

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 8, 2007

A. John Voelker
Acting 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. 2006AP1343

Cir. Ct. No. 1991FA328

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

CHARLENE I. VANGEN,

PETITIONER-APPELLANT,

V.

LARRY E. VANGEN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Charlene Vangen appeals from a post-divorce order terminating her maintenance payments from her ex-husband Larry Vangen. We affirm for the reasons discussed below.

BACKGROUND

¶2 When the parties were divorced in 1993, Larry was earning \$11,554 per month and Charlene was earning \$100 per month. The court ordered Larry to pay Charlene 40% of his employment income for three years while she earned a degree, and 30% of his employment income thereafter. The court also ordered that that the parties would be jointly liable for any liability that might be assessed against Larry's partnership interest in a CPA firm, HABCO, as the result of then-ongoing litigation.

¶3 In 2001, Larry was notified that his partnership share of the judgment against HABCO would be \$561,036, and that funds would be withheld from his draw until the debt was paid. Larry took out loans to pay most of his half of the litigation debt.

¶4 Meanwhile, Charlene has earned a social work degree and obtained a succession of several jobs following the divorce. However, at age sixty-two, she elected to draw early social security benefits, and only worked very limited hours after that. Instead of paying her share of the litigation debt, Charlene liquidated her ownership interest in a rent-generating building, used some of the proceeds from that as well as the proceeds from a second mortgage to buy a deferred annuity, and then filed a petition in bankruptcy. She eventually had \$434,401.65 of her debt to HABCO discharged (which by then included \$153,951 in unpaid interest along with her half of the original debt).

¶5 In response to Charlene’s bankruptcy discharge, HABCO reduced Larry’s capital equity in the partnership by a corresponding \$434,401.65. His capital equity was used in part to determine his salary, and would otherwise have been paid to him upon his mandatory retirement from the partnership at age sixty-five. The firm then attributed the \$153,951 interest figure to Larry for income tax purposes for 2006, with the remaining amount to be amortized as a business expense to HABCO and treated as income to Larry for tax purposes over the next five or six years.

¶6 Larry moved to terminate his maintenance payments based on HABCO’s assignment to him of Charlene’s portion of the litigation debt. The court granted Larry’s motion, and Charlene appeals.

DISCUSSION

¶7 “In order to modify a maintenance award, the party seeking modification must demonstrate that there has been a substantial change in circumstances warranting the proposed modification.” *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶30, 269 Wis. 2d 598, 676 N.W.2d 452; WIS. STAT. § 767.32(1)(a) (2003-04).¹ Then, in addition to evaluating the recipient’s continued need for support, “[f]airness must be considered with respect to the situations of both parties in determining whether maintenance should be continued indefinitely, continued for a limited amount of time, reduced, or terminated.”² *Id.*,

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

² Charlene argues that the change in circumstances also must be shown to have been unjust and inequitable to the movant. That standard was abandoned in *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶32, 269 Wis. 2d 598, 676 N.W.2d 452.

¶31. We review decisions whether to modify maintenance under the same erroneous exercise of discretion standard applicable to initial maintenance determinations. *Id.*, ¶17. We will affirm such discretionary decisions when they represent a rational decision based on the application of the correct legal standards to the facts of record. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789.

¶8 First, we conclude that there was sufficient evidence for the trial court to determine that the reassignment to Larry of over \$434,000 in litigation debt, which the court had originally ordered Charlene to pay, constituted a substantial change in circumstances. At the time of the divorce, the parties had a net marital estate worth of approximately \$306,000, which the court divided more or less equally. The court made a determination in the original divorce proceeding that the litigation debt was chargeable against the marital estate and should be shared equally because both parties had benefited from the additional income generated by the HABCO partnership's breach of contract. The court kept the property division open to set the amount of the debt. Larry appealed the original divorce judgment, but neither party raised the issue of the outstanding litigation debt on that appeal. As a result of HABCO's reassignment to Larry of Charlene's portion of the litigation debt, Charlene was allowed to keep substantial assets from the marital estate that she was able to protect in her bankruptcy proceeding, while Larry was left with marital debt far exceeding his original portion of marital assets. In other words, the debt reassignment changed what had been a substantially equal property division into a greatly disproportionate one.

¶9 It was proper for the trial court to consider this substantial change in the property division as weighing in favor of the termination of maintenance, notwithstanding the parties' disparity in income. As the court noted, the less-than

\$2,000 a month in maintenance Larry would otherwise pay for an additional two years when he was expected to retire would not come even close to offsetting the debt that had been transferred to him. The court also considered the respective abilities of the parties to maintain a standard of living comparable to that enjoyed during the marriage. The court found that Larry's ability to maintain his standard of living had gone down because of the debt, while Charlene's earning capacity should have gone up due to her degree—although it further found that she had chosen to be unemployed or underemployed by leaving jobs. The court concluded that Charlene no longer needed maintenance in light of her assets, lack of substantial debt, Social Security payments and “ability to earn if she desires.” In sum, we are satisfied that the court's decision represented a reasonable exercise of its discretion.

By the Court.—Order affirmed.

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

