

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 05, 2007

David R. Schanker
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. 2006AP3044

Cir. Ct. No. 2005FA1485

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

DAVID PAUL CAMPBELL,

PETITIONER-APPELLANT,

v.

CARMENZA CAMPBELL,

RESPONDENT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 KESSLER, J. David Paul Campbell appeals *pro se* from the Decision and Order on Trial Issues, the Findings of Fact, Conclusions of Law and Judgment of Divorce, and the division of marital property and maintenance granted thereunder. David asserts that the trial court erroneously exercised its

discretion when it: (1) determined that the property division between David and his wife, Carmenza Campbell, would be a 50:50 division; (2) determined that the post-marital agreement between the parties was unenforceable; and (3) awarded Carmenza maintenance of \$2000 per month for a period of six years. Because we conclude that the trial court did not erroneously exercise its discretion, we affirm.

BACKGROUND

¶2 David and Carmenza were married on August 11, 1995. The marriage took place in Bogotá, Colombia. Prior to the marriage, the parties executed a pre-marital agreement that was written in English and translated into Spanish by a Carroll College Spanish professor. Both parties signed the agreement in the presence of a notary public. The purpose of the pre-marital agreement was to exclude David's individual retirement accounts (IRAs), and any increase in their value, from becoming marital assets.

¶3 The parties also signed a post-marital agreement on January 6, 2003. The purpose of this agreement was to restrict Carmenza from incurring more credit card debt without David's consent. The agreement contained a penalty clause that Carmenza would owe David three times the amount of debt incurred if she failed to follow the agreement.

¶4 David filed for legal separation on March 1, 2005. Carmenza counterclaimed for divorce on March 29, 2005. A trial was held on November 7, 2005 and February 15, 2006. David testified extensively on both days of trial; Carmenza testified on February 15, 2006. The parties also stipulated to the value and disposition of the majority of the marital property, including retirement accounts, the value of the duplex where the couple had resided, a condominium in Bogotá, Colombia, a lot in South Carolina, various vehicles, recreational

equipment, furniture and jewelry. After receiving proposed findings of fact and conclusions of law from the parties, the trial court issued its decision and order on trial issues on August 2, 2006, and the findings of fact, conclusions of law and judgment of divorce was filed on October 11, 2006. David appeals as set forth above. Additional facts are provided below as necessary.

STANDARD OF REVIEW

¶5 Valuation of assets, property division, and maintenance all rest within the sound discretion of the trial court. *Haack v. Haack*, 149 Wis. 2d 243, 247, 440 N.W.2d 794 (Ct. App. 1989) (citing *Wozniak v. Wozniak*, 121 Wis. 2d 330, 336, 359 N.W.2d 147 (1984); *Pelot v. Pelot*, 116 Wis. 2d 339, 342, 342 N.W.2d 64 (Ct. App. 1983); and *Holbrook v. Holbrook*, 103 Wis. 2d 327, 338, 309 N.W.2d 343 (Ct. App. 1981)).

A discretionary determination, to be sustained, must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law. Additionally, and most importantly, a discretionary determination 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.

Hartung v. Hartung, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981); *see also Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982) (Because the exercise of discretion is not the equivalent of unfettered decision-making, the record must reflect the trial court’s “reasoned application of the appropriate legal standard to the relevant facts in the case.”). A trial court’s acquiescence of a statement by counsel may provide the rationale for the court’s decision. *Hagenkord v. State*, 100 Wis. 2d 452, 464, 302 N.W.2d 421 (1981).

¶6 “We will uphold the trial court’s decision unless the discretion was not exercised or there was no reasonable basis for the trial court’s decision.” *Wester v. Bruggink*, 190 Wis. 2d 308, 317, 527 N.W.2d 373 (Ct. App. 1994). If the trial court fails to provide reasoning for its evidentiary decision, the appellate court should independently review the record to determine whether it provides a basis for the trial court’s exercise of discretion. *Martindale v. Ripp*, 2001 WI 113, ¶29, 246 Wis. 2d 67, 629 N.W.2d 698. The appellate court will generally look for reasons to sustain the trial court’s discretionary decision. *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. However, “[w]e will not overturn a discretionary determination on a ground not brought to the attention of the trial court.” *State v. Foley*, 153 Wis. 2d 748, 754, 451 N.W.2d 796 (Ct. App. 1989).

