

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 30, 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. 95-2463

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

THOMAS E. JOHNSTON,

Petitioner-Appellant,

v.

BARBARA A. JOHNSTON,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

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

PER CURIAM. Thomas Johnston appeals the property division and maintenance portions of a divorce judgment. The trial court awarded Thomas most of the parties' tangible assets including two rental properties. The court then required Thomas to make an equalization payment and also ordered Thomas to pay Barbara \$3250 per month indefinite maintenance. Because these

awards constitute a reasonable exercise of the trial court's discretion, we affirm the judgment.

The property division and maintenance award are within the sound discretion of the trial court. See *Bahr v. Bahr*, 107 Wis.2d 72, 77, 318 N.W.2d 391, 395 (1982). Discretion is properly exercised if the trial court's decision reflects a reasoned approach based on proper considerations and articulated reasons for its conclusion. *Steinke v. Steinke*, 126 Wis.2d 372, 379, 376 N.W.2d 839, 843 (1985). The question is not whether a different decision would have been appropriate or even preferable in the opinion of this court. Rather, this court must affirm the trial court's discretionary decisions if they are reasonable. See *Liddle v. Liddle*, 140 Wis.2d 132, 156, 410 N.W.2d 196, 206 (Ct. App. 1987).

Thomas argues that the trial court should have awarded Barbara rental properties so that no equalization payment would be due and the rental income would eliminate the need for maintenance. The trial court rejected that option because it had "serious concerns as to her ability to manage these assets." Barbara suffered from physical and emotional problems that the trial court believed might interfere with her ability to manage rental properties. In addition, Thomas' business rented space in both of the buildings. He had shown good property management abilities in the past and demonstrated the skills necessary to preserve both the assets and the income. The court also considered the tax advantages to awarding Thomas the buildings and paying maintenance out of the rental income. Although Thomas complains about having to do the work associated with the rental property, he concedes that the buildings are in good repair and require minimal maintenance, that they are filled with reliable, reputable tenants and that he has to do very little work to manage them. Under these circumstances, the trial court articulated appropriate reasons for awarding Thomas the buildings and requiring him to make equalization and maintenance payments.

Thomas argues that the trial court must, if possible, divide marital property in such a way as to avoid an equalization payment. He cites no authority for this proposition. This court will not limit the trial court's discretion by imposing such a requirement.

The parties were married for twenty-three years and both of them advanced their education and earning capacity during the marriage. Under these circumstances, the starting point for the trial court's decision on maintenance is that the parties' income will be equally divided. *LaRocque v. LaRocque*, 139 Wis.2d 23, 39, 406 N.W.2d 736, 742 (1987). Thomas has earned and unearned income in excess of \$99,600 per year. At the time of the divorce, Barbara had no income. She had previously worked for Thomas and had not found other work because of recurring headaches and emotional problems. Thomas suggests that Barbara can find work at \$10 per hour to supplement her income. Even if the trial court had attributed some modest income to Barbara, the maintenance award plus imputed income would not exceed half of the combined marital income.

Thomas contends that the maintenance award is unfair to him because it requires him to pay almost all of his monthly earned income of \$3500 as maintenance. Although an asset may not be considered as both marital property subject to division and a factor in a party's future income for purposes of determining maintenance, income from an asset can be used to calculate a spouse's income for purposes of determining the appropriate amount of maintenance. See *Hommel v. Hommel*, 162 Wis.2d 782, 791, 471 N.W.2d 1, 5 (1991). The trial court properly considered Thomas' earned and unearned income in determining the amount of maintenance. It crafted the maintenance award to cover Barbara's expenses required to live in a manner comparable to that enjoyed during the marriage while maintaining an incentive for her to seek future employment when her physical and emotional health improves. Although the trial court did not make specific findings regarding Barbara's earning capacity and ability to become self-supporting, its finding that she was unable to manage the rental property implies that the trial court believed she had no present earning capacity and that it was not feasible that she would be able to support herself at a standard of living reasonably comparable to that enjoyed during the marriage unless she received some maintenance. The court did not make a finding as to the length of time Barbara would need to become self-supporting because the record does not include a prognosis and any finding of that nature would have been pure speculation.

By the Court.—Judgment affirmed.

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