

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 28, 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. 03-1675  
STATE OF WISCONSIN**

**Cir. Ct. No. 01FA000459**

**IN COURT OF APPEALS  
DISTRICT II**

---

**IN RE THE MARRIAGE OF:**

**LAURIE VAN CLEEF,**

**PETITIONER-RESPONDENT,**

**v.**

**MARK VAN CLEEF,**

**RESPONDENT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Walworth County:  
JAMES L. CARLSON, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Mark Van Cleef challenges the maintenance provisions of the judgment divorcing him from Laurie Van Cleef. Because the

duration and amount of maintenance is discretionary with the circuit court and the circuit court properly exercised its discretion, we affirm.

¶2 Mark and Laurie were married approximately twenty years before they divorced. The court set up a schedule of decreasing maintenance payments to be paid to Laurie over thirteen years. Mark objects to the maintenance award.

¶3 The determination of maintenance is within the circuit court's discretion and will not be disturbed on review unless there has been an erroneous exercise of discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. “[A] discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.” *Id.* (citation omitted). A circuit court's discretionary decision will be upheld as long as the court “examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Id.* (citation omitted).

¶4 When addressing maintenance, a circuit court must consider the relevant factors under WIS. STAT. § 767.26 (2001-02).<sup>1</sup> See *Trattles v. Trattles*, 126 Wis. 2d 219, 229, 376 N.W.2d 379 (Ct. App. 1985). The weight to be accorded to the various maintenance factors lies within the circuit court's discretion. *Meyer v. Meyer*, 2000 WI 132, ¶49, 239 Wis. 2d 731, 620 N.W.2d 382 (Prosser, J. concurring) (“Sound discretion in maintenance determinations must reflect consideration of the factors set out in § 767.26, but the factors in the statute

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

do not appear to be weighted, implying that the weighting will be done by the circuit court.”).<sup>2</sup>

¶5 A maintenance award has two objectives: support and fairness. *Hokin v. Hokin*, 231 Wis. 2d 184, 200-01, 605 N.W.2d 219 (Ct. App. 1999). The goal of the first objective is to ensure the spouse is supported in accordance with the needs and earning capacity of the parties. *See id.* The goal of the second objective is to ensure a fair and equitable arrangement between the parties in each individual case. *See id.*

¶6 With these standards in mind, we turn to Mark’s challenges to the maintenance award. In each instance, Mark disagrees with the circuit court’s weighing of the evidence and the maintenance factors.

¶7 In awarding maintenance, the circuit court made the following findings. The parties had a long-term marriage. Laurie earned income sporadically when the children were younger. Two of the children have disabilities and/or behavior problems which require more intense supervision at home and school, and the responsibility for that has fallen primarily on Laurie. Although Laurie has substantial employment, she might locate more lucrative employment in another community if she were to commute to work. However, this possibility does not take into account the limitations associated with Laurie’s health and the children’s special needs. Because of her health issues, Laurie requires health insurance and will have that expense going forward. The parties

---

<sup>2</sup> These are the standards of review for the circuit court’s maintenance decision, not the standards suggested by Mark in his reliance on *Smith v. Smith*, 177 Wis. 2d 128, 133, 501 N.W.2d 850 (Ct. App. 1993) (burden of proof on party seeking modification of child support due to the payor’s physical condition).

have comparable education levels and are of comparable age. Laurie's contributions during the marriage allowed Mark to enhance his earning power and his reputation and skills as a contractor.

¶8 The court found that Laurie earns \$1440 per month; Mark earns \$75,000 per year (or \$6250 per month). Mark pays \$402 in child support each month, giving Laurie funds of \$1842 per month. Laurie's monthly budget is \$2694, yielding a need for maintenance in the amount of \$852 per month. Although Mark's budget shows that he spends most of his \$50,000 net income (or \$4166 per month), the court found that Mark's expenses are excessive, including a high debt load on new vehicles. The court found that Mark has the ability to pay maintenance, and Laurie has the ability to increase her earning capacity over time. The court awarded Laurie limited maintenance of \$200 per week for three years, \$150 per week for the next seven years, and \$100 per week for the next three years.

¶9 On appeal, Mark argues that the maintenance award is unfair to him and is not supported by the record. The court specifically found that Mark's expenses were excessive and that he has the ability to pay maintenance. Mark argues that the court did not take into account that he commutes to work and has expenses associated with commuting. The circuit court was aware of these expenses, and Mark commuted during the marriage.

¶10 The circuit court considered the relevant maintenance factors under WIS. STAT. § 767.26. The court considered the length of the marriage, § 767.26(1), the parties' age and health, § 767.26(2),<sup>3</sup> the property division,

---

<sup>3</sup> Mark did not object to the testimony about Laurie's physical and health limitations.

§ 767.26(3), the parties' educational levels, § 767.26(4), Laurie's earning capacity and responsibility for children, § 767.26(5),<sup>4</sup> Laurie's ability to become self-supporting, § 767.26(6),<sup>5</sup> the tax consequences, § 767.26(7), the parties' agreements during the marriage, § 767.26(8),<sup>6</sup> the contributions of each party to the other party's education, training and increased earning power, § 767.26(9), and other factors relevant to this case, § 767.26(10).<sup>7</sup>

¶11 The maintenance award assists Laurie in meeting her budget, which the court did not find to be excessive. The court heard evidence of Mark's large grocery expenditure, vehicle debt and rent payments. Mark has not shown that he cannot afford roughly \$800 per month in maintenance on a gross income of \$6250 per month with a decreasing maintenance obligation in succeeding years.

¶12 Mark argues that the award does not require Laurie to become self-supporting. We disagree. The award assists Laurie in meeting her monthly budget (which is substantially less than Mark's monthly budget), is an award which Mark can afford to pay, and does not permit Laurie a lifestyle which exceeds the marital standard of living. Additionally, the court implicitly

---

<sup>4</sup> Mark argues that the circuit court did not consider that he and Laurie share placement. However, it is undisputed that when the children need Laurie's assistance during the day, she is available to them, regardless of whether they are in her placement that week. Additionally, because the children have special needs, it is reasonable for Laurie to seek employment in proximity to the children and their school.

<sup>5</sup> The court implicitly considered this factor when it instituted a decreasing maintenance award.

<sup>6</sup> The parties agreed that Laurie would refrain from income-producing activities during portions of the marriage to be available for child care and meeting the needs of the home.

<sup>7</sup> In this case, such a relevant factor would be the special needs of the children and the requirement that Laurie work locally in order to be available to the children in light of their special needs.

recognized that as the children grow older and leave school, Laurie may have fewer demands on her time and more flexibility in seeking employment. Laurie's current position requires her to work approximately thirty-five hours per week; Mark's work week is longer because of his commute. However, Mark continues to perform the type of work he performed during the marriage and he continues to commute, as he did during the marriage.

¶13 The court's maintenance award satisfies the support and fairness objectives of maintenance, and the court did not misuse its discretion in fashioning the award. Essentially, Mark asks us to rebalance the maintenance factors and place greater weight on the evidence he offered in support of his position regarding maintenance. This we cannot do.

*By the Court.*—Judgment affirmed.

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

