

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JUNE 10, 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. 96-3212

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

REBECCA SPARISH,

PETITIONER-APPELLANT,

V.

JAMES SPARISH,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Barron County:
EDWARD R. BRUNNER, Judge. *Affirmed.*

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

PER CURIAM. Rebecca Sparish appeals her \$100 monthly maintenance award from her divorce judgment. The trial court based the \$100 monthly award on Rebecca's former husband James' three-year average business

earnings of \$30,000, on Rebecca's \$18,000 earning capacity, and on her live-in boyfriend's capacity to pay part of their shared living expenses. On appeal, Rebecca makes three basic arguments: (1) the trial court should have used James' latest year's \$42,000 earnings, not three-year average earnings, to set maintenance; (2) the evidence did not show her earning capacity to be \$18,000; and (3) her lifestyle choice, a live-in boyfriend, should not reduce James' maintenance payments. We must affirm the trial court's maintenance award as long as the court correctly exercised its discretion. *See Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20-21 (1981). We reject Rebecca's arguments and therefore affirm the maintenance award.

The trial court correctly exercised its maintenance award discretion. First, the trial court's decision to average James' annual earnings at \$30,000 was reasonable. James' business earnings experienced fluctuations. The trial court's averaging process tended to even out these year to year variations and reflect the economic realities of business ownership. Courts have recognized averaging methods as a fair way to level business earnings' natural peaks and valleys. *See Soo Line R. Co. v. DOR*, 89 Wis.2d 331, 366, 278 N.W.2d 487, 503 (Ct. App. 1979). Further, if the trial court's average earnings method ultimately fails to reflect James' actual future business earnings, Rebecca may ask the court at a later time to modify maintenance for a change in circumstances. We see nothing inherently wrong with the trial court's approach, and future maintenance determinations may present facts that warrant continued use of the average earnings method.

Second, the trial court properly judged maintenance by reference to Rebecca's \$18,000 earning capacity. An expert set her earning capacity at this amount and provided the court good reasons for his conclusion. He described

Rebecca's job qualifications, work skills, current part-time school district employment, and other available job opportunities, including her ability to move from part-time to full-time work and to supplement her school year employment with work during the summer. He also covered the wage rates prevailing in the area for someone with Rebecca's work abilities and background. These were all relevant considerations and supported the trial court's earning capacity ruling. Last, the trial court rightfully took into account Rebecca's live-in boyfriend in examining her needs and expenses. The fact is that her new living arrangement has practical cost sharing consequences which reduces her living expenses. Practical consequences are relevant factors in divorce cases. *See Nichols v. Nichols*, 43 Wis.2d 346, 350, 168 N.W.2d 876, 878 (1969); *see also Lasnicka v. Lasnicka*, 46 Wis.2d 614, 620, 176 N.W.2d 297, 300 (1970). Nothing in *Van Gorder v. Van Gorder*, 110 Wis.2d 188, 327 N.W.2d 674 (1983), which Rebecca cites, requires a different conclusion.

By the Court.—Judgment affirmed.

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

