

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 24, 2003

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. 03-0373-FT
STATE OF WISCONSIN**

Cir. Ct. No. 01-FA-15

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JUDITH KAY BRIGGS,

PETITIONER-RESPONDENT,

v.

DONALD JAMES BRIGGS,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Rusk County:
FREDERICK A. HENDERSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Donald Briggs appeals a judgment awarding \$400 per month maintenance for four years, and \$1,700 per month for an additional ten

years thereafter, to his former wife, Judith Briggs.¹ He argues that the trial court failed to articulate a rational basis to support the award. Because the court's reasoning reflects appropriate discretion, we affirm the judgment.

¶2 Donald and Judith married in 1981 when they were both thirty-one years old. Judith, who had a high school diploma, worked in a factory earning \$4 per hour. Donald had a two-year nursing degree and was employed as a registered nurse.

¶3 During their marriage, Donald undertook a two-year course of study leading to his present position as a nurse anesthetist at a hospital. The court found that his gross monthly income was \$9,500. Judith eventually obtained her current employment as a herdsman earning \$10 per hour and working sixty hours per week. To accommodate her children's schedule, she begins work at 4 a.m.

¶4 The parties have twin daughters born in 1987. The court ordered Donald to pay \$2,275 per month child support. Based upon the length of the marriage, the parties' educational levels and their earning capacities, the trial court awarded four years of maintenance of \$400 per month to Judith, increasing to \$1,700 per month for an additional ten years.²

¶5 The amount of a maintenance award is within the sound discretion of the circuit court. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 43, 406 N.W.2d 736 (1987). We uphold a circuit court's maintenance determination unless its

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All statutory citations are to the 2001-02 version unless otherwise indicated.

² The parties agreed to an equal property division.

discretion is erroneously exercised. *Id.* at 42. An erroneous exercise of discretion may arise from an erroneous view of the law or from the trial court's failure to base its decision on the facts in the record. When the trial court's reasoning is not expressly stated, we may search the record to determine whether discretion was exercised and whether the record supports the court's decision. *See Schauer v. DeNeveu Homeowners Ass'n*, 194 Wis. 2d 62, 70-71, 533 N.W.2d 470 (1995).

¶6 A maintenance determination starts with consideration of the factors in WIS. STAT. § 767.26,³ which are designed to further the dual maintenance

³ WISCONSIN STAT. § 767.26 reads:

Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02(1)(g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:

- (1) The length of the marriage.
- (2) The age and physical and emotional health of the parties.
- (3) The division of property made under s. 767.255.
- (4) The educational level of each party at the time of marriage and at the time the action is commenced.
- (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
- (7) The tax consequences to each party.

(continued)

objectives: (1) to support the recipient spouse and (2) to facilitate a fair financial arrangement between the parties. See *LaRocque*, 139 Wis. 2d at 33-35.

¶7 The support objective is to provide support at the standard enjoyed during the marriage. See *LaRocque*, 139 Wis. 2d at 35. The fairness objective requires the trial court to give weight to such statutory factors as the length of the marriage and the contribution by one party to the education, training or increased earning power of the other. *Id.* at 37. “The fairness objective must be viewed in light of both the payor and payee.” *Gerth*, 159 Wis. 2d at 683.

¶8 Once the court decides to award maintenance in a long-term marriage, it begins with the reasonable assumption that the dependent partner may be entitled to fifty percent of the total earnings of both parties. *Id.* There is, however, no mechanical formula with respect to discretionary decisions such as maintenance. *Gerth v. Gerth*, 159 Wis. 2d 678, 682-84, 465 N.W.2d 507 (Ct. App. 1990). Disparate earnings do not necessarily entitle a spouse to maintenance. See *id.* (circuit courts are not legally required to award maintenance

(8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.

(9) The contribution by one party to the education, training or increased earning power of the other.

(10) Such other factors as the court may in each individual case determine to be relevant.

in cases involving long-term marriages with disparate earning capacities between spouses).

¶9 Donald argues that the court erroneously exercised its discretion. We disagree. The record discloses a rational basis for the court's determination. The court considered the length of the parties' marriage, their earning capacities, their educational levels and the equal property division. These are appropriate factors under WIS. STAT. § 767.26. Here, the parties' long-term marriage, disparate earnings and education levels, and their respective contributions weigh in favor of the maintenance award. Also, it is apparent from the structure of the maintenance award that the court considered Donald's child support obligations and Judith's custodial responsibilities to the children. This is a reasonable consideration. See *Van Wyk v. Van Wyk*, 86 Wis. 2d 100, 108, 271 N.W.2d 860 (1978). Because the record shows that the court relied on appropriate factors and reached a reasonable result, we cannot conclude that its discretionary decision is erroneous.

¶10 Donald relies on *Gerth* for his proposition that disparate earnings do not justify maintenance. We are unpersuaded. In *Gerth*, the trial court found that the husband, who earned \$37,727 per year, had insufficient income to meet his living expenses and pay maintenance. *Gerth*, 159 Wis. 2d at 683. Although the wife earned \$17,436, the trial court found that she failed to demonstrate sufficient need for maintenance. *Id.*

¶11 Here, the record indicates that Donald has the ability meet his living expenses and to pay maintenance. As *Gerth* explains, whether maintenance payments are required varies from case to case. *Id.* Although Donald claims Judith earns sufficient income to meet her bare expenses, it was within the court's

discretion to determine that fairness considerations entitle Judith to a share of the parties' total earnings beyond her wages. "It is recognized that a trial court in an exercise of its discretion may reasonably reach a conclusion which another judge or another court may not reach" *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶12 Donald further argues that the court erroneously concluded that maintenance was required in every long-term marriage. We are unpersuaded. In the context of the court's entire decision, there is no indication the court misapprehended the law. Rather, it is apparent that the court determined the record before it established Judith's entitlement to maintenance based upon the length of the marriage, the parties' incomes, and respective contributions. We also reject Donald's suggestion that the court erroneously ruled that he must work beyond normal retirement age. There is no record support for Donald's anticipated retirement age.

¶13 Donald further criticizes the trial court's decision for failing to mention the parties' ages and health. He states, however, that the parties were in generally good health and both fifty-two years old at the time of trial. We are satisfied that the trial court did not mention these facts because they did not play a large role in its decision. *See Meyer v. Meyer*, 2000 WI 132, 239 Wis. 2d 731, ¶49, 620 N.W.2d 382 (Prosser, J., concurring) ("Sound discretion in maintenance determinations must reflect consideration of the factors set out in Wis. Stat. § 767.26, but the factors in the statute do not appear to be weighted, implying that the weighting will be done by the circuit court."). The record here demonstrates that the trial court applied appropriate discretionary factors in determining maintenance and reached a reasonable result. Consequently, its determination will not be disturbed on appeal.

By the Court.—Judgment affirmed.

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

