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**DISTRICT IV**

July 11, 2017

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

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2016AP1247

In re the marriage of: Scott T. Doleshaw v. Janice K. Doleshaw  
n/k/a Janice K. Attlessey (L.C. #2003FA113)

Before Lundsten, Sherman and Blanchard, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Scott Doleshaw appeals the circuit court's order modifying the terms of maintenance between Doleshaw and his former spouse, Janice Attlessey. The circuit court reduced Doleshaw's monthly payment from \$1,650 to \$1,200, but Doleshaw argues that the court's decision to order indefinite maintenance in any amount was unreasonable and contrary to law.

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 (2015-16).<sup>1</sup> We affirm.

When Doleshaw and Attlesey divorced in 2004, Doleshaw was ordered to pay Attlesey indefinite maintenance of \$1,650 per month. Attlesey had primarily been a stay-at-home mother for the twenty-year marriage and was looking for work at the time of the divorce. The court calculated its award based on its expectation that Doleshaw would continue to earn \$110,000 per year, while Attlesey's earning capacity would be between \$20,000 and \$30,000 for the foreseeable future.

In 2015, Doleshaw filed a motion for maintenance modification, seeking to terminate his payments to Attlesey. Attlesey subsequently filed a motion to increase the amount of maintenance.<sup>2</sup> The circuit court found that Doleshaw earned \$140,000 in 2015, and that, with bonuses, his annual earnings were sometimes in excess of \$160,000. The court found that Attlesey's annual earnings were approximately \$21,600 per year. The court noted that Attlesey's earnings were consistent with expectations in the initial maintenance order, but questioned whether she was reaching her full earning potential. The court expressed its view that maintenance should generally not be "a lifetime annuity." The court concluded that, under the facts and circumstances of this case, Doleshaw should pay Attlesey indefinite maintenance of \$1,200 per month.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

<sup>2</sup> This motion was denied, and Attlesey does not cross-appeal its denial.

A party seeking modification of maintenance must demonstrate that there has been a substantial change in circumstances warranting the proposed modification. *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶30, 269 Wis. 2d 598, 676 N.W.2d 452. Doleshaw satisfied this threshold requirement when the circuit court determined that Attlesey's income of \$21,600 was a change of circumstances warranting modification. At that point, the decision of how to modify maintenance was within the discretion of the court. *See id.*, ¶17.

Doleshaw argues that the court's decision to award Attlesey indefinite maintenance is unreasonable in light of the court's concern that Attlesey is not maximizing her income. Instead, citing *LaRocque v. LaRocque*, 139 Wis. 2d 23, 40-41, 406 N.W.2d 736 (1987), Doleshaw argues that maintenance should be terminated because it is not making Attlesey self-supporting. Doleshaw's reliance on *LaRocque* is misplaced. *LaRocque* identified self-sufficiency as one among many goals of a limited maintenance award. *See id.* However, *LaRocque* also explains that "[a] court must not reduce the recipient spouse to subsistence level while the payor spouse preserves the pre-divorce standard of living." *Id.* at 35. The record shows that Attlesey had a monthly net income of \$3,162.67, including the \$1,650 maintenance payment, and expenses of \$3,173.56. Doleshaw may be suggesting that the circuit court should have reduced Attlesey's total income by \$1,650 per month to give her the incentive she needs to generate more earned income. If that is his argument, we reject it. Eliminating maintenance would have cut Attlesey's net income by more than half. That is plainly not reasonable, and it is inconsistent with *LaRocque*.

