

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 21, 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. 2008AP817

Cir. Ct. No. 2005FA1456

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

DONNA YILDIRIM,

PETITIONER-RESPONDENT,

V.

TAYFUN YILDIRIM,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
MARY KAY WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Tayfun Yildirim appeals the parts of a divorce judgment that required him to pay Donna Yildirim maintenance and child support based on imputed income. He argues that: (1) the decision to impute \$66,432

annual income to him is not supported by any findings, the evidence, or the applicable law; (2) the court erroneously exercised its discretion by considering his earning capacity but not Donna's, and by failing to consider the effect of the placement schedule on his earning capacity; and (3) the court failed to make any findings regarding Donna's needs. We reject these arguments and affirm the judgment.

BACKGROUND

¶2 At the time of the decision on the divorce, the parties had been married fourteen years and had two children, ages 13 and 11. Prior to trial, the parties entered into a custody and placement stipulation in which they were awarded joint legal custody and shared placement, giving Tayfun placement 27% of the time. The court was unable to determine Tayfun's income because he failed to present credible evidence. Tayfun worked as a tile setter. He was employed by a union in Illinois and also did side jobs through Signature Flooring and periodically collected unemployment benefits. The court found that Tayfun had income that was not disclosed on his tax returns and financial statements. Bank statements showed that Tayfun deposited in excess of \$64,000 into his account between March 2005 and January 18, 2006. That amount was significantly higher than the income amount Tayfun reported to the court. As the arbiter of credibility, the court was not required to accept Tayfun's explanation that the deposits were not his income but represented amounts he later paid to other employees. *See Gehr v. City of Sheboygan*, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977).

¶3 Tayfun also presented insufficient evidence to determine his income from Signature Flooring, which is incorporated in his girlfriend's name. Tayfun used the corporate credit card for various personal expenses and received "gifts

from his boss and girlfriend” that included payment of his rent, vacation expenses including a trip to Europe, payment of his auto insurance, and payment of his and his children’s cell phone bills. No other independent contractor received these benefits.

¶4 In its decision, the court characterized Tayfun as “a conniver and not at all truthful.” It found that he does not report his income and “[h]is testimony on several issues about his work was not believable.” The court determined that it was necessary to award child support based on income it imputed to Tayfun due to the unreliability of the evidence he presented regarding his actual income, the commingling of his personal finances with business expenses, and his incomplete and false disclosures. The court multiplied the hourly union wage of \$34.60 times 40 hours per week times 48 weeks per year.

¶5 The court found that Donna earned \$20,000 annually working part-time for a real estate company. She also tends bar on weekends. The court found it feasible that Donna could become self-supporting after the children reached an age where they could better care for themselves, and awarded Donna \$75 per week maintenance for five years.

DISCUSSION

¶6 Tayfun’s argument that the record does not support the amount of imputed income fails for two reasons. First, Tayfun put the circuit court in the position of needing to estimate his income because of his failure to present credible and complete evidence of his actual income. When a party fails to provide the court with accurate information regarding his income, he may not complain that a court’s reasonable approximation is excessive. See *Lellman v. Mott*, 204 Wis. 2d 166, 175, 554 N.W.2d 525 (Ct. App. 1996).

¶7 Second, the \$66,432 annual income imputed to Tayfun is supported by sufficient evidence. Even if Tayfun does not work 40 hours per week, 48 weeks per year for the union wage, other income and benefits he receives from Signature Flooring supplement his income. Tayfun argues that he never made as much income as the circuit court imputed. That argument is based on tax returns and financial statements that the circuit court reasonably found to be an unreliable indicator of actual total income.

¶8 Donna's actual income was established by credible evidence. Thus, the court properly considered Tayfun's earning capacity and Donna's actual earnings.

¶9 Tayfun next argues that the circuit court failed to consider how the placement schedule might impact his ability to work. Tayfun had the children on alternating weekends from 5:00 Friday evening until school time Monday morning, and on the opposite weeks overnight on Friday. In addition, he had the children every Tuesday and Thursday from 5:00 p.m. until 8:00 p.m. Tayfun contends that the weekday evening placements will interfere with his ability to perform out-of-town jobs for the union. However, the imputed income does not depend entirely on Tayfun's union wages. The fact that the court calculated Tayfun's imputed income on the basis of a 40-hour work week does not mean he must earn his total income by working that schedule.

¶10 Finally, Tayfun argues that the circuit court misused its discretion when it awarded maintenance. We disagree. We conclude that the court properly exercised its discretion when it awarded Donna \$75 per week maintenance for five years. She submitted a monthly budget of almost \$3000. While Donna's education, training, employment skills, and work experience suggest that she

could earn more income, the court could reasonably conclude that her custodial responsibilities limited her income. She is presumptively entitled to half of the marital income. *See LaRocque v. LaRocque*, 139 Wis. 2d 23, 39, 406 N.W.2d 736 (1987). The award of \$75 per week added to her \$20,000 annual income is substantially less than half of the parties' total annual income, and nothing in the record suggests that the maintenance will provide Donna with a higher standard of living than she enjoyed during the marriage.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