¶7 A reviewing court ““will find an [erroneous exercise] of discretion if the record shows that the trial court failed to exercise its discretion, the facts fail to support the trial court’s decision, or [the appellate] court finds that the trial court applied the wrong legal standard.”” *State v. Black*, 2001 WI 31, ¶9, 242 Wis. 2d 126, 624 N.W.2d 363 (citations omitted; first alteration in original).

DISCUSSION

¶8 On appeal, David argues that the trial court erroneously exercised its discretion when it: (1) determined that the property division between David and Carmenza would be a 50:50 split; (2) determined that the post-marital agreement between the parties was unenforceable; and (3) awarded Carmenza maintenance of \$2000 per month for a period of six years.

I. Property division

¶9 David first argues that the trial court erroneously exercised its discretion when it divided the marital property equally between Carmenza and himself, by “entirely neglecting [sic] the other statutory [sic] factors under Wisconsin Stat. 767.255 (3) and by ignoring the support of a step child as a relevant factor under Wisconsin Statute 767.255 (3) m.” David argues that the trial court did not adequately consider his support of Sergio (Carmenza’s son and David’s stepson), the tax consequences of Carmenza’s income that he alone had to pay for, and that the trial court failed to credit: (1) the money he paid to bring Carmenza and Sergio to the United States and for them to become United States citizens; (2) that he paid all expenses for Sergio for six years (age twelve to age eighteen); (3) to him all the assets which he brought into the marriage; (4) that “Carmenza retained her own salary and never contributed to any household expenses except for \$200 per month for 2 years,” including no contribution of money toward mortgages, groceries, utilities, vacations, and purchases of vehicles and furniture; (5) his payment of all additional tax liability for Carmenza’s salary that was not covered by her employer tax withholding; (6) that Carmenza had removed, without his permission, over \$28,000 in marital assets (in the form of money she sent her relatives); and (7) the over \$32,000 he paid to improve the real property in which they resided. David requests that the court grant to him two-thirds of the marital property, or an additional \$63,333.00.

¶10 Carmenza argues that the trial court’s “decision in this matter was detailed and comprehensive” and that the court “took particular care in summarizing the arguments of the parties before setting forth its decisions [and t]hat they were the ‘product of a rational mental process’”; therefore, the trial court’s exercise of discretion was not erroneous. Carmenza further argues

that: (1) “David did not make the required showing that he did not stand in the position of Loco Parentis with reference to Sergio,” in that David did not provide all of Sergio’s support as he argues; (2) the trial court did not ignore David’s testimony regarding assets and when and how they were obtained; (3) there was conflicting testimony regarding use of Carmenza’s wages, and the trial court is in the best position to judge the credibility of witnesses and their testimony; (4) David did not “lose money as a result of tax obligations” relating to Carmenza’s wages; (5) David testified that he was aware that Carmenza was going to, and did, send money back to her relatives in Colombia; (6) the trial court did not need to consider when David intended to retire, that his intention to retire was simply his stating so, a credibility determination, and that under WIS. STAT. § 767.255(3)¹ (2003-04),² consideration of age is not mandatory; and (7) that the

¹ Subsequent to the events at issue in this case, WIS. STAT. § 767.255 was amended and renumbered as WIS. STAT. § 767.61. *See* 2005 Wisconsin Act 443, § 109. Section 767.255, entitled, “Property division,” states, in pertinent part:

(1) Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (h), the court shall divide the property of the parties and divest and transfer the title of any such property accordingly....

(2) (a) Except as provided in par. (b), any property shown to have been acquired by either party prior to or during the course of the marriage in any of the following ways shall remain the property of that party and is not subject to a property division under this section:

1. As a gift from a person other than the other party.

2. By reason of the death of another, including, but not limited to, life insurance proceeds; payments made under a deferred employment benefit plan, as defined in s. 766.01 (4) (a), or an individual retirement account; and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance or by a payable on death or a transfer on death arrangement under ch. 705.

