

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 15, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP341

Cir. Ct. No. 2004FA1956

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

IBRAHEEM ABDULLAH,

PETITIONER-APPELLANT,

v.

LATEEFAH ABDULLAH,

RESPONDENT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL GUOLEE, Judge. *Affirmed.*

Before Curley, P.J., Wedemeyer and Fine, JJ.

¶1 WEDEMEYER, J. Ibraheem Abdullah appeals from a judgment of divorce ordering him to pay certain amounts of maintenance and child support to

his former wife, Lateefah Abdullah. Ibraheem claims the trial court erroneously exercised its discretion when it: (1) determined the amount and duration of maintenance; (2) determined the amount of child support; (3) included debts and assets as a part of the property division; and (4) *sua sponte* notified Ibraheem that he or his attorney would be assessed actual attorney's fees if he did not prevail at a reconsideration hearing. Because the trial court did not erroneously exercise its discretion in setting maintenance, child support, and property division and because Ibraheem was not aggrieved by the trial court's admonition regarding reconsideration, we affirm.

BACKGROUND

¶2 Ibraheem and Lateefah were married on October 13, 1984 in Florida. During their almost twenty-two year marriage, they had three children, one of whom is emancipated. The other two are Ayesha, born on March 12, 1993, and Humzah, born on September 7, 1995. Ibraheem is currently a heavy equipment operator for the Milwaukee Fire Department, earning \$5064 monthly (net \$3860). Lateefah is currently working as a teaching assistant for the Salam School, earning \$1375 monthly (net \$1164). Prior to 1994, Lateefah worked in a variety of positions at a rate of no more than \$7.50 per hour. At that point, the parties agreed that Lateefah would leave the job market to care for and homeschool the children. Lateefah re-entered the job market in the Fall of 2003, when she took a position with Salam School, where the children attended and received \$3000 per year tuition benefit in addition to her salary.

¶3 On April 5, 2004, Ibraheem filed for divorce. The parties initially attempted to proceed *pro se*, but subsequently each retained attorneys. The trial court granted the final judgment of divorce on November 7, 2007. The trial court

ordered Ibraheem to pay \$354 per month in child support and \$750 per month maintenance and ordered that the debts and assets be divided equally.

¶4 After the judgment was entered, Ibraheem filed a motion seeking reconsideration. In response, the trial court entered an order, which stated:

After reviewing the Court's exhaustive and detailed Findings of Facts and Conclusions of Law entered in this case, it appears that all the matters raised in the Motion to Reconsider were fully addressed. Based upon that review and pursuant to Sec. 805.17(3) Wis. Stats. and the records and findings made in this case this Court would normally not hold a hearing on the petitioner's motion.

If there are any scrivener's errors in the Court's findings, the parties are ordered to discuss[] those issues and attempt to stipulate to the appropriate changes without the need for a hearing. If a hearing is held on the issues raised by the petitioner and he does not prevail, the Court will assess actual costs and attorney's fees against him and/or his attorney, whichever shall be appropriate under the facts developed during the hearing of the motions.

As a result, Ibraheem did not pursue his reconsideration motion. Instead, he appealed to this court.

DISCUSSION

A. Maintenance.

¶5 Ibraheem's first contention is that the trial court erroneously exercised its discretion when it ordered maintenance to be paid to Lateefah in the amount of \$750 per month indefinitely. We are not convinced that the trial court's decision in this regard constituted an erroneous exercise of discretion.

¶6 In reviewing maintenance awards, our review is limited to whether the trial court properly exercised its discretion. *Olski v. Olski*, 197 Wis. 2d 237,

243 n.2, 540 N.W.2d 412 (1995). A trial court's discretionary determination will not be overturned as long as it considered the pertinent facts, applied the relevant law and reached a reasonable decision. *Id.* In reviewing the record before us, we conclude that the trial court did not erroneously exercise its discretion in setting maintenance. The trial court noted:

[T]he Court is mindful of the two main purposes that the Court should consider in determining maintenance. By the Court awarding \$750 per month, the Court is attempting to allow for the amount of support so that the respondent is supported in the manner reflecting the needs and earning capacities of the parties. And in looking at their respective incomes and expenses, the award ensures a fair and equitable financial arrangement between the parties. I have considered the factors listed in Wisconsin Statute section 767.26. In particular, it is significant to note that the parties have been married nearly 22 years. That she stayed out of the work force to stay home to tutor, home school the children, and to raise the children and to cook and maintain their home and allow him to go out and work and be the main breadwinner, as they say. Because of this arrangement, her earning capacity has been diminished, and the feasibility of the respondent becoming self-supporting at the standard of living reasonable comparable to that enjoyed during the marriage has been impaired.

The trial court also pointed out that Ibraheem suggested that maintenance be denied to Lateefah. The trial court found such a suggestion to be unconscionable and unfair, given the length of the marriage and the circumstances presented. It is clear from our review of the trial court's decision that it considered the facts and circumstances pertinent to this case, applied the correct law, considered the relevant statutory facts and reached a reasonable determination. Accordingly, the trial court's decision on maintenance is affirmed.

¶7 Ibraheem raises a variety of specific contentions, which he asserts constituted trial court factual or legal error. These included using an erroneous figure for Lateefah's income, disregarding the testimony of his vocational expert

as to Lateefah's earning capacity, relying on the shared income from Ibraheem's "religious wife,"¹ and relying on Ibraheem's attitude. In examining each of these contentions, we are not convinced that the trial court erred.

¶8 First, Ibraheem asserts that the trial court used the erroneous figure of \$16,500 for Lateefah's annual income. Ibraheem directs this court to Lateefah's most recent tax return, which reflects an income of \$19,266 with a refund in excess of \$4000. We are not convinced that these numbers rendered the trial court's use of the \$16,500 erroneous. The \$3000 tuition credit, which Lateefah receives in addition to her \$16,500 salary is included as taxable income. The credit is not cash with which she can support herself. Moreover, the credit benefits both parties in reducing the costs of education for their children. Thus, we are not convinced that the trial court erred in using the amount of \$16,500 for Lateefah's annual income. Further, we decline to address whether the tax refund should have been included in the calculation as Ibraheem failed to adequately assert this issue in the trial court.² See *State v. Rogers*, 196 Wis. 2d 817, 829, 539 N.W.2d 897 (Ct. App. 1995).

¹ The record reflects that Ibraheem married in the Muslim faith Anna Marie Shields, who, with her children from a prior marriage, resides with Ibraheem. Shields works part-time and receives child support for her two children from her former husband. Throughout the record Shields is referred to as Ibraheem's "religious wife."

² Ibraheem argues that the issue was raised as it is contained in his proposed findings of fact and his motion for reconsideration. We are not convinced that the references he proffers sufficiently raised the issue. At the time Ibraheem references the tax credits, the contested trial had already concluded and the trial court had thoroughly reviewed the evidence. It had determined income figures for both parties. Ibraheem failed to explain why the trial court should have added the tax refund/credits to Lateefah's income. Moreover, the tax return Ibraheem refers to reflects that Lateefah claimed deductions for both children, whereas after the divorce, the parties stipulated to splitting the deductions. Accordingly, Lateefah's refund will be reduced in future years due to the reduction in her deductions. The trial court's analysis clearly reflects that it declined to include those amounts that were inconsistent or indiscernible.

¶9 Second, Ibraheem contends the trial court erred by dismissing the testimony of his vocational expert regarding Lateefah's ability to increase her earning capacity. We are not convinced. The trial court found that the testimony of the vocational expert was not credible. It is within the discretion of the trial court to dismiss a vocational expert's testimony in such circumstances. *See Krueger v. Tappan Co.* 104 Wis. 2d 199, 203, 311 N.W.2d 219 (Ct. App. 1981).

¶10 Third, Ibraheem complains that the trial court erred in using the computer program to equalize incomes and calculate correct maintenance and child support amounts. We reject his contention. The trial court is permitted to use such a program. *See In re Marriage of Bisone*, 165 Wis. 2d 114, 122-23, 477 N.W.2d 59 (Ct. App. 1991). In addition, Ibraheem's main gripe with the use of the program was the inputting of the \$16,500 annual income figure for Lateefah. We have already concluded that the trial court did not err in using that figure.

¶11 Fourth, Ibraheem asserts the trial court erred in using his religious wife's support in rendering a decision and by relying on his attitude that he did not feel any obligation whatsoever to his legal wife of twenty-two years. We have reviewed the trial court's decision with respect to these assertions. The trial court did note both factors. However, reliance on the contribution by the "religious wife" was examined only to do "what is equitable between the parties." In addition, Ibraheem's "attitude" that no maintenance should be paid was addressed to point out that such was simply not fair and contrary to the laws of this state.

We see nothing in the trial court's reference to these factors, which constitute an erroneous exercise of discretion.³

B. Child Support.

¶12 Ibraheem's next contention is that the trial court erroneously exercised its discretion when it ordered him to pay \$354 a month in child support. Ibraheem's argument with respect to child support is that the trial court should have added the income Lateefah received as a result of qualifying for the earned income credit to her \$16,500 salary before computing monthly child support.

¶13 As noted earlier, Ibraheem failed to adequately raise this issue at trial and therefore, has waived any consideration by this court. *State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). The issue of including this credit

³ We also note that although the trial court ordered maintenance indefinitely, it also noted that after the children graduate from high school, there may be a substantial change in circumstances. Part of the trial court's analysis included the fact that Lateefah's current employment was with the school the children attended and included tuition credit. The trial court reasoned that at the current time, such arrangement was the best situation for all involved. Thus, although maintenance was ordered indefinitely, the trial court left the door open to modify the maintenance order once the children have graduated from high school.

The trial court also addressed Ibraheem's complaint that Lateefah should seek employment during the two-month summer break. It declined to require such because based on a variety of factors, it found that Lateefah would have a difficult time securing summer employment. The trial court held that even if she could secure summer employment, the income would be de minimus. We conclude that the trial court's analysis in this regard was reasonable and did not constitute an erroneous exercise of discretion.

We are also not persuaded by Ibraheem's contention that Lateefah never really had a career to put on "hold" and that she ran a child care business and worked at the YMCA during the time she was home with the children. After carefully analyzing the evidence and assessing the facts to reach a fair and equitable disposition, the trial court found that Lateefah put any potential career on hold for ten years to raise the children and support Ibraheem's career pursuits. The fact that she cared for other children and worked part-time at the YMCA does not change the fact that her primary focus was devoted to taking care of the home and the children. Ibraheem's self-serving assertions are insufficient for this court to overturn the trial court's findings.

as income was never raised during the disputed trial in this case. It was raised, only in passing, after the trial court issued its decision. Even then, Ibraheem never presented an explanation as to why the trial court should have included the credit. No testimony or other evidence was elicited regarding the issue to afford the trial court an opportunity to adequately assess it. A party should raise all issues necessary for the trial court to render its decision *before* that decision is rendered.

¶14 Because this was Ibraheem’s only basis for objecting to the child support order, we are not obligated to address child support further. The trial court’s determination is affirmed.

C. Inclusion of Debts/Assets and Property Division.

¶15 Ibraheem also claims the trial court erred when it included Lateefah’s credit card debts as “marital debts” even though they were incurred after filing and paid before judgment. He also complains that the trial court counted his 2003 tax refund as Ibraheem’s asset, even though he spent it to pay for the older child’s tuition. We reject Ibraheem’s assertions.

¶16 Property division rests within the sound discretion of the trial court. *See Friebel v. Friebel*, 181 Wis. 2d 285, 293, 510 N.W.2d 767 (Ct. App. 1993). We also recognize that underlying discretionary decisions may be factual determinations that we do not upset unless they are clearly erroneous. *See Hollister v. Hollister*, 173 Wis. 2d 413, 416, 496 N.W.2d 642 (Ct. App. 1992).

¶17 At the trial in this matter, the issue of Lateefah’s debts, when they were incurred, and the amounts was somewhat confusing. The trial court stated:

So from that day forward he is supporting her, and whatever debts she has are hers. But prior to that, they are marital debts. I don’t care what games you are playing,

what question you get her to admit, a layperson under oath, confused by giving documents. I am going to make a finding. And I suggest you get that number, so I can put it in my notes. And then we can argue about whether it's marital debt or not. We can argue whether your loan is marital debt, is marital debt or not.

The attorneys then agreed on the values of the debts, which were entered into the record. The trial court later found these debts to be marital debts and split them equally. We are not convinced that the trial court erroneously exercised its discretion in so ruling.

¶18 Likewise, the record reflects much discussion about the tax refund and the amounts paid for the emancipated child's tuition. The trial court eventually found that the school tuition debt was a marital debt and the income tax refunds, which went to pay that debt, were a marital asset. Both parties testified that they paid additional money toward the emancipated child's tuition. The trial court subsequently found that Ibraheem's tuition payment during the pendency of the divorce proceeding was an agreement between the parties in lieu of support payments.

¶19 We are convinced that the trial court properly assessed the facts with respect to debts, assets and property division. The trial court applied the pertinent legal principles and reached a reasonable determination.

D. Reconsideration Order.

¶20 Finally, Ibraheem argues the trial court erred when it issued an order in response to his motion for reconsideration stating that attorney's fees and costs would be assessed against Ibraheem and his attorney if he did not prevail at a reconsideration hearing.

¶21 Although, generally speaking, this court does not recommend such *sua sponte* admonitions from the trial court, we are not convinced that the warning here aggrieved Ibraheem. As noted from our decision on the issues Ibraheem raised, the trial court did not erroneously exercise its discretion with respect to maintenance, child support, property division or the use of the computer program. Thus, the trial court's warning, in essence, was its way of advising Ibraheem that further pursuit of these issues in the trial court would constitute over-trying of the case and/or be frivolous. Pursuing the motion for reconsideration would not have met with success and would have simply resulted in an unnecessary use of judicial resources.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

