

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

May 22, 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, 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. 96-2465-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE MARRIAGE OF:**

**GEORGE ALLEN TEMPLIN,**

**PETITIONER-APPELLANT,**

**V.**

**SHIRLEY ANN TEMPLIN,**

**RESPONDENT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Sauk County:  
PATRICK J. TAGGART, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. George Allen Templin appeals from a maintenance award in a divorce judgment.<sup>1</sup> The issues are whether the trial court's finding of

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

Shirley Ann Templin's earning capacity was clearly erroneous, and whether it erroneously exercised its discretion in awarding her a fixed amount of monthly maintenance, plus half of George's future bonuses. We conclude that the court's finding of Shirley's earning capacity was not clearly erroneous and that it properly exercised its discretion. Therefore, we affirm.

George and Shirley Templin divorced after almost nineteen years of marriage. The only contested issue for trial was maintenance. The trial court found that George's monthly earning capacity was \$2130.75 and that Shirley's monthly earning capacity was \$1269.86. It awarded Shirley \$500 monthly maintenance and fifty percent of George's future bonuses. George appeals.

George contends that the trial court clearly erred in determining Shirley's earning capacity. *See* § 805.17(2), STATS. His contention is based upon the parties' stipulation that Shirley's "year-to-date income as of March 6, 1996 is \$3,809.58." However, the parties merely stipulated to the amount of Shirley's income as of March 6; they did not stipulate to the amount of her monthly income. The flaw in George's argument is that the stipulated amount represents three months' income, not two.<sup>2</sup> The trial court found that \$15,238.32 was "a reasonable expectation of [Shirley's] annual income."<sup>3</sup> It based this finding on the

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<sup>2</sup> Shirley is paid monthly. Her March 6<sup>th</sup> paycheck was her third of the year. The "year-to-date income" was thus a three-month total, reflecting income earned in December 1995 and January and February 1996.  $\$3809.58 \div 2$  (months) = \$1904.79, whereas  $\$3809.58 \div 3$  (months) = \$1269.86.

<sup>3</sup> Although Shirley actually earned less than \$1269.86 per month, she does not challenge the trial court's higher finding.

parties' stipulation as to her year-to-date income, extrapolated to twelve months.<sup>4</sup> We conclude that the trial court's finding is not clearly erroneous.

George also contends that the trial court erroneously exercised its discretion in awarding Shirley fifty percent of his future bonuses. We disagree.

This court will not disturb a maintenance award unless the trial court has erroneously exercised its discretion. *LaRocque v. LaRocque*, 139 Wis.2d 23, 27, 406 N.W.2d 736, 737 (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 are considered together for the purpose of achieving a reasoned and reasonable determination." *Id.* To determine the amount of maintenance, the trial court must apply the facts to the relevant statutory factors. *Id.* at 31, 406 N.W.2d at 739; see § 767.26, STATS. These statutory factors are designed to further maintenance's dual objectives, support and fairness. *LaRocque*, 139 Wis.2d at 33, 406 N.W.2d at 740.

The trial court applied the facts of record to the relevant statutory factors. It found that Shirley "does not have the ability to work more hours nor has the educational abilities to work at a higher paying job."<sup>5</sup> The trial court found that Shirley's employability is limited by her medical problems. George contends that this maintenance award will result in Shirley's income exceeding his income, and her budgeted expenses. However, the trial court found that Shirley's expenses

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<sup>4</sup> The trial court multiplied the stipulated amount, \$3809.58 (three months' income), by four to reach \$15,238.32 (twelve months' income).

<sup>5</sup> It further found "no evidence in the record that [she] wishes to seek additional education to improve her job marketability nor is there a suggestion that such a course of action would be feasible."

exceeded George's expenses. It also considered the tax consequences to each party, *see* § 767.26(7), STATS., and recognized that George could deduct maintenance payments from his income.

The trial court reasoned that because this was a long-term marriage, it was reasonable to begin the maintenance analysis at an equal division of available income. *Bahr v. Bahr*, 107 Wis.2d 72, 85, 318 N.W.2d 391, 398 (1982). The trial court then fashioned an award to enable Shirley to meet her budgeted needs. We conclude that the trial court did not erroneously exercise its discretion in awarding Shirley \$500 monthly maintenance, plus fifty percent of George's future bonuses.

*By the Court.*—Judgment affirmed.

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

