

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 29, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0548-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

RICHARD G. BEAN,

PETITIONER-APPELLANT,

v.

MARILYN J. BEAN,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Juneau County:
JOHN W. BRADY, Judge. *Reversed and remanded.*

Before Eich, Vergeront and Roggensack, JJ

¶1 PER CURIAM. Richard Bean appeals from the judgment divorcing him from Marilyn Bean. The issue is whether the trial court erred by awarding

Marilyn additional marital property in lieu of maintenance. We reverse and remand for further consideration of this issue.¹

¶2 The parties divorced after twenty-three years of marriage. Both Richard and Marilyn were in their mid-forties and had suffered significant health problems in the past. Richard grossed \$72,000 per year as an insurance agent, but had substantial business expenses including salaries for two employees. Marilyn earned \$21,000 per year working in a bank. The parties had one minor child, living with Marilyn, and Richard was ordered to pay the greater of 17% of his income or \$400 per month child support.

¶3 The parties' assets totaled \$165,000 with debts of \$73,000 leaving a net marital estate calculated at \$92,552. An equal division of property under the court's allocation of the assets and debts required a \$49,000 payment from Marilyn to Richard.

¶4 The trial court determined that Marilyn was entitled to maintenance for the following reasons:

The marriage is a long-term marriage of twenty-four years and that factor weighs in favor of maintenance for Marilyn. Marilyn does suffer from multiple sclerosis that may affect her employment in the future. The court has attempted to make an equal property division. The educational level of the parties is not a factor. Regarding earning capacity, the evidence indicates that Richard's earning capacity is on the upswing and that Marilyn's earning capacity is stagnant or may be on the downswing if she loses her job. Marilyn's performance has been criticized by her employer. The evidence indicates Marilyn would be entitled to maintenance to meet the goal of fairness and to provide for her support and Richard would

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

have the ability to pay maintenance as his earning capacity increases.

However, the court waived Marilyn's \$49,000 equalization payment in lieu of maintenance. On appeal, Richard contends that the trial court erred by determining that Marilyn was entitled to maintenance, and by ordering the unequal property division in lieu of maintenance.

¶5 Determinations on property division and maintenance awards are committed to the trial court's discretion. *See Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996). The trial court properly exercises its discretion if it makes a rational, reasoned decision and applies the correct legal standards to the facts of record. *See id.* The dual objectives of maintenance are support and fairness. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 32-33, 406 N.W.2d 736 (1987). The support objective is to maintain the recipient spouse in accordance with the needs and earning capacities of the parties. *See id.* The fairness objective serves to insure a fair and equitable financial arrangement in each individual case. *See id.* The trial court may award extra marital property in lieu of maintenance. WIS. STAT. § 767.255(3)(i) (1997-98).²

¶6 The trial court reasonably exercised its discretion by concluding that Marilyn was entitled to maintenance. In long marriages the trial court should consider an equal division of the total earnings of both parties as the starting point in its maintenance analysis. *Bahr v. Bahr*, 107 Wis. 2d 72, 85, 318 N.W.2d 391 (1982). Richard earned far more than Marilyn, even with his substantial business expenses. And, as the trial court noted, Richard could expect increased earnings in

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

the future while Marilyn could not. Additionally, there was no dispute that Marilyn substantially contributed to the marriage, and primarily supported the family while Richard obtained the training necessary for his present employment. The trial court properly considered these factors, along with Marilyn's health problems, and reached a reasoned and reasonable decision that she was entitled to some share in Richard's income.

¶7 Having concluded that Marilyn was entitled to maintenance, the court awarded Marilyn an extra \$49,000 in property. A court may award an unequal division of property in lieu of maintenance. See *Herdt v. Herdt*, 152 Wis. 2d 17, 22, 447 N.W.2d 66 (Ct. App. 1989). However, “for us to properly defer to the trial court’s discretion, the court must illuminate its reasoning in reaching the award.” *Bahr*, 107 Wis. 2d at 84. Here, the trial court was silent as to its reasons why the extra \$49,000 in property fairly resolved the maintenance issue, and we are unable to discern the reasons from the record. We therefore remand with directions to reconsider the matter, and to adequately explain on the record why the court reached its result.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

