

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

September 6, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-0475-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**IN RE THE MARRIAGE OF:**

**ELLEN M. RHODE,**

**Petitioner-Respondent-Cross-Appellant,**

**v.**

**DENNIS E. RHODE,**

**Respondent-Appellant-Cross-Respondent.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Oneida County: MARK A. MANGERSON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Dennis Rhode appeals and Ellen Rhode cross-appeals that part of a divorce judgment awarding Ellen maintenance.<sup>1</sup> Dennis argues that the award is excessive in both amount and duration. Ellen argues that the maintenance is inadequate and based on speculation regarding her future earning capacity. We reject these arguments and affirm the judgment.

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

The parties were divorced after a twenty-year marriage. During the marriage, Dennis was employed as an electrician, in recent years averaging \$50,000 annual income. He concedes an earning ability of \$42,900 without overtime. Ellen was primarily a homemaker, raising the couple's two children. She worked full time as a bank teller for the past three years, receiving an annual salary of approximately \$11,300. Ellen suffers from depression exacerbated by the break-up of the marriage and has been prescribed Prozac to alleviate the depression. A clinical social worker testified that Ellen would require six months to one year to overcome her depression and become functional. A vocational expert testified that if Ellen were to obtain a two-year degree, she would have an earning capacity of \$16,000 to \$20,000 per year.

The trial court awarded Ellen \$1,100 per month maintenance for fifteen months to allow her time to adjust to the dissolution of the marriage and decide whether she would continue her education. If Ellen elected to enroll in school, the court ordered \$1,300 maintenance per month for two years and \$800 per month thereafter. If she elects not to return to school, Ellen will receive indefinite maintenance of \$995 per month.

The amount and duration of maintenance rests within the sound discretion of the trial court and will not be upset on appeal if the decision reflects a rational mental process by which the facts of record and the law relied upon are stated and are considered together. *Wikel v. Wikel*, 168 Wis.2d 278, 282, 483 N.W.2d 292, 293 (Ct. App. 1992). Maintenance is designed to further two objectives: (1) to support the recipient according to the parties' needs and earning capacities; and (2) to ensure fair and reasonable financial arrangement in the individual case. *Id.* The trial court's findings of fact will be sustained unless they are clearly erroneous. Section 805.17(2), STATS.

The trial court's maintenance decision reflects a careful consideration of the parties' needs and earning capacities, and is based on findings of fact that are supported by the record. The award of permanent maintenance does not constitute a disincentive for Ellen to become self-supporting. The trial court found, based on the testimony of an expert vocational witness, that it was not realistic to expect her to complete four years of college at this time. Two years of college would provide her with a job that paid up to \$20,000 per year. In the absence of indefinite maintenance, the

record does not show any likelihood that Ellen could attain a standard of living comparable to that enjoyed during the twenty-year marriage.

The amount of maintenance is not excessive. The maximum maintenance awarded Ellen, combined with the highest income she can attain at present or with two additional years of schooling, does not equal half of the parties' marital income. Dennis argues that the trial court failed to consider relevant factors set out in § 767.26, STATS. Dennis' arguments relating to Ellen's health and earning capacity appear to be based on his skepticism about her mental health problems. The record contains sufficient evidence to support the trial court's finding that Ellen's depression interferes with her earning capacity.

Ellen argues that the projections as to her educational attainment and potential income are too speculative to support the maintenance award. The projections that Ellen will "heal," that she would obtain additional education if she applies herself, and that she is capable of earning \$16,000 to \$20,000 per year are not based on mere speculation. They are based on the uncontradicted testimony of a clinical social worker and a vocational expert. While the future can never be known with substantial certainty, the trial court reasonably considered the experts' projections and designed the maintenance structure to cover a number of contingencies. Ellen was only thirty-seven years old at the time of the divorce. It is reasonable to expect her to recover from the effects of the divorce and produce substantial income in the future.

*By the Court.*— Judgment affirmed. No costs on appeal.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.