

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 16, 1996

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(1), STATS.

NOTICE

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

No. 94-2596

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

GARY L. RETZLAFF,

Petitioner-Respondent,

v.

BETTY A. RETZLAFF,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Dodge County:
DONN H. DAHLKE, Judge. *Affirmed in part; reversed in part and cause remanded.*

Before Dykman, Sundby and Vergeront, JJ.

PER CURIAM. Betty Winters, formerly Betty Retzlaff, appeals from a judgment of divorce terminating her twenty-one-year marriage to Gary Retzlaff. She raises four issues: (1) did the trial court err in refusing to award her a contribution toward her attorney's fees; (2) did the trial court undervalue the marital estate; (3) did the trial court's memorandum decision terminate the interim maintenance award; and (4) did the trial court erroneously exercised its discretion when it failed to award Winters maintenance when the divorce was

finalized. We conclude that the trial court should have awarded Winters maintenance. We reverse on that issue, but affirm in all other respects.

After their 1973 marriage, both Retzlaff and Winters worked at various jobs. In 1978, they started G&G Printing, a business which they initially ran from their home. G&G Printing is a partnership which is owned equally by Retzlaff and Gerald Henchke. Winters, although not a partner, worked in the business as it grew, often for minimal or no pay. At the time of divorce, Winters was forty-eight and working as a sales clerk for \$6 per hour. Retzlaff was forty-seven and earned over \$100,000 per year from G&G Printing. The trial court divided their property equally, ordering Retzlaff to pay Winters \$195,000 because Retzlaff kept the two major assets from the marriage, the printing business and the family home. The trial court denied Winters' request for maintenance.

Winters argues that the trial court should have ordered Retzlaff to pay her attorney's fees. Whether attorney's fees should be awarded is a matter of trial court discretion. *Bisone v. Bisone*, 165 Wis.2d 114, 123-24, 477 N.W.2d 59, 62 (Ct. App. 1991). "The party requesting contribution must establish ... the reasonableness of the total fees, the need of one spouse for contribution and the ability of the other spouse to pay." *Corliss v. Corliss*, 107 Wis.2d 338, 350-51, 320 N.W.2d 219, 224 (Ct. App. 1982). The trial court denied Winters' request for attorney's fees for two reasons: (1) because she failed to present evidence as to the reasonableness of the fees during trial;¹ and (2) because both parties had sufficient assets and income to pay their own fees. This was not an erroneous exercise of discretion.

Winters next argues that the trial court undervalued the marital estate. A trial court's valuation of an asset is a finding of fact which will not be overturned on appeal unless clearly erroneous. *Liddle v. Liddle*, 140 Wis.2d 132, 136, 410 N.W.2d 196, 198 (Ct. App. 1987); *see also* § 805.17(2), STATS. We address each asset in turn.

¹ We note that the trial court suggested at trial that a day be set for determining attorney's fees, but the court did not set a day for doing so because Winters' counsel stated that the parties were "working on a stipulation" where "neither side will ask for attorney's fees."

Winters first contends that the Montana homestead was undervalued. Both Winters and Retzlaff testified at trial that the land was worth between \$5,000 and \$6,000. Retzlaff owned only a one-third interest in the property, making it difficult to sell. Winters did not have the property appraised and produced no evidence as to its value at trial. The trial court's conclusion that the land was worth \$5,000 was not clearly erroneous.

Winters next contends that the trial court undervalued the family residence. The trial court valued the property at \$90,000. Retzlaff testified that it was worth less than \$90,000. Winters stated in her interrogatories that the house was worth \$85,000. After remodeling, the house was appraised at \$90,000. Although substantial money was invested in the house, both the appraisal and the parties' statements support the trial court's finding. The finding was not clearly erroneous.

Winters next argues that G&G Printing was undervalued. Winters' expert valued the business at \$250,000. Retzlaff's expert valued the business at \$272,000. The trial court found the business's value to be \$250,000 because it was a "working partnership" and, "[i]f anything should happen to either partner or if either partner should want to terminate this working relationship, the business would suffer greatly by the loss of that partner, until he could be replaced." The trial court further explained that it accepted the lower valuation because the business was relatively easy to enter and, as such, subject to competitive pressure. The trial court's finding that the business had a value of \$250,000--the valuation put forth by Winters' own expert--was not clearly erroneous.

Winters next argues that she should have continued to receive interim maintenance through September 9, 1994, the date the judgment of divorce was entered. On January 7, 1994, the trial court ordered Retzlaff to pay Winters \$700 weekly in interim maintenance. On June 29, 1994, the trial court issued its memorandum decision. In the decision, the trial court denied Winters' request for maintenance after divorce. After receiving the decision, Retzlaff stopped making the interim maintenance payments. Winters then filed a motion with the trial court asking that Retzlaff be found in contempt of court for having ceased maintenance payments prior to any court order countermanding the \$700 per week order. The trial court denied the motion, stating that it intended for maintenance to cease as of July 1.

Winters contends that the trial court should have ordered Retzlaff to continue paying interim maintenance from the last week in June until entry of judgment in September. She bases her argument on § 807.03, STATS., which provides that "[a]n order made upon notice shall not be modified or vacated except by the court" She argues that a memorandum decision is merely a document written by the court for the information of counsel and did not modify the previous order. We disagree. We conclude that the trial court modified its previous interim maintenance order when it issued its memorandum decision denying maintenance after the divorce.²

Winters finally argues that she should have been awarded maintenance. A maintenance determination should be made with two related objectives in mind: "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 amount of maintenance to be awarded in furtherance of these objectives in a given case is committed to the trial court's discretion. *Fowler v. Fowler*, 158 Wis.2d 508, 519, 463 N.W.2d 370, 374 (Ct. App. 1990). A court exercises discretion when it considers the facts of record and reasons its way to a rational, legally sound conclusion. See *McCleary v. State*, 49 Wis.2d 263, 277, 182 N.W.2d 512, 519 (1971). To determine whether the trial court properly exercised its discretion in a particular matter, we look first to the court's explanation of the reasons underlying its decision.

² In this section of our opinion, we address only the effect of the trial court's memorandum decision. We address whether the trial court's maintenance award was appropriate below.

In denying maintenance, the trial court stated:

This Court feels that it is not appropriate in this case because of the large property settlement that is required, together with the very real prospect of a relatively short number of years that Gary will be able to be productive. Betty has a comfortable financial safety net for her to be able to continue to live as she has been, and to secure whatever training or education she may desire for her future.

The trial court's decision is not consistent with applicable law. "When a couple has been married many years and achieves increased earnings, an equal division of total income is a reasonable starting point in determining maintenance." *Wikel v. Wikel*, 168 Wis.2d 278, 282, 483 N.W.2d 292, 293 (Ct. App. 1992). The trial court may not deny maintenance simply because Winters has a "comfortable financial safety net" based on the property division. Retzlaff, too, received a large property settlement. He also has a substantial stream of income. Winters does not. Winters should not be required to live off her property settlement *in lieu* of maintenance. See *LaRocque*, 139 Wis.2d at 33, 406 N.W.2d at 740. Accordingly, we remand to the trial court for a determination as to the proper amount of maintenance.

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

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