

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 09, 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. 2005AP1290

Cir. Ct. No. 2001FA5588

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

SABIHEH BAGHERLI,

PETITIONER-APPELLANT,

v.

ALI SADOUGHIAN,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: BONNIE L. GORDON, Judge. *Affirmed*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 KESSLER, J. Sabiheh Bagherli sought and obtained a divorce from Ali Sadoughian. The trial court awarded a greater share of the marital estate to

Bagherli and denied maintenance to both parties.¹ Bagherli challenges both the division of property and the denial of maintenance. We affirm.²

¶2 Bagherli also requests additional relief which, to the extent we can understand, appears to be properly sought only before a trial court as the finder of fact, and appears to have previously been raised during the three-year trial of this action.³ We deny her requests without discussion, as they are not appropriately raised and/or are not sufficiently explained. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

BACKGROUND

¶3 This was a second marriage for both parties. Each party had been previously divorced. Prior to their marriage, the parties entered into a Marital Property Agreement, which by its terms was effective until the date a divorce would be granted and which also defined the parties' respective rights and obligations as to income and as to property. The parties were married on January 3, 1997 and began living together five months later. Bagherli began an

¹ Bagherli's *pro se* brief raises myriad issues, such as whether the trial court "was observing the law." The gist of her appeal appears to be her discontent with the final property division and maintenance award. We will address these issues. To the extent she has attempted to raise other issues, we conclude they are insufficiently briefed and we decline to address them. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

² Sadoughian seeks an award of attorney's fees on grounds that Bagherli's brief fails to comply with appellate procedures. We decline to address the issues that are inadequately briefed. However, we are unconvinced that Bagherli's *pro se* brief was so non-compliant, or that the two issues we address, property division and maintenance, are so meritless as to justify an award of fees. We deny Sadoughian's request.

³ For example, Bagherli asks for, among other things, the following relief: "Authenticated Income Tax Return for the years 2001-2004 ... audit Heart Care Associates, LLC ... Ali's contract with VA ... Ali to complete due process...."

action for divorce on September 14, 2001. The parties separated on October 1, 2001 and were divorced on December 15, 2004.

¶4 Bagherli, age sixty-five at the time of trial, is a retired pediatrician who is in poor health. She receives income from social security disability benefits, private disability insurance benefits and a small pension. Bagherli has two children from a prior marriage. One became an adult in 1997; the other became an adult in 2000, but did not finish high school until 2001. Sadoughian, age sixty-seven at the time of trial, is a practicing physician who works for the Veterans Administration (“VA”) Hospital in Las Vegas and is also in poor health. He receives a salary from the VA, social security benefits, and an Air Force pension. At the time of the divorce, he had substantial family support obligations from his prior marriage. Sadoughian has four children, two of whom were adults before this marriage. The two minor children live primarily with their mother. There were no children born or adopted during this marriage.

¶5 During these divorce proceedings, each party accused the other of improper spending. Significant discovery by both parties was conducted to document their respective financial affairs and the alleged financial misdeeds of the other. The trial court found the parties lived a lifestyle beyond their means, financed by incurring substantial debt and depleting assets. Each party had used assets during the marriage and while the divorce was pending in ways objected to by the other party, but permitted by their Marital Property Agreement. Therefore, the trial court concluded that it was impossible post-divorce to continue a lifestyle that was enjoyed during the marriage.

¶6 The trial court found that the value of the assets in Bagherli’s possession at the time of the marriage was \$415,206, and the value of the assets

belonging to Sadoughian at that time was \$314,243. At the conclusion of the divorce, pursuant to the property division ordered by the trial court, Bagherli received \$429,810 worth of assets, while Sadoughian received \$200,435 worth of assets. The court denied maintenance to both parties.

STANDARD OF REVIEW

¶7 Decisions concerning the division of the marital estate and maintenance awards are committed to the trial court's discretion. *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996). We affirm a trial court's discretionary decision if the court makes a rational, reasoned decision and applies the correct legal standard to the facts of record. *Id.* We accept all findings of fact made by the trial court unless they are clearly erroneous. WIS. STAT. § 805.17(2); *Kohl v. Zeitlin*, 2005 WI App 196, ¶28, ___ Wis. 2d ___, 704 N.W.2d 586. However, whether the trial court applied the correct legal standard is a question of law that this court reviews *de novo*. *Cook v. Cook*, 208 Wis. 2d 166, 172, 560 N.W.2d 246 (1997).

DISCUSSION

I. Denial of Maintenance

¶8 The determination of the amount and duration of maintenance is entrusted to the sound discretion of the circuit court. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987). Maintenance serves two purposes: to support the recipient spouse in a manner reflecting the needs and earning capacities of the parties (the support objective), and to ensure a fair and equitable financial arrangement between the spouses (the fairness objective). *Id.* at 33.

