

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 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. 2007AP1063-FT

Cir. Ct. No. 2006FA44

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

CARL SANFORD JOHNSON,

PETITIONER-APPELLANT,

V.

LINDA FRANCIS JOHNSON,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Douglas County:
GEORGE L. GLONEK, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Carl Johnson appeals the maintenance portion of a judgment dissolving his marriage to Linda Johnson.¹ Carl argues the trial court erroneously exercised its discretion by ordering maintenance based on what Carl characterizes as an error in computation that is not supported by the evidentiary record. We reject Carl’s argument and affirm the judgment.

BACKGROUND

¶2 Carl and Linda were married in August 1973. The couple have two adult children. In February 2006, Carl filed for divorce. It is undisputed that at the time of the divorce hearing, the issues remaining were limited to the valuation of a few items of personal property, the division of debt and the issue of maintenance. With respect to maintenance, Linda requested a monthly amount of \$1,500 and Carl agreed to pay a monthly amount of \$300. The court ultimately awarded Linda monthly maintenance of \$1,250 for thirty-six months, \$750 for forty-eight months and \$500 for eighty-four months. This appeal follows.

DISCUSSION

¶3 The determination of maintenance is a matter entrusted to the trial court’s sound discretion. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (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.” *Id.* Upon a judgment of divorce, “the court may grant an order requiring maintenance payments to either party for a limited or

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

indefinite length of time after considering” those factors listed under WIS. STAT. § 767.56. On review, the question is whether the trial court’s application of the factors 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). The first objective is to support the recipient spouse in accordance with the needs and earning capacities of the parties. “The goal of the support objective of maintenance is to provide the recipient spouse with support at pre-divorce standards.” *Fowler v. Fowler*, 158 Wis. 2d 508, 520, 463 N.W.2d 370 (Ct. App. 1990). The fairness objective is to ensure a fair and equitable financial arrangement between the parties in each individual case. *King v. King*, 224 Wis. 2d 235, 249, 590 N.W.2d 480 (1999).

¶4 Here, Carl argues that the maintenance award is based on an error in computation that is not supported by the evidentiary record. Specifically, Carl contends that the trial court erred by basing the maintenance award on the gross monthly income of \$3,384.96 listed in his financial disclosure statement. Carl claims that figure inaccurately represents his income because it does not factor in weeks or days in which Carl does not work due to weather or lack of work.

¶5 At the divorce hearing, Carl presented evidence of his gross earnings during two years—2005 and 2006. Carl stated his gross income in 2005 was \$46,000, resulting in an average monthly gross income of \$3,833.33. Carl further testified that he lost his employment and received unemployment for five months in 2006, during which time he received \$371 weekly. At the time of the hearing, Carl was employed in a new position as a union iron worker, and although his financial disclosure statement listed his monthly gross income at \$3,384.96, Carl clarified that this amount reflected his income for only the past four weeks. Carl further emphasized that he is laid off periodically throughout the year. Carl

nevertheless admitted that he expected to earn only “slightly less” in 2006 than he had in 2005.

¶6 In awarding maintenance, the court ignored Carl’s higher earnings from 2005 and determined Carl’s gross earnings to be \$3,384.96 per month, or \$40,619.52 per year. Based on the record before it, the court properly utilized the income information and testimony provided by Carl at the divorce hearing. The court also carefully considered the statutory factors, as well as the support and fairness objectives, and crafted a limited-term step-down maintenance plan that allowed for Linda to return to school, thereby increasing her earning potential over time. We discern no erroneous exercise of discretion in either the analysis or the award of maintenance.

By the Court.—Judgment affirmed.

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

