

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 28, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0206

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

In re the Marriage of:

BEVERLY JEAN HANLEY,

Petitioner-Appellant,

v.

WILLIAM JOSEPH HANLEY,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Reversed and cause remanded with directions.*

Before Dykman, Sundby and Vergeront, JJ.

PER CURIAM. Beverly Jean Hanley appeals from a divorce judgment. The issues are whether the court erred in declining to award maintenance, find hardship, or order a contribution to attorney's fees. We reverse and remand.

At the time of the circuit court decision, Beverly and the respondent, William Joseph Hanley, were forty-seven. They were married in 1979. They have one child, born in 1979. By agreement of the parties, William has primary placement of their daughter. Beverly's income is currently \$275 per month. After three years of technical college it is expected to be in the range of \$14,000 to \$19,000. William's income is significantly greater. William is in generally good health, while Beverly suffers from current and potentially recurring health problems. The court did not order Beverly to pay child support. The court did not order William to pay maintenance and decided the issue should not be left open. The court did not order William to contribute to Beverly's attorney's fees.

Determination of maintenance is within the discretion of the trial court. *LaRocque v. LaRocque*, 139 Wis.2d 23, 27, 406 N.W.2d 736, 737 (1987). A discretionary determination must be a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination. *Id.* Maintenance is governed by § 767.26, STATS., and is designed to further two objectives: to support the recipient according to the parties' needs and earning capacities, and to ensure a fair and equitable financial arrangement in the individual case. *Id.* at 32-33, 406 N.W.2d at 740.

Beverly argues the court erred in declining to award maintenance. The court wrote:

This issue is the most difficult part of this case. Whether to award maintenance and whether to leave the issue open are very close questions. Given the property division awarded to [Beverly] below, given that [William] has custody and will be supporting the minor child of the parties, and given that [William] will not be receiving support from [Beverly], the court concludes that [William] does not have an ability to pay maintenance at this time. The court further concludes that the issue of maintenance should be closed with respect to both parties.

We conclude the court erroneously exercised its discretion. It appears that many of the factors in § 767.26, STATS., would favor Beverly. Some of the factors relied upon by the court to conclude otherwise are not substantial. William's support of their daughter is a factor of minimal significance because of her nearness to majority. The fact that Beverly is not paying child support is also of modest significance because that may change at any time. The court provided no reasoning as to why the issue of maintenance should be closed. Therefore, on remand the circuit court shall reconsider the maintenance issue.

Beverly argues the court erred by not awarding her some of William's inherited property on hardship grounds under § 767.255(2)(b), STATS. Because this issue is interwoven with the maintenance issue, we reverse and remand for further consideration with the maintenance issue.

Beverly argues the court erred by not ordering William to make a contribution to her attorney's fees. Because this issue is based on factors similar to the above issues on which there will be further consideration, we also reverse and remand on this issue.

On remand, the circuit court shall reconsider maintenance, hardship and contribution to attorney's fees.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.