

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 3, 2012

Diane M. Fremgen
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. 2011AP747

Cir. Ct. No. 2009FA219

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JULIANNE K. HASTINGS TAYLOR,

PETITIONER-APPELLANT,

V.

ANDRES TAYLOR WILLIAMS,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dunn County:
WILLIAM C. STEWART, JR., Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Julianne Hastings Taylor appeals a supplemental divorce judgment, alleging errors concerning property division, maintenance and child support. We affirm.

¶2 Julianne and Andres Taylor Williams were married on January 6, 1997. They were divorced on September 21, 2010. Three minor children were born to the marriage. At the time of the divorce, Julianne was forty years old and employed as a professor at Walden University. Andres was forty-two years old and employed as a custodian/maintenance worker. At the final hearing, the circuit court granted a divorce but left open the issues of child support, maintenance, and property division. The court issued supplemental findings of fact, conclusions of law and judgment of divorce on January 5, 2011. The court ordered Julianne to pay Andres \$484 monthly child support and limited term monthly maintenance of \$600 for thirty months, and allocated the property and debts of the parties. This appeal follows.

¶3 Property division, maintenance and child support decisions are entrusted to the circuit court's sound discretion, and are not disturbed on appeal unless the court has erroneously exercised its discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will sustain discretionary decisions if the circuit court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). We generally look for reasons to sustain the circuit court's decisions. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968). "[W]e may search the record to determine if it supports the court's discretionary determinations." *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. Findings of fact will be affirmed unless

clearly erroneous. WIS. STAT. § 805.17(2).¹ The circuit court is also the ultimate arbiter of witnesses' credibility. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶4 Julianne first argues the circuit court erroneously exercised its discretion by dividing the marital estate unequally in favor of Andres. Julianne insists there is no connection between the court's factual findings and its unequal property division. Although the court stated she had "what appears to be a greater net estate," she contends that when the debt is offset against the value of her assets, her net estate is substantially less than Andres's.

¶5 Our review of the record demonstrates the circuit court properly deviated from the presumption of equal property division after considering proper relevant factors. The court also made very extensive findings of fact, and its findings are not clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶6 Contrary to Julianne's perception, there is a connection between the trial court's factual findings and its unequal property division in Andres's favor. Julianne received the most significant assets. However, the court also found that Julianne was better able to sustain a larger portion of the debt. Among other things, the court explained that Julianne should be responsible for repayment of her student loans as she is the direct beneficiary of the three postbaccalaureate degrees achieved during the marriage. In addition, the home mortgages were directly related to the marital residence, which was awarded to Julianne with the specific goal of preserving that asset for her, as she would have the children a

¹ References to the Wisconsin Statutes are to the 2009-10 version unless noted.

substantial portion of the time and it would be contrary to their best interests to require sale of the home, especially in the housing market at the time. The court also noted that if Andres was forced to pay a significant equalization payment, his expenses would increase thereby requiring more maintenance or the invasion of his only retirement asset. The court's property division determination, as a whole, incorporates appropriate considerations and the court properly exercised its discretion in dividing the property.

¶7 Julianne also argues that Andres was shirking as a matter of law because he terminated his employment the month the divorce was filed. According to Julianne, the circuit court therefore erred by using Andres's income rather than his earning capacity when determining child support and maintenance.

¶8 Julianne asserts:

There is no question but that Andres voluntarily terminated his position with Solid Gold. Andres testified unequivocally he quit this job, giving his employer two weeks' notice. Thus, the pivotal issue is whether Andres' decision was reasonable. If Andres' decision was reasonable, the circuit court's order must be affirmed; if Andres' decision was unreasonable, the circuit court's order must be reversed.

¶9 Shirking occurs when "the reduction of actual earnings was voluntary and unreasonable under the circumstances." *Scheuer v. Scheuer*, 2006 WI App 38, ¶9, 290 Wis. 2d 250, 711 N.W.2d 698. Ordinarily, the question of reasonableness is a question of law, but because the circuit court's legal conclusion is so intertwined with the factual findings necessary to support it, we give weight to the circuit court's ruling. Therefore, we review a shirking determination as a question of law, but one to which we pay appropriate deference. *Chen v. Warner*, 2005 WI 55, ¶43, 280 Wis. 2d 344, 695 N.W.2d 758.

¶10 We decline to interfere with the circuit court’s exercise of discretion regarding its failure to find shirking. As Julianne recognizes, the circuit court refused to find Andres’s decision was unreasonable, concluding only that it was ill-advised. The court noted that Julianne had also lost her employment and concluded “it would be inequitable to penalize either party any more than they already have been in that regard.” Moreover, the court found that it would only take Andres thirty months “to re-achieve a level of income which he earned previously.” The record supports the court’s conclusion that Andres was not shirking.

¶11 Julianne also argues that maintenance to Andres is unjustifiable as a matter of law. Contrary to Julianne’s perception, however, multiple factors support the court’s limited-term maintenance award. The court discussed the length of the marriage, the parties’ age and health and their ability “to achieve an earning capacity in excess of what they currently earn.” The court stated, in part:

Both parties are young and in good physical and emotional health and given their history, have demonstrated throughout their marriage their energy and drive to raise a family, build two homes, achieve advanced educational opportunities and work part time jobs. This behavior will likely continue into the future, but it will likely take [Andres] more time, given his education, training and experience, to re-achieve a level of income which he earned previously. That should not take him in excess of 2 ½ years.

It is also apparent from the court’s decision that it awarded the limited-term maintenance in accordance with Andres’s needs and to ensure a fair and equitable standard of living. Again, we do not quarrel with the court’s findings.

¶12 In conclusion, an adequate basis exists in the record to support the circuit court’s property division, maintenance and child support determinations.

The court employed a process of reasoning based upon the facts of record, and reached a conclusion based upon a logical rationale. The court's decisions did not constitute an erroneous exercise of discretion.

By the Court.—Judgment affirmed.

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