Moreover, Doleshaw's argument ignores the fact that the initial maintenance award was based on the prediction that Attlesey's earning capacity would be between \$20,000 and \$30,000 for the foreseeable future. In its modification order, the court noted that this prediction was

“correct” and the prediction supported the indefinite maintenance award. Thus, the court’s suggestion that Attlesey could be earning more than \$21,600 is consistent with its decision to continue an indefinite maintenance award that was based on an expected earning capacity of up to \$30,000. At the same time, it is also consistent with the court’s decision to modify maintenance by ordering a \$450 reduction. As the circuit court explained, Attlesey “has remained where she is at because she is comfortable there.” This was part of the circuit court’s clearly stated opinion that there needed to be some reduction in maintenance to give Attlesey an incentive to increase her earnings. We therefore conclude that the circuit court’s decision to reduce but not eliminate indefinite maintenance is reasonable. *See Vander Perren v. Vander Perren*, 105 Wis. 2d 219, 229–30, 313 N.W.2d 813 (1982) (a party’s lack of effort to become self-supporting is a relevant but not determinative factor in setting or modifying maintenance).

Doleshaw seems to acknowledge that the circuit court mentioned appropriate statutory factors, but contends that the court erroneously exercised its discretion by failing to explain why those factors justified its maintenance modification decision. There are two problems with Doleshaw’s argument.

The first problem is that Doleshaw fails to come to grips with our standard of review. Even assuming for argument’s sake that the court provided an inadequate explanation, we independently review the record to determine whether the court properly exercised its discretion, *Martindale v. Ripp*, 2001 WI 113, ¶29, 246 Wis. 2d 67, 629 N.W.2d 698, and look for reasons to affirm the court’s decision, *Allstate Insurance Co. v. Brunswick Corp.*, 2007 WI App 221, ¶5, 305 Wis. 2d 400, 740 N.W.2d 888. Doleshaw’s argument fails to explain why the record does not support the circuit court’s decision. For example, he argues that the court failed to explain how the length of the marriage, the health of the recipient spouse, and the parties’ respective

contributions to each other's education relate to the court's decision to continue maintenance at a reduced level. But Doleshaw does not argue that any of these factors has changed since the initial maintenance award. If the factors have not changed, then there is no reason to think that the decision to award indefinite maintenance should change either. *See Rohde-Giovanni*, 269 Wis. 2d 598, ¶33 (in reviewing a motion to modify maintenance, the court should not retry issues decided in the first proceeding but should instead adapt the award to the parties' changed financial circumstances).

To the extent Doleshaw suggests that the circuit court omitted discussion of pertinent factors entirely, he does not identify any omitted factors nor does he sufficiently develop an argument about why those factors would have changed the outcome. Accordingly, we address that topic no further.

Doleshaw also contends that the circuit court did not adequately articulate its reasoning regarding the dual goals of support and fairness. *See id.*, ¶29 (maintenance serves two distinct goals: to support the recipient spouse in accordance with the needs and earning capacities of the parties, and to ensure an equitable financial arrangement between the parties). In reducing the award from \$1,650 to \$1,200 per month, the court stated that it had considered both objectives. Doleshaw argues that the fairness objective should have prompted the circuit court here to ignore the support objective because Attlesey has not maximized her income. However, Doleshaw has not identified any authority supporting the view that the support objective falls away when a maintenance-receiving spouse fails to maximize his or her income. We think such a proposition is patently inconsistent with the circuit court's obligation to consider and balance relevant factors.

Moreover, the circumstances here plainly do not support penalizing Attlesey by eliminating all maintenance. The circuit court properly considered the situation of both parties. *See id.* The court declined to use Doleshaw’s increased earnings after the divorce as a basis for increasing maintenance. The court stated that maintenance should not generally be a “lifetime annuity.” However, the court also noted that Attlesey was barely able to make ends meet with the existing payment of \$1,650 per month. On this record, the court’s decision to reduce but not eliminate maintenance reasonably balances the dual objectives of fairness and support.

Because the circuit court’s decision reflects a reasonable application of the law to the facts, we affirm the order modifying maintenance. *See Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982) (a maintenance decision should be sustained where the circuit court considered the relevant facts, applied the correct law, and reached a conclusion that a reasonable judge could reach).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*