

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 4, 1997

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(1), 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. 96-1622

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN RE THE MARRIAGE OF:
JANET A. BAKER, f/k/a
JANET A. SHOCK,**

Petitioner-Respondent,

v.

LARRY F. SCHOCK,

Respondent-Appellant.

APPEAL from an order of the circuit court for Dunn County:
JAMES A. WENDLAND, Judge. *Affirmed.*

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

PER CURIAM. Larry Schock appeals an order raising Janet Baker's monthly maintenance from \$700 to \$1,000 over the six years remaining on the original seven-year maintenance award. He argues that Baker has not established a substantial change in the parties' financial circumstances that would justify modification of maintenance. We reject this argument and affirm the order.

At the time of the divorce, the parties had been married for thirty years. Schock was employed as a plumber earning approximately \$42,000 per year. Baker earned approximately \$13,700 per year. The court equally divided the parties' \$308,000 marital estate. One year later, Schock's income rose to \$56,000 per year. Baker's income from all sources rose to slightly over \$15,200.

The modification of a maintenance award involves the exercise of the trial court's discretion. *Poindexter v. Poindexter*, 142 Wis.2d 517, 531, 419 N.W.2d 223, 228-29 (1988). To withstand appellate scrutiny, the trial court's decision must be the product of a rational mental process and be based on facts appearing in the record and on the appropriate and applicable law. *Id.* Maintenance may be modified only upon a showing of a substantial change in the parties' financial circumstances. *Eckert v. Eckert*, 144 Wis.2d 770, 774, 424 N.W.2d 759, 761 (Ct. App. 1989). Whether the circumstances have changed is a question of fact which this court reviews under the clearly erroneous test. *Harris v. Harris*, 141 Wis.2d 569, 574, 415 N.W.2d 586, 588-89 (Ct. App. 1987). Whether the change is substantial is a question of law, but because it is closely related to the factual issues, we give weight to the trial court's conclusion. *Id.*

The record establishes that the parties' financial circumstances had changed substantially between the divorce and the hearing on the motion to modify maintenance. Schock's \$14,000 increase in wages, when compared to Baker's raise of less than \$2,000, establishes a substantial change in two of the factors that affect the maintenance decision, Schock's ability to pay and the fairness of the maintenance. *See LaRocque v. LaRocque*, 139 Wis.2d 23, 32-33, 404 N.W.2d 736, 739 (1987). The substantial increase in Schock's earnings also modified the ability of the trial court to restore Baker to a standard of living reasonably comparable to that enjoyed during the marriage. *See Vander Perren v. Vander Perren*, 105 Wis.2d 219, 228, 213 N.W.2d 813, 818 (1982).

Schock argues that the \$14,000 raise is due primarily to his working overtime and the fact that he rents out an efficiency apartment in his home. All sources of income, ordinary and extraordinary, are to be considered when establishing or modifying maintenance. *See Dowd v. Dowd*, 167 Wis.2d 409, 415, 481 N.W.2d 504, 506 (1992). Schock complains that his standard of living has decreased because he is now required to pay a mortgage and because the car awarded to him in the divorce judgment was stolen and was not insured. Neither of these items supports Schock's argument that his standard of

living has decreased. Schock's mortgage is only \$325 per month. That expense is offset by the \$200 per month rent he receives from his tenant. The car that was uninsured was valued at only \$550 at the time of the divorce. Schock has the use of his fiancé's car as well as a vehicle from his employer. The trial court reasonably concluded that Schock has the ability to pay an additional \$4,800 per year maintenance out of the additional \$14,000 he earns.

By the Court. – Order affirmed.

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