

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 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. 04-1882-FT
STATE OF WISCONSIN**

Cir. Ct. No. 03FA000251

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

THOMAS J. ROACH,

PETITIONER-APPELLANT,

v.

ARLIS M. ROACH,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Rock County:
DANIEL T. DILLON, Judge. *Affirmed.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM.¹ Thomas Roach appeals the maintenance component of his divorce judgment. He claims the trial court failed to give proper consideration to a number of factors and failed to adequately articulate its reasons for the award. We disagree and affirm.

BACKGROUND

¶2 Thomas and Arlis were married for twenty-nine years. By the time of the divorce, both parties were in their early fifties and in relatively good health. The trial court found that Thomas was earning \$45,298 per year as a construction worker, and Arlis was earning \$20,633.60 as a certified nursing assistant. The court noted that Arlis had spent a significant period of time during the marriage out of the job market caring for the parties' two children (who were adults by the time of the divorce). The court further noted that both parties were likely to fall short of meeting their pre-divorce standard of living and proposed budgets and that it was unlikely that Arlis, without maintenance, would become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. The trial court set maintenance in the amount of \$138.46 per week, for a period of ten years, when the parties' court-divided pension benefits were scheduled to begin.

DISCUSSION

¶3 Maintenance determinations lie within the sound discretion of the circuit court. *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996). Therefore, we will affirm maintenance awards when they represent a

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

rational decision based on the application of the correct legal standards to the facts of record. *Id.*

¶4 WISCONSIN STAT. § 767.26 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, 33, 406 N.W.2d 736 (1987).

¶5 Here, it is apparent from the trial court's citation to *LaRocque* and the factual findings it made relating to a number of the factors enumerated in WIS. STAT. § 767.26 that the trial court was operating under the correct legal standard. Thomas contends that the trial court nonetheless erroneously exercised its discretion by failing to "set forth any rational basis connecting the Findings of Fact to the Order for maintenance." Thomas asserts that the court failed to properly consider that the parties had essentially lived separate lives for six years prior to the divorce; that Arlis was working more than thirty-two hours a week; that no purpose for limited term maintenance was apparent; that Thomas would not have sufficient income to meet his budget if he paid maintenance; and that Arlis had not subordinated her career to marriage. We are not persuaded.

¶6 We are satisfied from the trial court’s discussion that it rationally based its decision to award maintenance primarily upon Arlis’s inability to support herself at a level reasonably comparable to the standard of living enjoyed during the marriage. The trial court did not ignore Thomas’s inability to meet his budget, but could reasonably conclude based on the evidence before it that Arlis was less able to meet her budget than was Thomas. In making that assessment, the court was entitled to credit Arlis’s testimony that her hours were going to be reduced based on county budget cuts. The court’s decision was plainly in accordance with the support objective. With respect to the fairness objective, the trial court was entitled to consider that some amount of economic compensation was appropriate for the years in which Arlis had stayed at home with the children, regardless of the actual extent to which her earning capacity may have been adversely affected. The fact that the parties may have lived largely “separate lives” for the six years prior to the divorce did not negate the first twenty-three years of the marriage. Moreover, it is axiomatic that many marriages that end in divorce involve long periods of time when couples do not get along and live to a greater or lesser extent independently. With or without the six-year period, the twenty-nine-year marriage in this case can fairly be categorized as long-term, thereby supporting a discretionary decision to equalize income.

¶7 In sum, Thomas’s arguments lack merit because they amount to little more than a request that this court reconsider the weight that the trial court assigned to various factors and evidence.

By the Court.—Judgment affirmed.

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

