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DISTRICT IV

June 29, 2023

To:

Hon. Rhonda L. Lanford
Circuit Court Judge
Electronic Notice

Patricia L. Grove
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

John Joseph Bialk
Electronic Notice

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

2021AP544

In re the marriage of: John Joseph Bialk v. Nola Nancy Bialk
(L.C. # 2019FA744)

Before Blanchard, P.J., Fitzpatrick, and Nashold, 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).

John Bialk appeals a judgment of divorce. The issue is 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 (2021-22).¹ We affirm.

Maintenance determinations are entrusted to the discretion of the circuit court and will be upheld if the court examined the relevant factors, applied a proper standard of law and, using a rational process, reached a conclusion that a reasonable judge could reach. *Ladwig v. Ladwig*,

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

2010 WI App 78, ¶15, 325 Wis. 2d 497, 785 N.W.2d 664. Circuit courts consider statutorily listed factors in determining whether maintenance is appropriate and, if so, how much and for how long. *See* WIS. STAT. § 767.56(1c).

These factors are designed to further two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective). *LaRocque v. LaRocque*, 139 Wis. 2d 23, 32-33, 406 N.W.2d 736 (1987).

The circuit court ordered John to pay respondent Nola Bialk maintenance of \$1,300 per month for a period of fifteen years. After reviewing the statutory factors, the court wrote: “Considering Petitioner’s income of \$78,000 per year, and Respondent’s imputed income of \$30,000 per year, as well as a long-term, 35 year marriage, the parties’ joint decision that Respondent care for and homeschool the children, and all of the other factors set forth above, the Court orders that Petitioner pay maintenance[.]”

On appeal, John first argues that maintenance should not have been awarded because, at the time of trial, Nola was able to be self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *See* WIS. STAT. § 767.56(1c)(f). John argues that the \$30,000 of income imputed to Nola is equal to or exceeds the income the couple earned in the last two years before the divorce filing and, therefore, the additional \$15,600 awarded in annual maintenance has the effect of raising her income above the lifestyle during the marriage.

John’s argument does not persuade us that the court erred on this point. This was a thirty-five-year marriage. John does not point to any law that requires a court to consider only

the most recent two years of the marriage lifestyle in assessing this factor. It seems clear from the history of the marriage that those years were not typical of what occurred during most of the marriage. The circuit court noted that the couple filed for bankruptcy in 2018, which is one of the years John uses as a comparison. John's argument fails to demonstrate that Nola's post-divorce income, with maintenance included, produces a lifestyle that is above one "reasonably comparable" to that enjoyed during the marriage as a whole.

John next disputes the circuit court's view that Nola's support, in the form of caring for and homeschooling their children, contributed to his ability to acquire the skills and experience that have led to his current level of earnings. *See* WIS. STAT. § 767.56(1c)(i). His argument appears to be that he could have acquired these skills and experience even without Nola's efforts. However, that argument is speculative and misses the point. Perhaps he *could* have done so, but the court found that in *this* marriage he did not. John has not shown that this finding is in error. John also argues that Nola did not sacrifice education or career opportunities with a reasonable expectation of future financial gain later in the marriage, but he cites no law that requires her to have had such an expectation for her contribution to be recognized.

Finally, John argues that, during the last ten years of the marriage, after their children left home, Nola provided no financial support or childcare to them, and therefore none of his increased earning capacity during that time should be attributed to her. The obvious difficulty with this argument is that John does not offer a numerical method by which his current earning capacity can be separated into that which is based on acquisition of skills and experience before the most recent ten years, and that based on the recent ten years. Instead, he asserts that there should be no award of maintenance at all. Whatever merit his concern about the last ten years

might have, it fails as a basis to conclude that the circuit court erred by ordering maintenance in any amount, after consideration of all the relevant factors.

IT IS ORDERED that the judgment appealed from is summarily affirmed under Wis. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals