

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 3, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2005AP949

Cir. Ct. No. 2003FA46

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

DAVID J. BLEY,

PETITIONER-RESPONDENT,

V.

DEBORAH J. BLEY, N/K/A DEBORAH J. RODERICK,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Ozaukee County: PAUL V. MALLOY, Judge. *Reversed and cause remanded with directions.*

Before Snyder, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Deborah J. Bley, n/k/a Deborah J. Roderick, appeals from the judgment of divorce and the order denying her motion for reconsideration and a new trial. She argues on appeal that the circuit court erroneously exercised its discretion when it calculated her maintenance award. Because we conclude that the circuit court erroneously exercised its discretion by not applying the proper methodology, we reverse that portion of the judgment that awarded maintenance, and the order denying the motion for reconsideration, and remand the matter to the trial court for proceedings consistent with this opinion.

¶2 Deborah and David Bley were divorced on August 25, 2004. The contested issues at trial were the distribution of the debt, whether to award maintenance to Deborah, and how much that maintenance should be. The parties did not have significant amounts of income or property, but did have a significant amount of debt. The court found that Deborah's earning capacity was substantially less than David's because of her health issues. Deborah had moved to Texas to live with her parents, and the parties' emancipated son was living with her. David was living with a woman in Wisconsin and paying all of the rent.

¶3 The court awarded maintenance to Deborah of \$125 per month for a period of five years. The court acknowledged that this was a minimal amount. The court also required David to assume most, but not all, of the parties' debt. The court noted that Deborah could increase her "ready income" by telling her son to "become a man" and support himself. The court further noted that Deborah may have qualified for more and/or better benefits by staying in Wisconsin instead of moving to Texas to live with her parents. Deborah moved for reconsideration and a new trial, arguing that the maintenance amount was inadequate, and should be for an indefinite period of time, rather than five years. She also argued that she should not have been penalized for moving to Texas to live with her parents. The

circuit court denied the motion for reconsideration and a new trial. Deborah appeals.

¶4 Deborah argues to this court that the circuit court erred because the statutory factors support a greater award of maintenance, that the circuit court did not adequately explain how its findings led to the minimal award, and that an indefinite term of maintenance is warranted in this case. We conclude that the circuit court did not consider the support objective of maintenance and did not adequately explain its reason for limiting the term of maintenance to five years. For these reasons, we reverse and remand the matter to the trial court. When reconsidering the award of maintenance, the trial court may also revisit the property division.

¶5 The amount and duration of maintenance awards rests within the sound discretion of the trial court and will not be disturbed absent an erroneous exercise of that discretion. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987). An erroneous exercise of discretion occurs when “the trial court has failed to consider the proper factors, has based the award upon a factual error, or when the award itself was, under the circumstances, either excessive or inadequate.” *DeLaMatter v. DeLaMatter*, 151 Wis. 2d 576, 582-83, 445 N.W.2d 676 (Ct. App. 1989). Therefore, the “court’s decision 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.’” *Trieschmann v. Trieschmann*, 178 Wis. 2d 538, 541-42, 504 N.W.2d 433 (Ct. App. 1993) (quoting *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981)). A trial court misuses its discretion when it construes the support objective of maintenance too narrowly and disregards the fairness objective. *LaRocque*, 139 Wis. 2d at 33-34.

¶6 We acknowledge in this case that the trial court was attempting to be fair by distributing more debt to David and, hence awarded a smaller amount of maintenance to Deborah. In considering the fairness objective, however, the trial court failed to consider the support objective. We note that the court found that Deborah “has very little realistic working capacity now or in the foreseeable future” and that she had a “shortened life span,” yet did not explain how these facts comported with the small maintenance award. Further, while acknowledging that Deborah’s potential earning capacity or ability to be self-supporting was very little, the court gave no reason for limiting the term of the maintenance award to five years other than maintenance was not meant to be an annuity. We are not necessarily concluding that the trial court’s result was incorrect. We are requiring, however, that the court consider Deborah’s support needs as well fairness to the parties.

¶7 Family law decisions are driven by methodology. The appellant’s brief sets forth a methodology for determining the award of maintenance, which begins with an equal division of the total combined gross earnings of both parties. *See Bahr v. Bahr*, 107 Wis. 2d 72, 84-85, 318 N.W.2d 391 (1982). We are not concluding that the appellant’s math is correct, and that the court must reach the result suggested by the appellant. Rather we recommend that the trial court apply a similar methodology for determining the appropriate award of maintenance, and to explain its reasons for the findings it makes. Consequently, we reverse that portion of the judgment of divorce that awarded maintenance, and the order denying the motion for reconsideration, and remand the matter to the trial court for proceedings consistent with this opinion.

By the Court.—Judgment and order reversed and cause remanded with directions.

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

