

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 24, 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. 96-0970-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

SUSAN L. MAGINN,

Petitioner-Respondent,

v.

RICHARD D. MAGINN,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Columbia County: RICHARD REHM, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Richard Maginn appeals from the judgment divorcing him from Susan Maginn. The trial court awarded Richard limited-term maintenance for seven months. The issue is whether the trial court erroneously exercised its discretion by denying his request for permanent

maintenance. We conclude that the trial court properly exercised its discretion, and therefore affirm.¹

The parties divorced after twenty-five years of marriage. At the time of divorce, Richard was forty-five, earned approximately \$11,400 per year and had not exceeded that income level for several years. Susan, forty-seven, had earned in excess of \$50,000 per year for the last several years.

Richard explained the income disparity by introducing evidence that he had left a teaching career in 1982 to care for the parties' two children, who were then approximately four and six years of age. In 1983, he had returned to seasonal employment, and from 1986 until shortly before the divorce had worked for a small business, partially owned by the Maginns, for little or no pay.

The determination of the amount and duration of maintenance is a discretionary determination of the trial court. *LaRocque v. LaRocque*, 139 Wis.2d 23, 27, 406 N.W.2d 736, 737 (1987). We affirm a discretionary award if the trial court articulates its reasoning, bases the award on facts of record and the correct legal standards and the award is neither excessive nor inadequate. *Haugen v. Haugen*, 117 Wis.2d 200, 215, 343 N.W.2d 796, 804 (1984). In awarding maintenance, the trial court must consider the standards set forth in § 767.26, STATS., and must apply them to provide support for a dependent spouse and to ensure a fair and equitable arrangement between the parties. *LaRocque*, 139 Wis.2d at 31-33, 406 N.W.2d at 739-40. In a long-term marriage such as this one, the court should begin with the proposition that an equal division of income is appropriate, regardless of need. *Id.* at 39, 406 N.W.2d at 742.

The trial court properly used its discretion in limiting the award of maintenance to seven months. The court considered Richard's good health, advanced degree, nine years teaching experience, significant earning capacity as a teacher, and ability to use that earning capacity to enjoy a standard of living reasonably comparable to that enjoyed during the marriage. The court also

¹ This is an expedited appeal under RULE 809.17, STATS.

found that Richard voluntarily worked for reduced income since 1983, and that Susan disagreed with his decision not to seek higher paid employment. The court also noted Richard's lack of efforts to improve his financial condition until after the divorce began, the fact that he received a disproportionate share of the marital property, and the fact that Susan had significantly contributed to his financial well-being during the divorce, including all housing costs and voluntary maintenance in the amount of \$5,000. Finally, the court found that "this is not a case in which the respondent subordinated his welfare, career or education to the welfare, career or education of the petitioner or to managing or preserving the assets of the marital partnership." Considering all of these factors, the court concluded that an equal division of income was not appropriate.² We conclude, in turn, that these were proper factors to consider, that the court used facts of record to make its findings, and reached a reasoned and reasonable conclusion.

By the Court. – Judgment affirmed.

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

² Richard claims a specific error of fact in the trial court's calculation of Susan's income. He contends that the court should have added \$11,000 in interest income to her salary. That interest income derives from an inheritance Susan received shortly before the end of the marriage. The trial court reasonably excluded it from her income under those circumstances.