(continued)

3. With funds acquired in a manner provided in subd. 1. or 2.

(b) Paragraph (a) does not apply if the court finds that refusal to divide the property will create a hardship on the other party or on the children of the marriage. If the court makes such a finding, the court may divest the party of the property in a fair and equitable manner.

(3) The court shall presume that all property not described in sub. (2) (a) is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering all of the following:

(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.

(continued)

trial court did not have to consider money David spent on improving the property in its property division determination because, by the very terms of the pre-marital agreement, the validity of which was never contested by the parties, and interpretation of which is governed by § 767.255(3)(L), those improvements were to be classified marital property. Finally, Carmenza argues that due to David's commingling of his pre-marital and post-marital retirement accounts, the trial court actually credited him with more non-marital retirement funds than he would have otherwise been entitled to, either under the terms of the pre-marital agreement or under Wisconsin law.

¶11 In its decision and order, the trial court divided the Campbells' marital property equally. In so doing, the court stated:

The Court orders that the parties divide the marital property equally between Husband and Wife. Husband has always earned more income than Wife, but Wife has contributed to the marriage in other ways; for instance, Wife has cleaned the home, washed clothes, and cooked

(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.

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

meals throughout the marriage. Additionally, since 2003, Wife has paid for her own clothing, health care, auto expenses, mortgage payments for the condo in Colombia, and long distance bills. The Premarital Agreement recognized that the parties would have equal interest in subsequently owned earnings and property.

(Emphasis in original.)

¶12 In making its determination that the marital property would be divided equally, the trial court specifically determined whether the pre-marital agreement should be enforced and concluded that it agreed with the parties that the agreement was enforceable. Under WIS. STAT. § 767.255(3)(L), the trial court has the discretion to make this evaluation and determination. The trial court then went on to apply the pre-marital agreement³ in determining what would and would not be classified as marital property.

³ The pre-marital agreement states, in pertinent part:

1. Separate Property. After their marriage, David shall separately retain all rights in his American Funds and Liberty Utility Funds I.R.A. accounts or accounts purchased from funds in those accounts and including all appreciation in value of the I.R.A. accounts, whether attributable to market conditions or to David's skills and efforts, or due to any other cause whatsoever.

David shall have the sole and exclusive and absolute right at all time to manage and control his I.R.A. accounts. Carmenza acknowledges that the right of David to retain, manage and control his I.R.A. accounts extends not merely for the duration of the marriage, but additionally at divorce. Carmenza specifically gives up any claim that she might otherwise make to the I.R.A. accounts.

2. Marital Property. The parties agree that earnings and accumulations or appreciation in value resulting from personal services, skills, efforts and work of either of the parties, together with all property acquired or income derived therefrom, shall be marital property.

(continued)

¶13 Accordingly, and pursuant to the express terms of the pre-marital agreement, the trial court found that the residence/duplex in Greenfield, Wisconsin was marital property. The trial court then considered the I.R.A. accounts set forth in the pre-marital agreement, and the fact that David had rolled over additional monies from subsequently acquired 401(k) plans into one pooled I.R.A. account. The trial court decided to allow David an opportunity to provide evidence as to the amount of the I.R.A. account that should be covered under the pre-marital agreement, setting forth the following provisions in the judgment of divorce:

The parties have agreed that Todd Voit and/or Voit Econometrics shall serve as the court's expert for [determining what amount of the balance of David's TD Waterhouse retirement account is attributable to the accounts identified in the premarital agreement]. If, within 30 days of the report of such expert, neither party has filed with the court a motion specifying objections to the conclusions of this expert determining the nonmarital component (including premarital deposits and appreciation) then the court will adopt those conclusions which will be binding upon the parties.

The remaining portion of the TD Waterhouse IRA that is not considered separate property of [David] will be divided equally between [David] and [Carmenza] by Qualified Domestic Relations Order.

