

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 28, 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. 2006AP456**

**Cir. Ct. No. 2004FA59**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**ANTON JEFFERY GRAPA,**

**JOINT-PETITIONER-APPELLANT,**

**V.**

**TARA LOUISE GRAPA,**

**JOINT-PETITIONER-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Price County:  
NEAL A. NIELSEN III, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Anton Grapa (Tony) appeals a judgment granting maintenance to his former wife, Tara Grapa. Tony contends the trial court

erroneously exercised its discretion by applying “too mechanistically the 50-50 analytical ‘starting point’ for calculation of spousal maintenance.” We conclude the trial court properly considered the statutory factors for granting maintenance and therefore did not erroneously exercise its discretion. We therefore affirm the trial court’s judgment.<sup>1</sup>

## **BACKGROUND**

¶2 Tony and Tara were married for twenty-seven years and had three children. Tara graduated from high school and attended one year of college, but never returned to college after the marriage. Tara worked as a homemaker until the year 2000, when the couple’s youngest child reached seventeen years of age, and she took a position with Tony as co-manager at a motel. Throughout the marriage, Tony worked full time in factory work and on second jobs as a farmhand and carpenter.

¶3 At the time of the divorce, Tony, then forty-eight, worked at a local manufacturing plant as a welder earning \$18.93 an hour for forty hours a week. Tara, then forty-seven, worked as a receptionist earning \$9.87 an hour for forty hours a week. Tony also worked overtime in varying amounts.

¶4 The trial court awarded maintenance to Tara in the amount of \$700 a month for thirteen years. At thirteen years, Tara’s mortgage would be fully paid

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<sup>1</sup> Tony and Tara were granted a judgment of divorce based on a stipulation resolving all issues except maintenance. Maintenance was decided in a separate hearing after entry of the divorce judgment. Though the court issued an “order” granting maintenance, maintenance granted after a judgment of divorce usually results in an amended judgment. For ease of understanding, we therefore refer to the order as a judgment.

and maintenance would be reduced to \$450 a month. Maintenance would end at Tara's sixty-seventh birthday.

## DISCUSSION

¶5 The award of maintenance is committed to the trial court's discretion. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987). We will not disturb the trial court's award unless the trial court erroneously exercises its discretion. *Id.* The trial court need not consider all of the factors in the maintenance statute<sup>2</sup> but, rather, has an obligation to consider only those

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<sup>2</sup> WISCONSIN STAT. § 767.26 provides the court may grant an order requiring maintenance payments after considering:

- (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.

(continued)

factors that are relevant. *Trattles v. Trattles*, 126 Wis. 2d 219, 228, 376 N.W.2d 379 (Ct. App. 1985). “[T]he weight to be given to the relevant factors under the maintenance statute is committed to the trial court’s discretion.” *Metz v. Keener*, 215 Wis. 2d 626, 640, 573 N.W.2d 865 (Ct. App. 1997). The statutory factors are intended to further “two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective).” *LaRocque*, 139 Wis. 2d at 32-33.

¶6 In this case, the trial court clearly set forth the factors in WIS. STAT. § 767.26 it found relevant, stating: “Of the statutory factors for consideration of a maintenance award in this case, the court views the most relevant being Sec. 767.26 (1), (2), (5), (6) and (8).” The court then went on to explain its reasoning with regard to each factor in a complete and detailed manner. The trial court’s explanation is an excellent example of a well-reasoned exercise of discretion.

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(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.

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

¶7 The parties were married for twenty-seven years. The court addressed Tara and Tony’s ages and physical and emotional health. The court then addressed Tara’s earning capacity, stating: “Even if Tara were to progress from a receptionist to an administrative assistant as a result of increased computer training and experience, she will not approach Tony’s earning capacity.” The court further observed: “At 47 and with little workforce experience she cannot reasonably hope to achieve much more, particularly in Price County.” The court also addressed “[w]hether Tara could become self-supporting at a standard of living reasonably comparable to that enjoyed during marriage ....” In examining this possibility, the court considered the fact that Tara and Tony had not led a lavish life and often struggled financially.

¶8 The court provided a reasoned and detailed analysis of the support and fairness objectives of maintenance, stating:

While it is true that Tony always promised to support Tara, and worked very hard to allow her to remain home with the children, the court believes it would be fundamentally unfair to expect this level of hard work and sacrifice to drive a long-term maintenance award....

....

Tony is living with his mother and has no immediate ability to buy a home if the maintenance award is substantial; Tara has a house, but has no immediate ability to begin to provide for her retirement .... Both parties need to be able to provide for those basic needs ....

It is reasonable to look at an equal division of the total earnings of the parties when beginning a maintenance analysis....

....

Although a “mechanistic” approach to maintenance by equalizing total income under *LaRocque* can also be criticized as an abuse of discretion, in this case it does produce a justifiably fair result. The court believes that

overtime, however, is not properly subject to division except to prevent an unjust result in extreme cases.

The court's analysis is not, as Tony claims, "too mechanistic." In fact, it is the opposite, showing a reasoned approach and a clear understanding of the factors and objectives of maintenance.

¶9 Tony also argues the court failed "to recognize that the equity in the former marital residence is as much a retirement asset as the balance in Anton Grapa's 401(k) account remaining to him after the 'equalizing payment' to Tara Grapa." Tony does not further develop this argument and it is not supported by the record. The court clearly considered both parties' retirement needs and assets, stating:

[T]he term of maintenance should continue until Tara's 67<sup>th</sup> birthday. This is necessary to allow her time to make provision for her own comfort in retirement, which the parties acknowledge will probably not equal Tony's, given his significantly greater social security earnings. Nonetheless, Tara will likely have greater equity in her house and land by that point than will Tony, should he purchase a home.

¶10 Finally, Tony argues the court erred by relying on WIS. STAT. § 767.26(8), which provides a court determining maintenance may consider:

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.

Tony argues, "[t]he only such 'arrangement' to which Tara Grapa can point is the one that enabled her to remain in the marital home until the parties' youngest child reached the age of 17 years while Anton Grapa was working two or more jobs to

support the family.” Tony also argues that Tara “suffered no economic disadvantage by reason of the ‘arrangement.’” However, as explained above, the trial court fully considered all relevant factors including Tara’s contribution to the marriage by working in the home and how her twenty-two-year absence from the job market affected her earning ability.

*By the Court.*—Judgment affirmed.

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