When considering whether to award maintenance, the trial court must examine the factors listed in WIS. STAT. § 767.26 (2003-04):⁴

- (1) The length of the marriage.
- (2) The age and physical and emotional health of the parties.
- (3) The division of property made under s. 767.255.
- (4) The educational level of each party at the time of marriage and at the time the action is commenced.
- (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
- (7) The tax consequences to each party.
- (8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
- (9) The contribution by one party to the education, training or increased earning power of the other.
- (10) Such other factors as the court may in each individual case determine to be relevant.

⁴ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶9 The trial court denied maintenance to both parties after a careful and detailed analysis on the record of all of the relevant statutory criteria. The trial court also considered the twin maintenance objectives of fairness and support. *See LaRocque*, 139 Wis. 2d at 33. The trial court found that this was a short marriage, lasting only four-and-a-half years from the date of marriage to commencement of the divorce. The trial court noted that both parties were in their middle to late sixties, both were physicians with established careers at the time the marriage commenced, and both now had significant medical problems that reduced or eliminated their historic earning capacity. In addition, both were receiving social security benefits. The trial court found that neither party contributed to the education or income enhancement of the other party as both were established physicians at the time that they married. The feasibility of either party becoming self-supporting at the standard of living they maintained during the marriage was impossible because they lived beyond their financial means, and incurred debt and depleted assets to do so. The trial court noted that as a result of those actions, it would be essential for each party to live below the standard of living enjoyed during the marriage.

¶10 The trial court specifically found that Bagherli had not made a substantial contribution to the marriage partnership because three months into the marriage, Bagherli voluntarily reduced her hours of employment in order to spend more time with her fourteen- and seventeen-year-old children, and her income remained between \$64,000 and \$70,000 until 2001, when she filed for divorce. During 2001, Bagherli's income dropped to approximately one-half of the pre-divorce amount. The property division left Bagherli with assets worth approximately \$14,600 more than she owned when she came into the marriage, although Sadoughian left with assets valued at approximately \$113,800 less than

when the parties married. The record reflects that the trial court carefully considered all relevant statutory factors. There are ample facts in the record that support the trial court's findings.

¶11 The trial court weighed the *LaRocque* support objective and concluded that the circumstances of the parties had changed so that neither could reasonably expect to live the lifestyle they adopted during the marriage. It noted that the parties had substantially depleted assets to live in excess of their income, both were at a reasonable retirement age and both had significant health problems. Bagherli's request for maintenance for five years would require her sixty-seven-year-old husband to work until he was seventy-two years of age; it would provide her with maintenance for a longer period of time than the parties actually lived together during this marriage. That does not satisfy the fairness objective of *LaRocque*.

¶12 Having examined the record and the trial court's decision, we conclude that the trial court did not erroneously exercise its discretion when it denied maintenance to both parties. The trial court examined appropriate facts and reached a reasonable conclusion based on a correct analysis of the law.

II. Division of the marital estate

¶13 In arriving at the division of property, the trial court appropriately analyzed each of the factors listed in WIS. STAT. § 767.255(3):

- (a) The length of the marriage.
- (b) The property brought to the marriage by each party.
- (c) Whether one of the parties has substantial assets not subject to division by the court.

(d) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

(e) The age and physical and emotional health of the parties.

(f) The contribution by one party to the education, training or increased earning power of the other.

(g) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

(h) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.

(i) The amount and duration of an order under s. 767.26 granting maintenance payments to either party, any order for periodic family support payments under s. 767.261 and whether the property division is in lieu of such payments.

(j) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

(k) The tax consequences to each party.

(l) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.

(m) Such other factors as the court may in each individual case determine to be relevant.

Relying on *Prosser v. Cook*, 185 Wis. 2d 745, 519 N.W.2d 649 (Ct. App. 1994), the trial court determined that an unequal division was appropriate because in a short-term marriage, it is generally not unfair to return the parties to a pre-

marriage status quo or something close. *See id.* at 755-56. In addition, as we discussed *supra*, the trial court's decision to deny maintenance to both parties supported the award of a greater share of property to the lower income spouse. The trial court found that there was a total estate of \$630,246, and after allocating specific assets to each party, a total value of \$429,810 was awarded to Bagherli and a total value of \$200,435 was awarded to Sadoughian. Curiously, Bagherli challenges this unequal award.

¶14 Our review of the property division reveals no error. The trial court considered the appropriate statutory factors and correctly applied the law based upon the facts which are supported by the record. Reasoned discretion was exercised based on substantial evidence in the record. Therefore, we affirm.

By the Court.—Judgment affirmed.

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