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**DISTRICT II**

July 10, 2013

To:

Hon. Wilbur W. Warren III  
Circuit Court Judge  
Kenosha County Courthouse  
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Kenosha, WI 53140

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
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Perry Christopher Albrecht  
12798 - 249th Ave.  
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You are hereby notified that the Court has entered the following opinion and order:

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2012AP866

In re the marriage of: Perry Christopher Albrecht v. Roberta Marie Albrecht (L.C. #2011FA333)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Roberta Albrecht appeals from a judgment divorcing her from Perry Albrecht. On appeal, she challenges maintenance and property division. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition.

WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We affirm the circuit court.

At the time the circuit court decided maintenance and property division, Roberta, who appeared pro se, was incarcerated in Illinois pursuant to a 2010 conviction. After a 2012 divorce trial, the court found that the parties' home was almost fully encumbered by tax obligations and

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

mortgages, which were in default. The circuit court ordered the home sold with any proceeds divided equally between the parties. The circuit court equally divided Perry's Illinois Municipal Retirement Fund pension in recognition of the parties' long-term marriage and because Perry's pension accrued entirely during the marriage.

During the divorce trial, Roberta argued for maintenance. Perry argued that all of Roberta's needs were being met in the prison system. During the hearings, the circuit court stressed that it needed a record on which to base its decisions and directed Roberta to submit a financial disclosure statement and offer the court her perspective on maintenance and property division. Roberta never offered any evidence of her specific financial needs while in prison or her monthly budget, and she did not file a financial disclosure statement.<sup>2</sup> While Roberta complained that she needs funds in her prison account to pay for her medical care, Roberta did not present any evidence regarding this need.

In setting maintenance, the circuit court considered the length of the marriage (twenty-nine years), the parties' respective physical conditions, the parties' home is likely to be foreclosed upon (rendering it an insignificant asset of the parties), the parties' other assets were divided relatively equally, and Roberta was unlikely to become self-supporting upon release from prison. The court also considered when Roberta would be eligible for parole and that she would be eligible for Social Security and Medicare benefits upon parole. The court awarded maintenance of \$500 month, a "nominal specific dollar sum of maintenance" intended to assist

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<sup>2</sup> At the February 28, 2012 divorce hearing, Roberta testified that she sent her February 22 financial disclosure statement to Perry's counsel. However, that document was never filed in the circuit court and its contents were not described on the record. Therefore, the financial disclosure statement is not part of the record on appeal.

Roberta in meeting her needs while incarcerated. The court also characterized as maintenance the expenses it required Perry to bear for Roberta's benefit during her incarceration to preserve property awarded to her in the property division: the expenses of storing and insuring Roberta's personal property and vehicle and the monthly payments on Roberta's vehicle. The court held maintenance open for ten years so that Roberta could request a greater amount of maintenance in the future.

On appeal, Roberta challenges the maintenance order. The amount and duration of maintenance is within the circuit court's discretion, and we will not disturb the circuit court's determination unless it erroneously exercised its discretion. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987). "A discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and ... considered together for the purpose of achieving a reasoned and reasonable determination." *Id.* (citation omitted).

Roberta argues that maintenance of \$500 per month is insufficient to meet her needs while incarcerated. Yet, Roberta concedes, as she must, that the "bare bones" record does establish her financial needs while incarcerated. Roberta cannot complain that the circuit court misused its discretion when she left the court in an evidentiary vacuum by not offering evidence of her financial circumstances. *Popp v. Popp*, 146 Wis. 2d 778, 796, 432 N.W.2d 600 (Ct. App. 1988).

Roberta next argues that the maintenance award does not meet the objective of a fair and equitable financial arrangement. *Forester v. Forester*, 174 Wis. 2d 78, 85, 496 N.W.2d 771 (Ct. App. 1993). The circuit court determined maintenance based on the record before it. We

conclude that the court's decision to hold maintenance open serves the fairness objective. *Grace v. Grace*, 195 Wis.2d 153, 158, 536 N.W.2d 109 (Ct. App. 1995) ("When a court provides appropriate and legally sound reasons, based on the facts of record, for holding open a final maintenance decision until a future date, it may do so."). In addition, we note that the court treated as maintenance the expenses it ordered Perry to bear for Roberta's benefit during her incarceration.

We turn to Roberta's challenge to the circuit court's disposition of the marital home in the property division. Property division is within the circuit court's discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. Roberta argues that the court misused its discretion when it ordered the marital home sold after concluding that foreclosure was likely. The court found that the home had almost no value for the parties, and the mortgage lenders were no longer accepting payments. Roberta wanted the home awarded to her, but she did not offer evidence that she has the means to satisfy the debt and taxes encumbering the home. Rather, Roberta merely speculated that she could undertake financial responsibility for the home upon her release from prison. Because Roberta offered no evidence that she had the means to satisfy the debt and taxes encumbering the home, the court did not erroneously exercise its discretion in requiring the home to be sold.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*