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DISTRICT IV

January 29, 2015

To:

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Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2013AP2710

In re the marriage of: Michelle A. Roggenbauer v. Doug R.
Roggenbauer (L.C. # 2012FA282)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Doug Roggenbauer appeals from a judgment of divorce and argues that the circuit court erroneously exercised its discretion in not requiring Michelle Roggenbauer to pay him maintenance. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm the judgment.

The Roggenbauers were married for twenty-three years and have two children. Only one child was a minor at the time of the divorce. Placement of the child is shared and there is no

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

child support obligation between Doug and Michelle. Michelle works part-time and earned \$39,375 in 2012. In 2012, Doug was laid off from his employment, attended technical college, and received unemployment compensation. His 2012 earnings were \$8,032. The circuit court found that Michelle's gross monthly income is \$3,703 and Doug's imputed gross monthly income is \$2,250. The circuit court found that Doug failed to present evidence to show "the basis and need for maintenance," and denied Doug's request for maintenance.

A maintenance determination is reviewed for an erroneous exercise of discretion. *Ladwig v. Ladwig*, 2010 WI App 78, ¶15, 325 Wis. 2d 497, 785 N.W.2d 664. Maintenance is designed to further two objectives: to support the recipient according to the parties' needs and earning capacities, and to ensure a fair and equitable financial arrangement in the individual case. *Wikel v. Wikel*, 168 Wis. 2d 278, 282, 483 N.W.2d 292 (Ct. App. 1992). In reviewing a circuit court's maintenance determination, we look to the court's explanation of the reasons underlying its decision, and where it appears that the court looked to and considered the facts of the case and reasoned its way to a conclusion that is (a) one a reasonable judge could reach and (b) consistent with applicable law, we will affirm the decision as a proper exercise of discretion. See *Grace v. Grace*, 195 Wis. 2d 153, 157, 536 N.W.2d 109 (Ct. App. 1995).

Doug argues that the circuit court failed to consider the fairness objective of maintenance because the court did not apply the starting point analysis set forth in *LaRocque v. LaRocque*, 139 Wis. 2d 23, 39, 406 N.W.2d 736 (1987), that "when a couple has been married many years and achieves increased earnings, it is reasonable to consider an equal division of total income as a starting point in determining maintenance." Doug merely points out the disparity in the parties' incomes and suggests that "[l]ooking historically at [Michelle's] income, it is not inconceivable that her income will increase over the next three to five year time period." While

Doug repeats verbatim the statutory factors the circuit court is charged to consider under WIS. STAT. § 767.56, he provides no discussion of how one or all of them are relevant to the circuit court's determination.

We reject Doug's contention that an equal division of the parties' total income is required. *LaRocque*'s starting point of a 50-50 split of the parties' gross income is one approach, not a mandated result. *Enders v. Enders*, 147 Wis. 2d 138, 144-45, 432 N.W.2d 638 (Ct. App. 1988). The circuit court explained that this is not a *LaRocque* case because there was no indication here that one spouse had sacrificed his or her own earning capacity for the enhancement of the other's. Indeed the "fairness objective" of maintenance discussed by the supreme court in *LaRocque* is a factor focusing on noneconomic contributions made by the spouses during the marriage. *Hubert v. Hubert*, 159 Wis. 2d 803, 821-22, 465 N.W.2d 252 (Ct. App. 1990). Here the circuit court noted there was no evidence of what the parties' respective earnings were over the course of the marriage and nothing to suggest that Doug had acted to his own economic disadvantage.

We also refuse to consider Doug's speculation that Michelle's income will rise in the future and his will not. The court noted that Doug's cash jobs make it difficult to assess his past and present income. It found that Doug works part-time but there is no reason why he could not work full-time and that, based on a vocational assessment, in the future Doug can earn close to what Michelle earns. Doug does not challenge those findings or the circuit court's imputation of income to him.²

² We accept the circuit court's findings of fact unless clearly erroneous. WIS. STAT. § 805.17(2).

The circuit court recognized the disparity in the parties' income in the year preceding the divorce but attributed it to Doug's loss of employment and the necessity of returning to school to learn a new trade. Thus, the circuit court's denial of maintenance is based on its consideration of the earning capacities of each party and the feasibility that Doug could become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. See WIS. STAT. § 767.56(1c)(e), (f). Although these are the only statutory factors mentioned by the court, a court need not consider all of the factors but need consider only those that are relevant. *Poindexter v. Poindexter*, 142 Wis. 2d 517, 532, 419 N.W.2d 223 (1988). We conclude that the circuit court's determination is a proper exercise of discretion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals