

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 9, 1996

NOTICE

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.

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

No. 95-2798

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

BERNICE B. SIEBERT,

Co-Petitioner-Respondent,

v.

GLENN H. SIEBERT,

Co-Petitioner-Appellant.

APPEAL from an order of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Affirmed.*

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

PER CURIAM. Glenn Siebert appeals a trial court order that converted Bernice Siebert's \$9,600 temporary annual maintenance into permanent maintenance. As part of the divorce judgment, the trial court had awarded Bernice temporary maintenance until she could increase her earning capacity. After five years, the trial court concluded that Bernice could not raise her earning capacity above approximately \$12,500 per year. The trial court had the power to modify the maintenance award for substantially changed circumstances, *Bentz v. Bentz*, 148 Wis.2d 400, 407, 435 N.W.2d 293, 296 (Ct. App. 1988), and we will uphold its discretionary decision as long as it rested on

a reasonable basis. *Littmann v. Littmann*, 57 Wis.2d 238, 250, 203 N.W.2d 901, 907 (1973). Glenn does not argue that \$9,600 was excessive maintenance if Bernice's earning capacity was truly \$12,500. Rather, Glenn argues that Bernice made no effort to find employment commensurate with her earning capacity and that her actual earning capacity exceeded the \$12,500 that the trial court found. We reject these arguments and therefore affirm the trial court order.

Glenn has not shown that the trial court lacked a reasonable basis for its decision. The trial court originally granted temporary maintenance to allow Bernice to increase her earning capacity. At the hearing to make the maintenance permanent, the trial court found from the direct and circumstantial evidence that Bernice's earning capacity was \$12,500. Bernice testified that this was what people with her education and training could earn in the marketing business. Glenn provided no evidence to the contrary. In addition, at age fifty-three, Bernice's prospects for increasing her earnings had decreased to some extent. Bernice also claimed that health problems affected her prospects. Taken together, this evidence tended to show a change in circumstances that permitted the trial court to award permanent maintenance. It permitted a finding that \$12,500 was Bernice's true earning capacity, making the trial court's finding not clearly erroneous. *Fryer v. Conant*, 159 Wis.2d 739, 744, 465 N.W.2d 517, 519-20 (Ct. App. 1990). We must accept the trial court's reasonable inferences. *Cogswell v. Robertshaw Controls Co.*, 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979).

Glenn has pointed to nothing in the record that indicated why Bernice had an earning capacity above \$12,500 per year or that otherwise refuted the trial court's findings. He did not offer the trial court any suggestions on how Bernice could have increased her earning capacity between the ages of forty-eight and fifty-three. Glenn also supplied the trial court no direct evidence showing that Bernice enjoyed a higher earning capacity. Rather, he has relied almost entirely on a claim that Bernice made unsubstantial efforts to find employment. By inference from this evidence, Glenn claims that Bernice is squandering a higher earning capacity that she in fact enjoys. The evidence compels no such finding. Although Bernice's unsubstantial efforts to find full-time employment may have weakened the strength of her permanent maintenance request, they did not require the trial court to find that she actually enjoyed a higher earning capacity. Rather, the trial court remained free to infer from the other evidence that Bernice's earning capacity was \$12,500. In sum, Glenn has not shown that the trial court incorrectly exercised its discretion.

By the Court. – Order affirmed.

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