

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 16, 2002

Cornelia G. Clark
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. 01-2871
STATE OF WISCONSIN**

Cir. Ct. No. 00-FA-34

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

DALE A. GLEFFE,

**PETITIONER-RESPONDENT-CROSS-
APPELLANT,**

v.

ROMAYNE R. GLEFFE,

**RESPONDENT-APPELLANT-CROSS-
RESPONDENT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Buffalo County: DANE F. MOREY, Judge. *Affirmed.*

Before Cane, C.J, Hoover, P.J. and Peterson, J.

¶1 PER CURIAM. Romaine Gleffe appeals and Dale Gleffe cross-appeals a divorce judgment that denies Romaine maintenance and assigns Dale

the debts he incurred after the petition for divorce was filed. Romaine argues that the evidence does not support the trial court's estimate of Dale's income and that the court erroneously added her earning capacity to her actual social security income when determining her needs. She also argues that the court improperly exercised its discretion because the denial of maintenance did not achieve either the support or fairness objectives set out in *LaRoque v. LaRoque*, 139 Wis. 2d 23, 406 N.W.2d 736 (1987). Dale argues that the trial court erroneously assigned him debts he incurred during the pendency of this action and should not have used different dates for valuing the assets and the debts. We affirm the judgment.

¶2 Dale and Romaine were married for eighteen years. Both parties are over sixty-five-years old and have experienced health problems. Romaine has arthritis and a bad hip for which replacement surgery was recommended. She finds it difficult to stand or walk for significant periods. Dale suffers from depression, which was originally diagnosed in 1989. He was hospitalized for over four months as a result of a suicide attempt during the pendency of this action. He also suffers from gout, sleep disorders, high blood pressure and cholesterol levels, angina, and has had heart bypass surgery.

¶3 During the marriage, the parties owned a retail bait and tackle business. Romaine helped with the business and also worked outside the home. She left that employment to care for her sick daughter and did not seek employment after her daughter's death.

¶4 The trial court found that the parties lived substantially beyond their means during the marriage. They took vacations to Canada, Hawaii, Florida and Colorado, owned two time-shares in Mexico, two sports utility vehicles, two boats and two snowmobiles. They financed a number of these activities and purchases

with credit cards and transferred balances between cards. The trial court determined that neither party had the financial ability to pay maintenance to the other and, although they were both of retirement age, both would be required to work to support themselves. The court divided the assets equally, giving Dale the parties' home and the business, but assigned Dale \$117,200 debt incurred by him for the business and residence after he filed the petition for divorce.

¶5 Sufficient evidence supports the trial court's finding that Dale will earn approximately \$24,000 from the business. The tax returns reflect widely divergent income for three years preceding the divorce. Although the average income during these years was nearly \$42,000, the court could reasonably discount that figure because of Dale's health, missing time from work due to hospitalization and his loss of Romaine's services. Romaine notes that Dale listed his gross monthly income at \$8,333 in a loan application, substantially higher than his predicted gross income in his financial disclosure statement. As the arbiter of the witnesses' credibility, the trial court reasonably discounted the figure given in the loan application because it was never submitted and it also exaggerated Romaine's income. This court has no authority to overturn trial court findings of fact that are based on the witnesses' credibility. See *Wiederholt v. Fischer*, 169 Wis. 2d 524, 533, 485 N.W.2d 442 (Ct. App. 1992).

¶6 Romaine also argues that this court should draw an adverse inference from Dale's failure to complete his income tax return for the year preceding the divorce. The trier of fact, not this court, draws inferences from the evidence. This court must accept the trial court's inferences derived from credible evidence. See *Noll v. Dimiceli's Inc.*, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983). Dale was hospitalized from January through April 19, 2001, and asking to postpone filing his tax returns does not necessarily suggest that he is

hiding income. The finding that Dale could earn approximately \$24,000 is a reasonable extrapolation from the evidence presented.

¶7 Sufficient evidence also supports the finding that Romaine would receive \$368 per month social security benefits and could work thirty hours per week at \$6 per hour. She submitted no medical evidence at trial to support any claim that she was incapable of working those hours. Her own testimony indicates that she worked outside the home approximately twenty hours per week at \$6 per hour in addition to the work she performed for the family business.

¶8 The court properly exercised its discretion when it denied Romaine maintenance. As correctly notes, a goal of maintenance is to provide the recipient with sufficient income to maintain his or her standard of living. *See Fowler v. Fowler*, 158 Wis. 2d 508, 520, 463 N.W.2d 370 (Ct. App. 1990). That is simply not possible when the parties lived beyond their means during the marriage. It appears likely that both parties will be required to liquidate assets they received in the divorce judgment and will be required to work to support even a minimal standard of living. Dale's negative financial position greatly exceeds Romaine's shortfall per month from Romaine's listed monthly expenses.

¶9 The trial court's decision to deny maintenance also achieves the fairness objective. Although this was a long-term marriage and Romaine's efforts assisted in the success of the family business, the court awarded Dale the residence and the business and the substantial debts that accompanied each of them. By assigning Dale over ninety-nine percent of the parties' debt, the trial court made it possible for Romaine to keep her earnings rather than using them to service the debt. Allowing Dale the opportunity to maximize his income without maintenance

but assigning him the parties' debt achieves a fair distribution of the parties' property and income.

¶10 Because property division and maintenance decisions are interdependent and are not made in a vacuum, *see Bahr v. Bahr*, 107 Wis. 2d 72, 78-79, 318 N.W.2d 391 (1982), the court properly exercised its discretion when it assigned Dale most of the parties' debt by using different dates for calculating the value of the assets and debts. Dale borrowed money for home improvements and allegedly for business purposes while the divorce was pending. The record does not reflect that these expenditures resulted in a corresponding increase in the assets' values. As the arbiter of the witnesses' credibility, the court reasonably doubted Dale's testimony that it was common practice for him to borrow money to buy his inventory. Dale contends that the trial court "ignored his testimony regarding the inventory." Rather, it appears the trial court disbelieved his testimony.

¶11 During the pendency of this action, Dale was in sole possession and control of the business and incurred new debt of over \$117,000. At the time of trial, he asked the court to value the business at a negative \$18,300. Dale had previously represented that he would not sell the business for less than \$200,000. The widely divergent estimates of the business's value underscores that the money borrowed did not necessarily enhance the business's value. The trial court could reasonably view Dale's expenditures as an attempt to run up debt during the pendency of the action.

¶12 Likewise, the improvements to the marital residence did not necessarily enhance its fair market value. Because Dale had sole control of these assets during the pendency of the divorce, the trial court reasonably assigned the

debt as of the date the petition for divorce was filed and valued the assets as of the date of the divorce to make Dale solely responsible for the financial decisions he made while the divorce was pending.

By the Court.—Judgment affirmed. No costs on appeal.

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

