

**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. 95-3163

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

In re the Marriage of:

CHRISTINE A. BLACKSTONE,

Petitioner-Respondent,

v.

THOMAS A. BLACKSTONE,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Sawyer County:
NORMAN L. YACKEL, Judge. *Affirmed.*

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

PER CURIAM. Thomas Blackstone appeals those parts of a divorce judgment requiring him to pay Christine Blackstone \$750 per month maintenance for three years and to contribute \$500 toward her attorney fees and costs. Because the trial court reasonably exercised its discretion in reaching these decisions, we affirm the judgment.

The parties were married seven and one-half years and had two children. By stipulation, Christine was awarded primary physical placement of the two children and receives twenty-five percent of Thomas' income as child support. The marital property was equally divided. At the time of the divorce, Thomas was employed as a truck driver and earned \$44,666 per year. Christine was unemployed. During the course of the marriage, Christine was employed outside the home on a limited basis at odd jobs. Thomas estimated Christine's earning capacity at \$12,384 per year. Christine indicated that she would like to become a fulltime student learning to become an accounting assistant or administrative assistant. In support of her claim for maintenance, she requested compensation for tuition costs, travel and day care expenses. The trial court found Christine's educational plans to be reasonable under the circumstances.

Both the maintenance award and the contribution toward attorney fees are left to the sound discretion of the trial court and will not be disturbed on appeal unless the appellant shows that discretion was improperly exercised. See *Schorer v. Schorer*, 177 Wis.2d 387, 409, 501 N.W.2d 916, 924 (Ct. App. 1993). The trial court's decision must be the product of a rational mental process by which the facts of record and law relied upon are stated and considered together for the purpose of achieving a reasoned and reasonable determination. *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981).

The trial court properly considered the relevant factors set out in § 767.26, STATS. The trial court's maintenance decision is supported by the disparity in the parties' income and earning capacities, Christine's absence from the job market, her educational plans and the amount of maintenance needed to allow Christine to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. The fact that Christine voluntarily terminated a more lucrative job prior to meeting Thomas is irrelevant. The trial court's decision does not attempt to compensate Christine for compromises she made to her own career. Rather, it merely reflects her diminished earning capacity and attempts to give her an opportunity to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. Likewise, the award does not attempt to compensate Christine for childrearing contributions during the marriage. The trial court merely rejected the suggestion that Christine did not work during the marriage.

Thomas argues that the maintenance award is unfair because the maintenance, added to the child support and Christine's income will give her more disposable income than Thomas. Adding the amount Thomas pays in child support and maintenance to Christine's "disposable income" does not result in a fair comparison with Thomas' disposable income. Thomas' calculations do not account for the cost of child care. Christine's income including maintenance but excluding child support is \$21,384 per year for three years. Thomas' income after paying maintenance and child support is approximately \$24,502. The excessive maintenance Thomas complains of results from his deducting child support from his income, adding it to Christine's income and making no accommodation for the cost of the children. Thomas also assumes that Christine can complete her education while working fulltime. We conclude that the maintenance award reasonably achieves both the support and fairness objectives of maintenance. See *Luciani v. Montemurro-Luciani*, 191 Wis.2d 67, 78, 528 N.W.2d 477, 481 (Ct. App. 1995).

The requirement that Thomas pay \$500 toward Christine's attorney fees is also reasonable. The trial court considered the reasonableness of the fees and expenses, Christine's lack of income and Thomas' ability to pay the fees. See *Doerr v. Doerr*, 189 Wis.2d 112, 126, 525 N.W.2d 745, 751 (Ct. App. 1994). Christine incurred attorney fees of nearly \$1,200, approximately half the amount Thomas incurred. The parties' financial statements demonstrate that Christine had need for assistance with her attorney fees and that Thomas has the ability to pay. Christine borrowed money from her father to buy a car. Thomas contends that Christine could borrow money to pay attorney fees more easily than he could. The record does not support Thomas' assertion that Christine had additional borrowing power. Loans from family members are no substitute for the cash flow necessary to promptly pay existing debts.

By the Court. — Judgment affirmed.

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