

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 6, 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. 02-0930-FT  
STATE OF WISCONSIN**

Cir. Ct. No. 99-FA-213

**IN COURT OF APPEALS  
DISTRICT III**

---

**IN RE THE MARRIAGE OF:**

**THOMAS M. SPANG,**

**PETITIONER-APPELLANT,**

**V.**

**MAUREEN A. SPANG,**

**RESPONDENT-RESPONDENT.**

---

APPEAL from an order of the circuit court for Douglas County:  
JOSEPH A. MCDONALD, Judge. *Affirmed.*

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

¶1 CANE, C.J.<sup>1</sup> Thomas Spang appeals an order denying his motion to modify his maintenance obligation to Maureen Spang. Thomas requested the court either terminate or reduce maintenance because he had experienced a reduction in income. The circuit court reduced Thomas's monthly payment from \$650 to \$400, but extended the length of the maintenance period so that Maureen would receive the same amount of money provided in the Spangs' marital settlement. On appeal, Thomas argues the circuit court erroneously exercised its discretion by not reducing or terminating his obligation because he will suffer a monthly budgetary deficit if he has to pay maintenance. We determine the circuit court properly exercised its discretion and affirm its order.

### BACKGROUND

¶2 Thomas and Maureen Spang divorced in July 2000 after twenty years of marriage. Their stipulated marital property agreement obligated Thomas to pay Maureen maintenance of \$650 a month for four years. At the time of divorce, Thomas worked forty hours a week as a flight paramedic at St. Mary's Duluth Clinic in Duluth, Minnesota. He also worked twenty-four hours a week as a paramedic for Gold Cross Ambulance. His gross monthly income at that time was \$5,358.36. Maureen's was \$1,732, which consisted primarily of temporary child support from Thomas.

¶3 In December 2001, St. Mary's fired Thomas because he did not comply with the company's weight policy for flight paramedics. Although he was able to work forty-eight hours a week at Gold Cross, his monthly gross income

---

<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All statutory references are to the 1999-2000 version.

dropped to \$3,256.07. He sought a termination or modification of his maintenance obligation based on his loss of income. He argued the wage loss was a substantial change in circumstances and it would be unfair for him to pay maintenance when his monthly expenses exceeded his net income.

¶4 The circuit court agreed Thomas's reduction in income was a substantial change in circumstances, but did not reduce Thomas's overall obligation to Maureen. Instead, it reduced his monthly payment to \$400 and extended the maintenance period to allow Maureen to receive the same amount she would have under the original plan. Thomas appeals.

## DISCUSSION

¶5 A decision to modify a maintenance award is committed to the discretion of the circuit court, and we will not disturb it unless the court has erroneously exercised its discretion. *Seidlitz v. Seidlitz*, 217 Wis. 2d 82, 86, 578 N.W.2d 638 (Ct. App. 1998). A court may modify maintenance only “upon a positive showing of a change of circumstances,” which must be “substantial” and “relate to a change in the financial circumstances of the parties.” *Johnson v. Johnson*, 217 Wis. 2d 124, 127, 576 N.W.2d 585 (Ct. App. 1998). Here, Maureen does not dispute that Thomas's reduction in income is a substantial change in circumstances. Our only inquiry then is whether the circuit court erroneously exercised its discretion by extending the payment period but not reducing the overall amount of maintenance.

¶6 An exercise of discretion must be based on the facts appearing in the record and the appropriate and applicable law, as well as being the product of a rational mental process. *Dowd v. Dowd*, 167 Wis. 2d 409, 416, 481 N.W.2d 504 (Ct. App. 1992). We generally look for reasons to sustain the circuit court's

discretionary decision. *Haeuser v. Haeuser*, 200 Wis. 2d 750, 765, 548 N.W.2d 535 (Ct. App. 1996).

¶7 When modifying maintenance awards, the court must consider the same factors governing the original determination of maintenance set forth in WIS. STAT. § 767.26. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 31-32, 406 N.W.2d 736 (1987). These factors are the touchstone of analysis in determining or reviewing a maintenance award. *Id.* at 32. They reflect and are designed to further two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective). *Id.* at 33.

¶8 We determine the trial court did not erroneously exercise its discretion in its modification of Thomas's maintenance obligation. The court emphasized its deference to the Sprangs' original agreement. The settlement focuses on their financial responsibilities and does not explicitly state any particular purpose they might have considered for the maintenance. Nonetheless, when a limited-term maintenance award arises from the parties' stipulation, as it did here, it is fair to conclude the parties acknowledged that some or all of the purposes for limited-term maintenance existed. *Rosplock v. Rosplock*, 217 Wis. 2d 22, 34, 577 N.W.2d 32 (Ct. App. 1998).

¶9 It appears the primary purpose of the maintenance was to help ensure an equitable property division. Maureen testified she sought maintenance in order to keep the family's home so she and the Sprangs' three children could continue to live there, at least until the children graduated from high school. This purpose is served by the extension of the maintenance period. It will allow

Maureen to receive the same amount she and Thomas agreed upon, albeit over a longer period of time. The extension might actually be more in line with this purpose because the original obligation would have ended before all of the children graduated.

¶10 Thomas suggests the court ignored his change in circumstances by failing to modify or terminate his obligation. A modification requires a substantial change in circumstances, the court is not obligated to grant the modification if the change exists; the decision is still within the discretion of the court. *Seidlitz*, 217 Wis. 2d at 88. The circuit court was not obligated to grant Thomas's motion. We cannot even say the court disregarded his change in circumstances. It reduced Thomas's monthly payment by nearly thirty-nine percent, which is equivalent to his income reduction.

¶11 Thomas also argues the circuit court should have terminated his obligation because it will now cause him to suffer a monthly deficit. Although Thomas will suffer a monthly budget deficit of \$718.56 under the circuit court's modification, this alone does not require the court to terminate his maintenance. Thomas fails to address Maureen's financial difficulties. If her maintenance was terminated, she would suffer a monthly budget deficit of \$796.35. A court should not reduce maintenance just to place the payor in a better financial position at the expense of the payee. *See Dowd*, 167 Wis. 2d at 417.

¶12 The circuit court was faced with the unfortunate task of distributing the consequences of Thomas's reduction in income among the Spangs. We determine the court rationally distributed those consequences based on principles governing maintenance awards, including the specific objective of the Spangs' marital settlement. The court did not erroneously exercise its discretion.

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.