COURT OF APPEALS
DECISION
DATED AND RELEASED

August 28, 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. 96-0524-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

In re the Marriage of:

KORALYN KAY KUESTER,

Petitioner-Respondent,

v.

FREDERICK JOHN KUESTER,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Winnebago County: ROBERT A. HAWLEY, Judge. *Affirmed*.

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

PER CURIAM. Frederick John Kuester has appealed from a judgment of divorce from Koralyn Kay Kuester challenging the trial court's award of maintenance. Pursuant to this court's order of April 2, 1996, and a presubmission conference, the parties have submitted memorandum briefs. Upon review of those memoranda and the record, we affirm the judgment of the trial court.

The record indicates that Frederick was involuntarily terminated from his employment with the Neenah Foundry Company on April 30, 1993, after almost twenty-eight years of employment. The record further indicates that after a fourteen-month job search, Frederick elected to retire and to begin monthly withdrawals from an individual retirement account (IRA). The parties subsequently commenced divorce proceedings and the trial court divided the monthly IRA withdrawals equally as part of the division of the parties' marital estate.

The trial court also determined that maintenance should be awarded to Koralyn. In making the award, it found that Frederick's retirement in his early fifties was unreasonable, that he had a current earning capacity of $37,000 per year, and that Koralyn had an earning capacity of $16,000 per year. It determined that Frederick could and should therefore pay $800 per month in maintenance for a period of eight years. However, since Frederick was not working at the time of trial, it calculated the present value of the maintenance award ($57,600). It then ordered that the IRA be divided equally on February 10, 2001, and that the $57,600 awarded to Koralyn as maintenance be deducted from Frederick's one-half share of the IRA.

Frederick argues that the trial court erred in assigning an earning capacity to him because unlike the situation in ***Van Offeren v. Van Offeren***, 173 Wis.2d 482, 496 N.W.2d 660 (Ct. App. 1992), his loss of employment was involuntary, did not result from shirking, and occurred before, not after, the parties' divorce. He also objects that the trial court erroneously awarded maintenance to Koralyn based on the parties' standard of living before his retirement rather than on their standards after his retirement. In addition, he objects that the award left him with income insufficient to meet his needs and with only 27% of the IRA. He argues that the hearing and the trial court's decision were rushed and that a comparison of the trial court's bench decision with the written findings of fact, conclusions of law and judgment reveals errors and discrepancies.

The determination of the amount and duration of maintenance rests within the sound discretion of the trial court and will not be upset absent an erroneous exercise of discretion. ***Wikel v. Wikel***, 168 Wis.2d 278, 282, 483 N.W.2d 292, 293 (Ct. App. 1992). Discretion is properly exercised when the court arrives at a reasoned and reasonable decision through a rational mental

process by which the facts of record and the law relied upon are stated and considered together. ***Id.*** Maintenance 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.***

While the trial court found that Frederick's loss of employment with Neenah Foundry was involuntary and that he was not shirking when he failed to find new employment in the fourteen months following his termination, it also found that his decision to take retirement benefits rather than continue to seek work was unreasonable and untenable. The reasonableness of Frederick's decision was properly considered by the trial court. ***Van Offeren***, 173 Wis.2d at 496, 496 N.W.2d at 665. While a determination as to reasonableness involves a question of law, we give deference to the trial court's conclusion on the issue because it is intertwined with its factual findings. ***Id.*** at 492-93, 496 N.W.2d at 663-64.

Based on Frederick's age, employment experience, the expert testimony regarding his continued earning capacity, and evidence regarding the job market in the area, the trial court's conclusion that Frederick's early retirement was unreasonable will not be disturbed by this court. The trial court therefore properly considered Frederick's earning capacity in awarding maintenance, *see* ***id.*** at 496, 496 N.W.2d at 665, and properly imputed that income to him for eight years, when he would have reached a reasonable retirement age of sixty-two.

We reject Frederick's argument that his earning capacity could not be considered because he retired before, not after, these divorce proceedings were commenced. While Frederick may have long desired or intended to retire at an early age, the trial court acted within the scope of its discretion in determining that his plans had to change in light of the parties' divorce and the support and fairness objectives of maintenance, which necessitated the support of two households rather than one. Since Frederick retained a substantial earning capacity at the time of the divorce, the trial court was entitled to impute income to him based on his unreasonable refusal to exercise that potential. In conjunction with the income imputed to him, it was also entitled to consider the

length of the parties' marriage, Koralyn's minimal job skills and experience, and the standard of living the parties had achieved during the course of their marriage, not just in the short time following Frederick's retirement. Based on these factors and its imputation of income of $16,000 per year to Koralyn, the award of maintenance of $800 per month was reasonable under both the support and fairness objectives.

Contrary to Frederick's argument, the trial court did not violate case law precluding the double-counting of an asset for both property division and maintenance purposes. Rather, the trial court simply divided the IRA equally as part of the property division, postponing its final division until 2001 because of tax and pension law requirements. Its order requiring that maintenance of $57,600 be paid by Frederick to Koralyn from his share of the IRA is not an additional award of an asset to her, but simply a requirement that he pay the maintenance which will have accrued by that date.

We also reject Frederick's argument that the trial court's written judgment, which sets forth findings of fact and conclusions of law, is inconsistent with its bench decision. The written judgment is merely more formal and detailed. The fact that it may contain additional findings which were not contained in the trial court's bench decision is not a basis for challenging it, since nothing precluded the trial court from incorporating additional or more detailed findings when it signed the final judgment.[1]

[1] In the statement of facts in his brief-in-chief, Frederick also contends that Koralyn had a "pension/retirement plan with the Community First Credit Union which the trial court failed to rule on." However, he makes no argument concerning this matter and never mentions it again until the conclusion of his reply brief, where he asks for various modifications in the trial court's maintenance and property division and that Koralyn "be awarded her pension from the Community First Credit Union." We will not address this matter further because Frederick fails to provide a meaningful discussion of the issue, *see* ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992), and fails to cite to anything in the record demonstrating that he asked the trial court to correct the judgment to include the account, *see* ***Schinner v. Schinner***, 143 Wis.2d 81, 92-93, 420 N.W.2d 381, 385-86 (Ct. App. 1988).

Frederick also objects that some of the trial court's written factual findings are erroneous, contending, for example, that Koralyn commenced working outside the home in 1994 and that the

Finally, Frederick's objection to the trial court's use of the phrase "I guess" and reference to "rushing" is meritless. The trial court's use of the phrase "I guess" merely reflects a style of speaking. Moreover, its references to "rushing" do not indicate a lack of attention, but rather are self-effacing statements indicating the trial court's concern that all necessary issues be addressed and considered.

By the Court.—Judgment affirmed.

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

(..continued)
trial court erred when it found that she commenced outside work in 1995. Assuming arguendo that Frederick's contentions are correct, he has referred to no discrepancy of consequence in the trial court's decision. Since he has not demonstrated that his substantial rights were affected by any alleged errors, no basis exists to disturb the judgment. *See* § 805.18(1), STATS.