The trial court also determined the value of the property to be attributed to Carmenza, namely, the Bogotá, Colombia condo, and provided for set-off of this amount in the divorce property division. Finally, the trial court found that the remainder of the real property, certain select furniture items acquired during the

3. Transfers of Property From One Party to the Other. David intends to transfer his residential property at 6254 South 31st Street, Greenfield, Wisconsin, into survivorship marital property with present equity of approximately Seventy Thousand Dollars (\$70,000.00). This shall be considered marital property at death or divorce.

marriage, the jewelry Carmenza received from David, the vehicles and recreational equipment (canoe and trailer), the life insurance policies and the remainder of the retirement accounts for both parties were marital property and based upon either the stipulation of the parties, or the testimony and evidence presented at trial, set forth how these items would be assigned or disposed of, and what value would be assigned to each item.

¶14 As to David's argument that his support of Sergio should be factored into how the marital assets, once assigned, were divided, the trial court heard both parties' testimony regarding Sergio's support, including David's testimony that he paid for Sergio's citizenship and the household expenses, and Carmenza's testimony that she purchased clothes and shoes for Sergio. Additionally, at the time of the trial, Sergio had not lived in the household for over three years (having enlisted in the United States Marines in October 2001). On this argument, and based upon our review of the record, we conclude that the trial court did not erroneously exercise its discretion when it did not specifically award a greater percentage of the marital estate to David based upon this argument.

¶15 David also argues that "Carmenza retained her own salary and never contributed to any household expenses except for \$200 per month for 2 years." There was extensive testimony by both parties regarding Carmenza's work history and the money which she contributed to the household. The trial court, in its decision and order, *see* ¶11 *supra*, specifically addressed the contributions to the marriage of both individuals. We will not disturb a trial court's finding of credibility of witnesses unless it is clearly erroneous. *See Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983) (trial court "is the ultimate arbiter of the credibility of the witnesses"). Accordingly, we conclude that the

trial court did not erroneously exercise its discretion in not awarding David a greater percentage of the marital property based upon this argument.

¶16 David next argues that the trial court failed to credit his payment of all additional tax liability for Carmenza's salary that was not covered by her employer tax withholding when it determined that the marital property should be divided equally. Carmenza argues that David did not "lose money as a result of tax obligations" relating to Carmenza's wages. Again, there was substantial testimony by David regarding how he calculated the amount of tax liability he believed he paid that was over the amount he would have paid if not married to Carmenza. Carmenza's counsel cross-examined David on his calculations and assumptions, specifically eliciting David's testimony that David did not consider in his calculations the higher tax rate he would have been in had he been filing his taxes as a single person, but only presented the higher tax liability created by adding Carmenza's income to his own. We will not substitute our judgment for that of the trial court if the court could reasonably reach its discretionary decision based upon the evidence before it. *See Rivera v. Eisenberg*, 95 Wis. 2d 384, 388, 290 N.W.2d 539 (Ct. App. 1980) (The weight of the evidence, as well as the inferences to be drawn therefrom, are for the trial court.). Accordingly, we conclude that the trial court did not erroneously exercise its discretion in dividing the marital property equally and apparently rejecting any credit for the alleged additional tax liability David claims to have incurred as a result of the marriage.

¶17 David argues on appeal that Carmenza had removed, without his permission, over \$28,000 in marital assets (in the form of money she sent her relatives). Carmenza argues that David was aware from even before the marriage that Carmenza intended to send money to her relatives. Testimony was elicited from both parties regarding David's knowledge or expectations regarding support

of Carmenza's mother. At trial, David also provided information from Western Union showing the total amount of wire transfers made, including transfers that Carmenza made from her earnings. Again, we will not substitute our judgment for that of the trial court as trier of fact when facts and law support the court's discretionary decision. We conclude that the trial court did not erroneously exercise its discretion based upon this argument.

¶18 Finally, David argues that the trial court, in determining that the marital property should be divided equally, failed to consider the over \$32,000 he paid to improve the real property in which they resided. Carmenza argues that the trial court did not have to consider the money David spent on improving the property in its property division determination because, by the very terms of the pre-marital agreement, the validity of which was never contested by the parties, and interpretation of which is governed by WIS. STAT. § 767.255(3)(L), those improvements were to be classified marital property.

