

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 18, 2007

David R. Schanker
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP1092

Cir. Ct. No. 2004FA125

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

CRYSTAL C. LADD,

PETITIONER-RESPONDENT,

V.

ROBERT A. LADD, JR.,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Affirmed in part; reversed in part and cause
remanded for further proceedings.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Robert Ladd appeals a judgment of divorce. Robert contends the circuit court erroneously exercised its discretion with regard to

maintenance and an award of attorney fees to Crystal Ladd. We affirm on the issue of maintenance. We reverse and remand the award of attorney fees.

¶2 The parties were married in 1986 and divorced in 2007. Three children were born of the marriage. The only remaining minor child, a fifteen-year-old son, resides with Robert. Crystal is a high school graduate with no higher education or training. During the marriage, Crystal had several jobs, all of which were minimum wage jobs, but she was essentially “a stay-at-home mom.” At the time of the final hearing, Crystal was unemployed. Robert testified that his income was steady from 2002 through 2006, earning between approximately \$82,000 and \$84,000 annually.¹ The circuit court imputed an earning capacity to Crystal of \$6.50 hourly and imputed child support to Crystal in the amount of \$192 monthly, which the court indicated would be accounted for in the determination of maintenance. The court awarded maintenance to Crystal in the amount of \$2,000 monthly² and ordered Robert to contribute \$3,000 towards Crystal’s attorney fees.

¶3 Robert argues the circuit court erroneously exercised its discretion in awarding maintenance. We disagree. The awarding of maintenance rests within the sound discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will sustain a discretionary decision if the

¹ In its decision, the court stated, “and he has some \$82,000.00 a year gross.”

² In a clarification letter to counsel subsequent to the final hearing, the court indicated it was responding “to the letter of Attorney Schmid regarding what the Court intended in setting maintenance at \$2,000 per month.” The court indicated that Crystal was not required to pay \$192 monthly as child support, but that the \$192 was considered by the court in setting maintenance at \$2,000 monthly. We note the letter by Attorney Schmid is neither cited by the parties, nor does it appear to be part of the record on appeal.

circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). It need not be a lengthy process. While reasons must be stated, they need not be exhaustive. *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). When reviewing findings of fact, we search the record for reasons to sustain the circuit court's discretionary decision, not for evidence to support findings the court could have made but did not. See *Steiner v. Steiner*, 2004 WI App 169, ¶18, 276 Wis. 2d 290, 687 N.W.2d 740. Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2).³ Where there is conflicting testimony, the circuit court is the ultimate arbiter of the credibility of witnesses. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶4 Multiple statutory factors within WIS. STAT. § 767.56 support the court's maintenance decision. Specifically, the court noted the length of the marriage and the educational levels of the parties. The court considered Crystal's earning capacity. The court also considered the feasibility that the party seeking maintenance could become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage and, if so, the length of time necessary to achieve this goal. The court concluded "she will never reach that level. There's just too much of a disparity in income there." The court stated that Crystal was capable of obtaining a minimum wage job, but the court concluded Crystal's circumstances were unlikely to change greatly. After considering the

³ References to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

statutory factors, the court determined that maintenance of \$2,000 monthly for an indefinite period was reasonable.

¶5 Robert concedes the circuit court “did go through the factors” in WIS. STAT. § 767.56.⁴ However, Robert insists the court “never articulated how it applied any of the factors of maintenance to the facts of the case.” We are unpersuaded. In this case, we are satisfied the court adequately considered relevant factors. While the reasons for the court’s ultimate determination may not have been exhaustive, they need not have been. *Burkes*, 165 Wis. 2d at 590-91. The court’s decision to award \$2,000 monthly maintenance, as a whole, incorporates appropriate considerations and is not an erroneous exercise of discretion.

¶6 Robert also insists Crystal’s recent cohabitation was not adequately considered by the court. Cohabitation is an appropriate factor to consider to the extent it impacts or changes the recipient spouse’s economic status. *Van Gorder v. Van Gorder*, 110 Wis. 2d 188, 198, 327 N.W.2d 674 (1983). We conclude the circuit court adequately considered the economic impact of the cohabitation and did not erroneously exercise its discretion.

¶7 Robert next argues the circuit court erroneously exercised its discretion in awarding Crystal \$3,000 in attorney fees. The circuit court in a divorce action may award attorney fees to one party after consideration of three factors: (1) the spouse receiving the award needs the contribution; (2) the spouse

⁴ Robert incorrectly refers to WIS. STAT. § 767.26. WISCONSIN STAT. ch. 767 was substantially renumbered and revised by 2005 Wis. Act 443 § 110. Section 767.26 was renumbered WIS. STAT. § 767.56.

ordered to pay has the ability to do so; and (3) the reasonableness of the fee. *Johnson v. Johnson*, 199 Wis. 2d 367, 377, 545 N.W.2d 239 (Ct. App. 1996).

¶8 The circuit court initially considered Crystal's need for the contribution, and that finding is not clearly erroneous. However, the court subsequently did not adequately explain whether Robert had the ability to contribute and failed entirely to address the reasonableness of the order. In its decision, the court stated:

She really doesn't have any ability to pay based on her financial circumstances, and I'm not sure he has a great ability to pay either. Obviously, they both have run up pretty good legal expenses here, and - - but I think, I think he should contribute \$3,000.00 towards attorney's fees, which is somewhere in the neighborhood of one-half of her attorney's fees, which I will give him 90 days to do.

¶9 We conclude the court's analysis regarding whether Robert had the ability to contribute and the failure to address the reasonableness of the order constituted an erroneous exercise of discretion. We therefore reverse and remand for the court to reconsider the award of attorney fees.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded for further proceedings.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

