

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 17, 2009**

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. 2008AP1959-FT**

**Cir. Ct. No. 2005FA38**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**DEAN W. TAUTGES,**

**PETITIONER-APPELLANT,**

**V.**

**TINA M. WEIGEL, F/K/A TINA M. TAUTGES,**

**RESPONDENT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Marathon County:  
EARL SCHMIDT, Judge. *Affirmed.*

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

¶1 PER CURIAM. Dean Tautges appeals a judgment of divorce, arguing the circuit court erroneously exercised its discretion with regard to maintenance and property division.<sup>1</sup> We affirm.

¶2 Tautges and Tina Weigel, formerly Tautges, were divorced on May 20, 2008, after twenty-two years of marriage. The court found Tautges earned \$43,000 annually and Weigel was unemployed and disabled. The parties have three children, only one of whom was a minor at the time of the divorce. The court ordered Tautges to pay \$612 monthly child support, and \$900 monthly maintenance that would increase to \$1,400 monthly for an indefinite duration when the support obligation ceased.

¶3 The award of maintenance and the division of property rest within the sound discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We generally look for reasons to sustain the circuit court's discretionary decisions. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968). “[W]e may search the record to determine if it supports the court’s discretionary decision.” *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We will sustain discretionary decisions if the circuit court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). It need not be a lengthy process. While reasons must be stated, they need not be exhaustive. *Burkes v. Hales*, 165 Wis. 2d

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2). The circuit court is also the ultimate arbiter of witnesses' credibility. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶4 Tautges argues the circuit court failed to demonstrate a rational reasoning process in reaching its maintenance determination. Tautges contends the court “simply rattled off, in cursory fashion, facts which touch on some of the factors in sec. 767.56, Stats., without explication.”

¶5 We are satisfied the circuit court adequately considered relevant statutory factors under WIS. STAT. § 767.56. The court noted this was a lengthy marriage. It also referenced the physical and emotional health of the parties, their educational levels and earning capacities, the feasibility of the party seeking maintenance to become self supporting, and the contribution of one party to the other's earning capacity. While the reasons for the court's ultimate maintenance determination may not have been exhaustive, they need not have been. *Burkes*, 165 Wis. 2d at 590-91. The court's decision indicates it undertook an examination of the facts of the case and reasoned its way to a conclusion a reasonable judge could reach. As a whole, the decision incorporates appropriate considerations and is not an erroneous exercise of discretion.

¶6 Tautges insists “the underlying assumption that Weigel is disabled” underscores the circuit court's error in awarding maintenance. With regard to earning capacity, Tautges claims Weigel “presented only a non-certified photocopy of a report from her doctor, to which Tautges objected.”

¶7 However, our review of the record reveals Tautges did not object to the admission of the report. Tautges appeared pro se at the final hearing. He

began his cross-examination of Weigel by reference to the medical report, which was attached to her financial disclosure statement. Tautges did not, however, question Weigel regarding the document, but merely made arguments to the court alleging the form “has been tampered with.” During his direct testimony, Tautges testified in conclusory fashion, “[I]t’s been tampered with.”<sup>2</sup> We conclude any objection to the admission of the uncertified copy of the medical report was waived. The effect, if any, of alterations to the report went to the weight of the evidence rather than its admissibility.<sup>3</sup>

¶8 We also reject Tautges’ suggestion that the court’s finding regarding Weigel’s disability was based solely upon the medical report. Aside from that report indicating permanent restrictions, Weigel testified she was unemployable because of her physical impairments. She described her numerous back surgeries and her limitations. She also testified, without objection, that she discussed future employment with her physician, who indicated she was unable to work and that her condition was permanent. Evidence of her earning history was presented, and she testified she last earned income in 2000. Her daughter Tracy testified “she has episodes every day.” Tracy stated:

[H]er back will give out and sometimes she [will] have big episodes where she will be in bed for about a week, and I’ll have to take care of her. I have to feed her, take her bath, take her to the bathroom, basically home care.

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<sup>2</sup> In his brief, Tautges states, “[I]t appears that the document has been tampered with, as Tautges claimed, where ‘Total hours per day’ apparently said ‘8 hours’ at one time and then was apparently changed by someone to ‘Other’ and ‘1’.” Tautges does not provide citation to the record indicating he testified to anything other than the document was tampered with. We therefore will not address the argument concerning how the document was allegedly altered.

<sup>3</sup> Pro se litigants are held to the same rules as attorneys. *See Waushara County v. Graf*, 166 Wis. 2d 442, 451-52, 480 N.W.2d 16 (1992).

Tracy testified these “big episodes” occur monthly. As the court observed, Tautges presented no evidence to rebut Weigel’s evidence that she was unable to work, other than his own testimony that Weigel could work. It is the circuit court’s job to assess credibility, weigh the evidence and resolve disputes. *See Cogswell*, 87 Wis. 2d at 250. The court’s findings regarding Weigel’s earning capacity are not clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶9 Tautges insists if the evidence of disability was persuasive “as it apparently was to the trial court,” it erred by failing to impute social security disability income to Weigel. Tautges asserts, “Weigel testified that she had applied for Social Security disability on five occasions, but they said because Tautges made too much, she would have to wait until she divorced to reapply.” Tautges contends Weigel would have time to reapply by June 1, 2009. He argues the court was therefore required to impute \$674 monthly disability income to her as of June 1, 2009, citing the Social Security Administration’s website showing monthly supplemental income benefits in 2009.

¶10 Again, Tautges did not argue in the circuit court that social security income should be imputed to Weigel. This issue was raised for the first time on appeal and is thus waived. *Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980). Tautges concedes in his reply brief that the social security website printout included in his appendix is not part of the record on appeal, but requests that we take “judicial notice of this public record.” Tautges relies on *State v. Ramel*, 2007 WI App 271, ¶24 n.9, 306 Wis. 2d 654, 743 N.W.2d 502, where we took judicial notice of sentencing guidelines available online, which the sentencing court had reviewed. *Id.* In the present case, however, Tautges did not preserve in the circuit court the issue of the imputation of social security income.

We decline to take judicial notice of a social security administration website printout concerning an issue that was not considered at the circuit court level.<sup>4</sup>

¶11 Finally, Tautges insists the circuit court erred in the division of property by failing to discount, for tax and penalty purposes, an amount the court credited Tautges concerning a loan from his 401(k) account that was not repaid. Weigel responds that Tautges did not raise this issue at trial. In his reply brief, Tautges concedes Weigel “is correct in noting that Tautges did not explicitly argue the tax consequence of this 401(k) plan loan to the trial court.” Nevertheless, Tautges contends “he did express total confusion as to the settlement on the 401(k) loan.” Tautges asserts the resulting explanation to him “showed confusion on the part of the trial court.” Tautges then argues, “This colloquy alone should be sufficient to preserve this issue for appeal.” We find nothing in the cited “colloquy” that would sufficiently preserve an issue regarding the tax consequences of the 401(k) plan. As mentioned previously, we do not consider issues raised for the first time on appeal. *Wirth*, 93 Wis. 2d at 443.

*By the Court.*—Judgment affirmed.

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

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<sup>4</sup> We note the circuit court suggested that Tautges could seek to modify the maintenance award pursuant to a change of circumstances if Weigel obtains social security disability benefits.