¶19 The pre-marital agreement, which both parties argue is valid and enforceable, states, in pertinent part:

2. Marital Property. The parties agree that earnings and accumulations or appreciation in value resulting from personal services, skills, efforts and work of either of the parties, together with all property acquired or income derived therefrom, shall be marital property.

3. Transfers of Property From One Party to the Other. David intends to transfer his residential property at 6254 South 31st Street, Greenfield, Wisconsin, into survivorship marital property with present equity of approximately Seventy Thousand Dollars (\$70,000.00). This shall be considered marital property at death or divorce.

Based upon the parties' request that the trial court find the pre-marital agreement valid and enforceable, and the trial court so finding, the trial court correctly

considered the improvements made to the property to be marital contributions pursuant to the agreement and WIS. STAT. § 767.255(3)(L). Accordingly, we conclude that the trial court did not erroneously exercise its discretion in finding that David was not entitled to an additional \$32,000 of the marital property based upon improvements to the residential property he paid for during the marriage.

¶20 Based upon our review of the record, the trial court considered the testimony and evidence presented by the parties in its decision and order on trial issues and in its findings of fact, conclusions of law and judgment of divorce. In making its determination that the marital property should be divided equally between the parties, the trial court specifically noted the contributions of each party to the marriage, taking into account the factors set forth in WIS. STAT. § 767.255(3). Accordingly, we conclude that the trial court did not erroneously exercise its discretion when it determined the value of the marital assets between the parties.

II. Post-marital agreement

¶21 David next argues that the trial court erroneously exercised its discretion in finding that the post-marital agreement was unconscionable and, therefore, unenforceable. Specifically, the trial court found that:

[T]his Financial Agreement offends the sensibilities of the Court, and that to enforce it would be inherently unfair. The tenor of the agreement presents Husband as one who was acting like a loan shark against even his own interests. As an example of the inherent unfairness in the agreement and husband's role, the Court particularly points to the penalty clause provision in which Husband seeks nearly \$31,428 simply because Wife exceeded between \$2500 and \$8600 in credit card debt during the marriage. This is substantively unfair, and accordingly, will not be enforced.

In so finding, the trial court specifically noted that it was evaluating the agreement under WIS. STAT. § 767.255(3)(L), which is the applicable law.

¶22 The post-marital financial agreement was a written agreement memorializing an oral agreement of the parties. However, the written agreement was presented to Carmenza by David with an ultimatum: sign the agreement or I will divorce you. Additionally, the agreement specifically provided that Carmenza would have to pay to David three times the amount over \$2500 that she charged on the only credit card that he allowed her to keep. At this same time, Carmenza was required to pay the condo mortgage, her health care costs, all expenses relating to her clothing, automobile use and maintenance, other personal purchases, and all long distance telephone charges.

¶23 Under WIS. STAT. § 767.255(3)(L), the party who challenges the agreement bears the burden to produce evidence and persuade the trial court of the agreement's fairness. *Button v. Button*, 131 Wis. 2d 84, 93-94, 388 N.W.2d 546 (1986). Carmenza testified that she had little time to consider the agreement and that she was not represented by counsel. She testified that she signed it because she was threatened with divorce if she did not sign it. Additionally, Carmenza testified that she was unaware at the time that she signed the agreement of the large discrepancy between her income and David's income, believing that he made a great deal less than he actually made.

¶24 Determining whether a marital property agreement is fair and equitable is a discretionary determination by the trial court. WIS. STAT. § 767.255(3)(L); *Button*, 131 Wis. 2d at 99. The trial court not only presided over both days of trial, supplementing the parties' questions to witnesses with its own, it also ordered and read a transcript of the first day of trial immediately prior to the

second day of trial, which, due to scheduling difficulties, was not held until 100 days later. After reviewing the record in this case, including the transcripts of the trial and the court’s reasoning set forth in both the decision and order and the findings of fact, conclusions of law and judgment of divorce, we conclude that the trial court did not erroneously exercise its discretion when it refused to enforce the post-marital agreement, finding it “substantively unfair.”

