

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

March 12, 1996

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. 95-0689**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**IN RE THE MARRIAGE OF:**

**JAMES C. EATON,**

**Petitioner-Respondent,**

**v.**

**ANNE PAULA EATON,**

**Respondent-Appellant.**

APPEAL from a judgment of the circuit court for Barron County:  
ROBERT W. RADCLIFFE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Snyder, JJ.

PER CURIAM. Anne Paula Eaton appeals *pro se* from a judgment of divorce. She claims the trial court erred in setting maintenance payments

and denying her request for attorney's fees.<sup>1</sup> Because the trial court did not erroneously exercise its discretion in deciding either issue, we affirm.

## I. BACKGROUND

The judgment of divorce between Ms. Eaton and James Carroll Eaton was entered on February 24, 1995. As a part of the terms of the divorce, the trial court granted Ms. Eaton's request for maintenance, but limited the maintenance payments to \$900 a month for six years. The trial court denied Ms. Eaton's request that Mr. Eaton pay for her attorney's fees. Ms. Eaton objects to both determinations and appeals.

## II. DISCUSSION

Our standard of review on both issues raised by Ms. Eaton is limited to whether the trial court erroneously exercised its discretion. See *LaRocque v. LaRocque*, 139 Wis.2d 23, 27, 405 N.W.2d 736, 737 (1987); *Kastelic v. Kastelic*, 119 Wis.2d 280, 290, 350 N.W.2d 714, 719 (Ct. App. 1984). We will not find an erroneous exercise of discretion if the trial court applied the proper law to the relevant facts and reached a reasonable determination. *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981).

### A. Maintenance.

Ms. Eaton claims the trial court erred in limiting the maintenance award to \$900 a month for six years. She argues that the maintenance award should have been greater than \$900 and not limited in its term. We conclude from our review of the record that the trial court did not erroneously exercise its discretion with respect to the maintenance award. The trial court considered

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<sup>1</sup> Ms. Eaton referenced a third issue: whether the trial court erred in denying her request to be named as the death beneficiary on Mr. Eaton's military life insurance policy. She does not brief this issue, however, and we deem it abandoned. *Reiman Assocs., Inc. v. R/A Advertising, Inc.*, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981).

the relevant factors delineated by the applicable law pursuant to § 767.26, STATS., and reached a reasonable determination.<sup>2</sup>

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<sup>2</sup> Section 767.26, STATS., provides:

**Maintenance payments.** Upon every judgment of ... divorce ... 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.
- (8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party had 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.

The trial court specifically addressed the factors prescribed by statute to the particular facts of this case: the length of the marriage—20 years; the age and health of the parties; the property division, which was for the most part stipulated to by Ms. Eaton and Mr. Eaton; the education of the parties; the earning capacity of both parties and the fact that Ms. Eaton is capable of earning an income comparable to that which she enjoyed during the marriage, although she may need some time to take the appropriate steps necessary to become self-supporting. Further, the trial court found that Ms. Eaton has a nursing degree, and that she could pursue a nursing career by simply taking a refresher course, or that she could utilize her masters degree, or pursue an entirely different degree within a three-year time period. The trial court also properly addressed the tax consequences as well as the fact that there was no prior agreement concerning financial support. Finally, the trial court found that Ms. Eaton had contributed substantially to Mr. Eaton's success in the legal profession. There is support in the record for each finding and, therefore, the findings are not clearly erroneous.

In addition to addressing the statutory factors, the trial court applied the relevant case law to the facts in this case. Specifically, the trial court addressed the fairness and support objectives discussed in the case law. *See LaRocque*, 139 Wis.2d at 33, 406 N.W.2d at 740. The support objective's goal is to provide maintenance at a level equivalent to the pre-divorce standards. *Id.* at 35, 406 N.W.2d at 741. Sometimes this goal is unattainable, however, because there are now two households to support. Accordingly, the fairness objective is satisfied as long as both sides are treated equally; that is, the recipient spouse is not reduced to a sacrificial level, while the payor spouse maintains a pre-divorce level. *Fowler v. Fowler*, 158 Wis.2d 508, 521, 463 N.W.2d 370, 374 (Ct. App. 1990).

The trial court in the instant case applied the statutory factors in a manner which satisfies the support objective. Ms. Eaton will receive \$900/month maintenance for a period of six years. The trial court reasoned that during that six years, Ms. Eaton can take whatever steps are necessary to become self-supporting. The trial court determined that the six-year period was reasonable because it gave Ms. Eaton ample time to renew a previous career or start a new one, and because in six years all three teenage children will have finished high school and attained the age of majority. We agree that this was a reasoned and reasonable determination based on the relevant facts as applied to the law.

Finally, we also conclude that the trial court's maintenance determination satisfied the fairness objective. The goal of the fairness objective is to "ensure a fair and equitable financial arrangement between the parties in each individual case." *LaRocque*, 139 Wis.2d at 33, 406 N.W.2d at 740. The trial court determined that the \$900/month award for six years would satisfy this objective, and that by the time the six-year time period expired, Ms. Eaton should have been able to become self-supporting at a level comparable to pre-divorce standards. This determination is reasonable.

In sum, we conclude that the trial court did not erroneously exercise its discretion in making the maintenance determination.

*B. Attorney's Fees.*

Ms. Eaton claims the trial court should have ordered Mr. Eaton to pay for her attorney's fees. We conclude that the trial court's denial of Ms. Eaton's request for attorney's fees did not constitute an erroneous exercise of discretion.

The trial court found that because of the substantial child support and maintenance payments, Mr. Eaton did not have the financial ability to pay or contribute towards Ms. Eaton's attorney's fees. The trial court also found that although Ms. Eaton may not be immediately able to pay her attorney, she will eventually be able to satisfy her obligations. The record supports this finding and, therefore, it is not clearly erroneous. The trial court concluded that each party should be responsible for their own attorney's fees.

This determination is in accord with applicable law. See *Anderson v. Anderson*, 72 Wis.2d 631, 645, 242 N.W.2d 165, 172 (1976) ("Where the wife is able to pay her own attorney out of income or assets, or where the husband does not have the ability to pay such contribution, there is no basis in law or in equity for requiring a husband to contribute towards payment of a fee owed by his wife to her counsel."). Accordingly, the trial court did not erroneously exercise its discretion in denying Ms. Eaton's request for attorney's fees.

*By the Court.* – Judgment affirmed.

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