

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 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. 02-1062-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00-FA-784

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

JANE L. BOLTZ,

PETITIONER-RESPONDENT,

v.

KEITH W. BOLTZ,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
DAVID T. FLANAGAN, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Keith Boltz appeals a divorce judgment requiring him to pay his ex-wife Jane \$700 per month in maintenance for thirteen years.

After reviewing the parties' briefs and the record, we affirm the trial court's decision.

¶2 We first note that maintenance determinations lie within the discretion of the trial court. *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996). Therefore, we will uphold a maintenance award so long as it represents a rational decision based on the application of the correct legal standards to the facts of record. *Id.*

¶3 WISCONSIN STAT. § 767.26 (1999-2000)¹ lists a number of factors for a trial court to consider when determining the amount and duration of a maintenance award, including the length of the marriage, the age and health of the parties, the property division, the parties' respective educational levels and earning capacities, the contributions of one party to the education or earning power of the other, tax consequences, and the standard of living enjoyed during the marriage. These factors "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)." *LaRocque v. LaRocque*, 139 Wis. 2d 23, 32-33, 406 N.W.2d 736 (1987).

¶4 We are satisfied that the trial court considered and applied the proper statutory factors. It noted that the parties had been married for approximately twenty-eight years. During the marriage, Keith was the primary wage-earner,

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

while Jane was the primary homemaker and caregiver for two children, one of whom developed epilepsy from a bout with encephalitis.² The parties moved several times during the marriage so that Keith could find employment. Jane also held several part-time jobs at various times during the marriage.

¶5 At the time of the divorce, Keith was fifty-one years old, in good health, and earning about \$40,000 a year as a bus driver. Jane was fifty years old and earning about \$26,000 working for the Epilepsy Foundation. The trial court found that Jane had a history of significant health problems, some of which predated the marriage, and that she was taking medications for hypertension, depression and a thyroid condition.

¶6 The trial court acknowledged that Keith had chosen to work at jobs he did not particularly enjoy in order to support the family while Jane enjoyed her lower-paying job. It found insufficient evidence, however, to show that Jane had a higher earning capacity. It concluded that the length of the marriage, the fact that Jane had left the workforce to care for the children and had moved frequently due to Keith's employment, and Jane's health problems justified a maintenance award.

¶7 Keith first argues that the length of the marriage alone cannot compel a maintenance award. We consider this argument inapposite because it is clear from the record that the trial court did not base its award solely on the length of the marriage, but rather took it into account as one factor. A proper starting point for a maintenance evaluation following a long-term marriage is to award the dependent spouse half of the total combined earnings of both parties. *Bahr v.*

² The children were twenty-four and seventeen years old by the time of the divorce, and custody and child support are not at issue on this appeal.

Bahr, 107 Wis. 2d 72, 84-85, 318 N.W.2d 391 (1982). We are satisfied that the trial court properly considered the length of the parties' marriage to weigh in favor of a maintenance award.

¶8 Keith's second argument is that there is no evidence that Jane's absences from the workforce or her willingness to relocate based on Keith's employment opportunities adversely affected her earning capacity. He further asserts that his own frequent job changes show that he had not established a steadily increasing stream of income at the expense of Jane's career. While Keith's arguments are not unreasonable, they are not the only way to view the evidence. The trial court could reasonably have considered that Jane would have been able to move farther along in her own career had she been able to stay at one job throughout the marriage.

¶9 Keith next takes issue with the trial court's characterization of Jane's hypertension, depression, and thyroid condition as "significant health concerns." He argues that there was no evidence that any of Jane's health problems had affected her earning capacity. It is also true, however, that Jane's health problems might reasonably be expected to cause her to incur medical expenses at some point in the future, and her health history could make obtaining insurance more difficult and/or expensive and the possibility of future disability more likely. Again, we are satisfied that the trial court properly took Jane's health into account based on fair inferences from the record.

¶10 Keith contends that the trial court's award failed to meet the support objective because it left him with insufficient income to meet his own budget. He cites precedent stating that a maintenance award should not result in "unreasonable hardship to the supporting party." *Bisone v. Bisone*, 165 Wis. 2d

114, 120, 477 N.W.2d 59 (Ct. App. 1991). It is equally true, however, that “[a] court must not reduce the recipient spouse to subsistence level while the payor spouse preserves the pre-divorce standard of living.” *LaRocque*, 139 Wis. 2d at 35. The simple fact is that “[t]he increased expenses of separate households may prevent the parties from continuing at their pre-divorce standard of living.” *Id.* Here, it appears that the joint income of the parties was insufficient to meet the combined budgets of the parties, and that, without maintenance, Jane would fall shorter of achieving a comparable standard of living. We are satisfied that the trial court’s award represented a reasonable attempt to address the support needs of both parties.

¶11 Keith also argues that it is unfair for Jane to submit a higher budget than he did when she could choose to live more frugally or to seek higher paying employment. We are not persuaded, however, that there was anything unreasonable or unfair about Jane’s decision to keep the marital residence she was awarded in the property settlement. The parties had two houses, and each sought to obtain the larger one. Some resulting disparity in budgets was inevitable either way the trial court ruled in the property division. With regard to the “fairness” issue, the court found that Keith had reasonably reduced his income by no longer working overtime, and that there was insufficient evidence to show that Jane could earn substantially more money. The fact that Jane liked her job more than Keith liked his does not alter the earning capacities of the parties.

¶12 Finally, Keith argues that the amount of maintenance awarded was excessive because it resulted in Jane having approximately \$300 per month more in disposable income than Keith. Given Jane’s higher housing and health care costs, however, along with the other factors cited by the trial court, we see no misuse of discretion in setting the amount or duration of the award.

By the Court.—Judgment affirmed.

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