III. Maintenance

¶25 David argues that the trial court erroneously exercised its discretion when it awarded Carmenza maintenance of \$2000 per month for a period of six years. David further argues that the trial court failed to consider the age and future earning capacities of the parties, including his upcoming retirement, in calculating the maintenance award. Carmenza argues that the trial court correctly awarded her this maintenance. Carmenza further argues that David is requesting, for the first time on appeal, that the court impute Carmenza’s income from her full-time position in 2002, and that this is improper.

¶26 When determining maintenance awards, a court’s objective is to ensure that a fair and equitable financial arrangement is created between the parties. *King v. King*, 224 Wis. 2d 235, 249, 590 N.W.2d 480 (1999). A maintenance decision must begin with consideration of the factors in WIS. STAT. § 767.26,⁴ and must be designed to further the dual objectives of supporting the

⁴ Subsequent to the events at issue in this case, WIS. STAT. § 767.26 was amended and renumbered as WIS. STAT. § 767.56. See 2005 Wisconsin Act 443, § 110. Section § 767.26, entitled, “Maintenance payments,” states:

Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g) or (j), the court may grant an order requiring maintenance payments

(continued)

recipient spouse and facilitating a fair financial arrangement between the parties.
See LaRocque v. LaRocque, 139 Wis. 2d 23, 32-35, 406 N.W.2d 736 (1987).

to either party for a limited or indefinite length of time 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.
- (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.

This is particularly important when the marriage has spanned a number of years. *Fowler v. Fowler*, 158 Wis. 2d 508, 519, 463 N.W.2d 370 (Ct. App. 1990).

¶27 “The goal of the support objective of maintenance is to provide the recipient spouse with support at pre-divorce standards,” *id.* at 520, and “[t]he support objective of maintenance is fulfilled when the trial court considers the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage and the length of time necessary to achieve this goal, if the goal is feasible,” *Kennedy v. Kennedy*, 145 Wis. 2d 219, 223, 426 N.W.2d 85 (Ct. App. 1988).

¶28 The fairness objective must be determined on a case-by-case basis, *id.*, and requires the trial court to weigh such statutory factors as the length of the marriage, the division of property, the earning capacity of the party seeking maintenance, including educational background, training, and employment skills, and 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.” *See* WIS. STAT. § 767.26(6); *Kennedy*, 145 Wis. 2d at 223; *LaRocque*, 139 Wis. 2d at 32-33. We review a trial court’s maintenance award to ensure that it achieves both the support and fairness objectives of maintenance. *Forester v. Forester*, 174 Wis. 2d 78, 84-85, 496 N.W.2d 771 (Ct. App. 1993).

¶29 Here, the trial court noted in its findings of fact that: the marriage lasted over ten years, while Carmenza was “educated and is capable of speaking English, [her] ability to realize a much greater income is very unlikely,” and a period of maintenance of six years would “enable her to build skills and increase her earning potential.” As relates to David’s argument that the trial court failed to

consider his impending retirement in its maintenance award, the trial court specifically included a provision in its October 11, 2006 judgment that “[David] is not precluded from seeking modification based upon his retirement or other substantial change of circumstances,” which is an accurate statement of the standards for modification of maintenance under WIS. STAT. § 767.32. Based upon the updated financial disclosure David provided to the trial court, his income, not including any bonuses or rental income (or associated depreciation or interest tax credit on the rental property), was \$6875 per month, or approximately \$82,500 annually. Carmenza’s income was \$1209.16 per month or approximately \$14,510 annually. David argues that the trial court erred in not imputing income to Carmenza at \$25,119.90, which was the full-time salary Carmenza received in 2002. However, as noted in the trial court’s decision, David had asked at trial that the court impute Carmenza’s income as \$21,841. *See Foley*, 153 Wis. 2d at 754 (“We will not overturn a discretionary determination on a ground not brought to the attention of the trial court.”).

¶30 David’s testimony covers 241 pages over two days of trial. The trial court was in the best position to evaluate David’s demeanor and credibility and the evidence received. The trial court made findings regarding the contributions of the parties to the marriage and took into account the factors required in WIS. STAT. § 767.26. Based upon the record, we conclude that the trial court did not erroneously exercise its discretion when it awarded Carmenza maintenance of \$2000 per month for a period of six years.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

