

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**APRIL 9, 1996**

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.

**NOTICE**

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

**No. 95-2836-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**IN RE THE MARRIAGE OF:**

**STEPHEN J. DON CARLOS,**

**Petitioner-Appellant,**

**v.**

**SUSAN A. DON CARLOS,**

**Respondent-Respondent.**

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Stephen Don Carlos appeals that part of a judgment awarding Susan Don Carlos indefinite maintenance of \$15,600 per year.<sup>1</sup> He argues that the trial court failed to consider the economic

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

consequences of the property division and the parties' standard of living. He also argues that the maintenance award is unfair because it is likely to become a permanent annuity and that the court made insufficient findings to establish a base upon which future modification of maintenance must rest. We reject these arguments and affirm the judgment.

The parties had been married for twenty-three years at the time of the divorce. Stephen's annual salary was \$52,000 plus a \$261 monthly payment he received from his father's estate. Susan's annual income was \$17,142. Her financial statement, confirmed by her testimony, showed a need for \$1,870 per month, \$440 less than her income. Stephen's budget showed a surplus of \$1,000 per month.

The trial court properly awarded \$15,600 annual alimony. That figure, when added to Susan's income, constitutes half of the parties' total income. After a long-term marriage in which one spouse has sacrificed career advancement to care for the children or to promote the other spouse's career, equal division of the parties' total income is the starting point for determining maintenance. See *LaRocque v. LaRocque*, 139 Wis.2d 23, 39, 406 N.W.2d 736, 742 (1987). The trial court found that Susan was the primary care-giver of the minor children. The parties left Iowa and resettled in Appleton after Stephen lost his job in Iowa. Stephen has not established that equalizing the parties' incomes would result in unfairness, that he is unable to pay the maintenance awarded, or that Susan does not need that amount to maintain the standard of living she enjoyed during the marriage. Under these circumstances, equalization of the parties' incomes constitutes a reasonable exercise of the trial court's discretion.

The property division does not provide a basis for awarding Susan less than half of the parties' collective income. The marital property was equally divided. The major assets, a house and a 401K plan, are not liquid, and withdrawal from the 401K plan would result in substantial penalties. Furthermore, because the property was equally divided, consideration of Susan's share when determining her needs would be off-set by consideration of Stephen's share when considering his ability to pay. The presumptive equal division of income set out in *LaRocque* applies in circumstances where the marital property is equally divided. The trial court reasonably concluded that

the economic consequences of the property division had no effect on the amount or duration of maintenance in this case.

The trial court adequately reviewed the parties' standard of living and found that Susan could not become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage unless she received substantial, indefinite maintenance. The trial court found, and the record confirms, that Susan's present earnings constitute her earning capacity. Nothing in the record suggests that she is performing below her potential by continuing with her present employment at the same job she held during the marriage. The court noted that Susan lived in an apartment while Stephen lived in the parties' house. It cannot be seriously argued that a person earning \$17,400 per year can live in the manner she had when she and her husband shared an income of \$69,400 per year. The record does not support Stephen's assertion that the maintenance award will become a permanent annuity due to Susan's lack of initiative or effort.

Finally, the record adequately establishes the parties' financial circumstances to form a basis for any future motions for modification. The trial court is not required to make specific findings regarding every aspect of the parties' standard of living. The parties' financial records and expense statements create an adequate foundation for any future modification.

*By the Court.* – Judgment affirmed.

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