

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 8, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 98-0787-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

JUDITH E. SMRIGA,

PETITIONER-RESPONDENT,

v.

PAUL S. SMRIGA,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Clark County:
MICHAEL W. BRENNAN, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Paul Smriga appeals from the trial court's judgment awarding Judith Smriga, his former wife, \$475 per month in

maintenance payments for eight years. The issue is whether the trial court properly exercised its discretion in awarding Judith maintenance.¹ We affirm.

The interrelated objectives of maintenance are “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, 33, 406 N.W.2d 736, 740 (1987). The trial court should consider the length of the marriage; the age, physical, and emotional health of the parties; the property division; each party’s educational level at marriage and at divorce; the earning capacity of the party seeking maintenance; and other factors. See § 767.26, STATS. The award or denial of maintenance is committed to the sound discretion of the trial court. *LaRocque*, 139 Wis.2d at 27, 406 N.W.2d at 737.

Paul contends that the trial court erred because it failed to consider Judith’s need (or, as he argues, lack thereof) and his ability to pay maintenance in light of his legal obligations to creditors after he reaffirmed debts after bankruptcy.

The trial court focused on the fairness objective of maintenance in making its award. At the end of their twenty-eight year marriage, Judith’s earnings were \$41,000 per year and Paul’s earnings were \$54,000 per year. The trial court’s award allows Judith and Paul to share more equally in the financial rewards the two have reaped. Although the trial court noted that Paul had the right to reaffirm large debt payments on several pieces of property after bankruptcy, the court also properly concluded that Paul’s decision to do so should not be at

¹ This is an expedited appeal under RULE 809.17, STATS.

Judith's expense. Lowering her maintenance award because of his voluntary, increased monthly debt payments would not be fair, especially because those payments will allow Paul to retain several pieces of property, while Judith will have no such benefit. The trial court's award properly prevents "unjust enrichment of either party" by sharing their income between them, while allowing each party to do whatever they choose with that income. See *LaRocque*, 139 Wis.2d at 33, 406 N.W.2d at 740. There was no erroneous exercise of discretion.

By the Court.—Judgment affirmed.

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

