

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 15, 2004

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. 02-2999
STATE OF WISCONSIN**

Cir. Ct. No. 00FA1208

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

KEMAKOLAM MICHAEL OBASIH,

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

v.

KANELICHI ESTHER OBASIH,

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

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Waukesha County: ROBERT G. MAWDSLEY, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Kanelichi Esther Obasih (Anele) appeals from the maintenance and property division provisions of the judgment divorcing her from

Kemakolam Michael Obasih (Kem). Kem cross-appeals from the judgment of divorce. We reject both parties' challenges to the judgment of divorce and affirm.

¶2 Anele and Kem married in Nigeria in 1989 and divorced in Wisconsin in June 2002. Kem is a mechanical engineer; Anele is a medical technologist. They have four minor children. Kem has primary physical placement of the children. We will discuss additional facts as necessary to address the appellate issues.

¶3 Before we reach the appellate issues, we make this observation about the briefs. Both parties attempt to reargue their case to this court. This approach does not help the parties. We review the circuit court's exercise of discretion in the areas of maintenance and property division. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987) (maintenance is discretionary); *Ashraf v. Ashraf*, 134 Wis. 2d 336, 340, 397 N.W.2d 128 (Ct. App. 1986) (property division is discretionary). We do not decide the case de novo.¹

¶4 We will not reverse the circuit court's discretionary determination if the record shows that discretion was exercised and we can perceive a reasonable basis for the court's decision. *Prahl v. Brosamle*, 142 Wis. 2d 658, 667, 420 N.W.2d 372 (Ct. App. 1987). The term "discretion" encompasses a process of reasoning by the circuit court based on the facts in the record or those facts which can be reasonably derived by inference from the record and produces a conclusion

¹ For this reason, we do not address every argument made by the parties on appeal. To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

based on logic and founded on proper legal standards. *Johnson v. Johnson*, 157 Wis. 2d 490, 497, 460 N.W.2d 166 (Ct. App. 1990).

¶5 The parties dispute the circuit court's decision on maintenance. Anele argues that the maintenance award satisfies neither the support nor the fairness objective of maintenance set out in *LaRocque* and does not satisfy the criteria of WIS. STAT. § 767.26 (2001-02).² *LaRocque*, 139 Wis. 2d at 33. Specifically, she argues that the limited term maintenance award will not permit her to become self-supporting at the income level she enjoyed during the marriage. She also contends that the circuit court failed to consider her emotional health, the parties' disparate educational levels and earning capacities, the likelihood that she can become self-supporting, her contributions to the marriage, and cultural factors relevant to the marriage. Anele also argues that the circuit court should have divided the marital income equally.

¶6 Kem argues in his respondent's and cross-appellant's briefs that the maintenance award to Anele was a misuse of discretion. He contends that Anele did not make a significant financial contribution to the marriage and that five years of maintenance is too long given Kem's expenses and responsibility for the children and Anele's ability to obtain employment in her field. Kem also disputes the court's imputation to Anele of a twenty-one hour work week. Kem asks that the maintenance award reflect a thirty-five hour work week, not a twenty-one hour work week, and that the maintenance period be reduced to two years.

² All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶7 The circuit court found that Kem earns \$94,500 annually. The court imputed an \$18,000 annual income to Anele based on evidence that part-time employment as a medical technologist is available to her.³ The court awarded Anele maintenance of \$1200 per month for five years to assist her while she obtains counseling and pursues employment opportunities available to her as a medical technologist. The court found that imputing income to Anele and awarding her \$1200 in maintenance gave her \$2114 per month, very close to her budget of \$2500, and that Anele was free to work more hours. The court expected Anele to pursue employment in her field and to increase her earning capacity. Anele does not have a child support obligation.⁴

¶8 The court found that Kem needs \$4877 each month to support himself and the children. The court considered Kem's ability to pay maintenance and recognized that Kem has complete financial responsibility for the children, including day care expenses and the homestead.

¶9 Because the court wanted to give the children stability (as discussed in the psychological reports), the court awarded the house to Kem, the parent with primary physical placement of the children, subject to a requirement that Kem refinance the house to provide for an equalization payment to Anele. The court considered the length of the marriage and Anele's educational level. The court found that the spouses worked together in the marriage, and that Anele had four children, obtained additional education and worked during the marriage. The

³ At the time of the findings, Anele had declined work hours offered to her.

⁴ The court noted that the amount of maintenance would not change even if Anele earns more money. The court viewed its maintenance award as part of Anele's transition to a single person working toward her earning capacity.

court found that Anele made a significant contribution to the marriage and the family. The court considered Kem's ability to pay maintenance and the need for Anele to become self-supporting, her earning capacity and her counseling needs. Anele's placement schedule with the children accommodates the number of work hours attributed to her by the circuit court when it determined that she had an earning capacity of at least \$18,000 per year. The court was also aware that Anele has had some problems with money management and that the transition period would allow Anele to work on that problem through counseling and other efforts.

¶10 "Maintenance is designed to maintain a party at an appropriate standard of living" *Forester v. Forester*, 174 Wis. 2d 78, 89, 496 N.W.2d 771 (Ct. App. 1993). In reviewing a maintenance award, we consider whether the circuit court's application of the factors in WIS. STAT. § 767.26 achieves both the fairness and support objectives of maintenance. *Forester*, 174 Wis. 2d at 84-85. Here, we conclude that the award meets these objectives. Anele almost meets her budget with a half-time work requirement, and Kem must necessarily retain a larger share of the marital income to support himself and the children in the home. Additionally, Kem was assigned marital debt to satisfy post-divorce.

¶11 Kem's argument that Anele did not make a significant financial contribution to the marriage is outmoded and contrary to Wisconsin's approach to maintenance. In *LaRocque*, the supreme court specifically rejected the notion that a nonwage earning spouse does not make a contribution to the marriage worthy of recognition when maintenance is being considered. *LaRocque*, 139 Wis. 2d at 37. As to Kem's complaints about the amount and duration of the maintenance award, we note that Anele was out of the work force during periods of the marriage due to family obligations. This had an impact on her opportunities for advancement in her field.

¶12 Anele argues that the circuit court should have evenly divided the marital income via the maintenance award. While an even division of marital income is a starting point for maintenance, *Bahr v. Bahr*, 107 Wis. 2d 72, 84-85, 318 N.W.2d 391 (1982), this amount may then be “adjusted following reasoned consideration of the statutorily enumerated maintenance factors.” *Id.* at 85. Here, the psychological reports indicate that the children require stability, and the circuit court determined that such stability could be achieved by living in the marital home. The expenses associated with meeting the children’s needs affect the available income for maintenance. WIS. STAT. § 767.26(10). The court found that while Anele requires some counseling, § 767.26(2), she is capable of working in the field for which she is trained and there are work hours available to her if she is willing to accept them, § 767.26(5). The court noted that Anele contributed to Kem’s ability to earn income by caring for the children. Sec. 767.26(9).

¶13 Given the expenses borne by Kem for the house and the children, it is not financially possible for Anele to enjoy the standard of living she enjoyed during the marriage. *See LaRocque*, 139 Wis. 2d at 35. The increased expenses of separate households may prevent the parties from enjoying the marital standard of living. *Id.* The circuit court’s maintenance award took into account Anele’s budget and Kem’s ability to pay, along with concerns of fairness and support.

¶14 With regard to the property division, Anele complains that the circuit court awarded the homestead to Kem. However, we have already noted that the circuit court intended to give the children stability by maintaining their home. Additionally, Kem has primary placement of the four children, and the circuit court provided for an equalization payment to Anele. The property division was a proper exercise of discretion.

¶15 We reject Kem’s contention that because he earned most of the money during the marriage, he should receive the lion’s share of the property acquired during the marriage. A party’s financial contribution to the marriage is only one of the factors to be considered at property division. WIS. STAT. § 767.255(3)(d). Other factors include the length of the marriage, § 767.255(3)(a), the contribution of each party to the marriage, broadly defined, § 767.255(3)(d), and the desirability of awarding the family home to the party with greater periods of physical placement, § 767.255(3)(h). The court considered these and other factors in making the property division.

¶16 Because the appellant and cross-appellant raise the same challenges to the judgment of divorce and neither has prevailed on appeal, no WIS. STAT. RULE 809.25 costs to either party on appeal.

By the Court.—Judgment affirmed.

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

