</sup> The factors under WIS. STAT. § 767.26(3), (7), (8), and (9) appear to have been insignificant to the 1997 decision and they were not specifically identified by the court at that time. The parties had comparable education levels under § 767.26(4) and there is no indication the court identified additional factors under § 767.26(10).

<sup>6</sup> While Catherine states that the court decided she was "never going to be able to live in the lifestyle she enjoyed during the marriage." She fails to provide a record cite for this holding. It appears, however, that she has either misread the court's decision or views its characterizations of the parties' positions as its holding.

¶13 Thus, the primary reason the court made maintenance indefinite—the indeterminate nature of Catherine’s health status and its impact on her employability—had essentially disappeared and the primary impediment to her earning potential was no longer an obstacle. This is a sufficient, substantial change in her financial circumstances, but it does not end the analysis. The court was required to consider the support and fairness objectives and, although *Kenyon* had not been decided at the time of the court’s order to so instruct, it appears the court adequately considered both objectives.

¶14 First, the court noted the “purpose of the past maintenance has been satisfied.” We take this to mean the court considered that Edward fulfilled the support objective by paying Catherine when her health and responsibility for the children made it difficult to ensure her employability and standard of living. Because the court found that Catherine can now maintain herself at a level comparable to that enjoyed during the marriage, the court considered the support objective fulfilled.

¶15 Second, “the correct test [for fairness] ... should consider fairness to both of the parties under all of the circumstances, not whether it is unjust or inequitable to alter the original maintenance award.” *Kenyon*, \_\_ Wis. 2d \_\_, ¶30 (quoting *Rohde-Giovanni*, 269 Wis. 2d 598, ¶32). The court here determined that, in fairness, it would end Edward’s maintenance obligation. Although the written decision is silent on the reasoning, it is evident the court determined the primary factor holding Catherine back in the work force—her depression—was under control and manageable. Because she can hold a job, terminating maintenance would not unfairly leave her unsupported.

¶16 Moreover, the record reflects the court's concern of the length of time Edward had to pay. Indeed, "payment of maintenance is not to be viewed as a permanent annuity. Rather, such payment is designed to maintain a party at an appropriate standard of living, under the facts and circumstances of the individual case, until the party exercising reasonable diligence has reached a level of income where maintenance is no longer necessary." *Kenyon*, \_\_ Wis. 2d \_\_, ¶28 (quoting *Vander Perren v. Vender Perren*, 105 Wis. 2d 219, 230, 313 N.W.2d 813 (1982)). The court determined that Catherine has reached an income level where maintenance is no longer necessary and consequently, it would be unfair to require Edward to continue paying it. The court's determination is solidly grounded in the relevant law and facts of record and is therefore an appropriate exercise of discretion.

*By the Court.*—Order affirmed.

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



