

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 15, 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

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No. 96-0730

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN RE THE MARRIAGE OF
NORMAN HANS RECHSTEINER,**

Petitioner-Respondent,

v.

KAREN HILDEGARDE RECHSTEINER,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Washburn County: JAMES H. TAYLOR, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Karen Hildegard Rechsteiner appeals the portion of her divorce judgment setting child support and maintenance. She argues that the awards of \$1,580 per month child support and \$2,500 per month maintenance for seven years are not supported by the facts or any rational basis. We conclude the record supports the trial court's decision and affirm the judgment.

The parties were married in 1972. Both parties had jobs to pay for expenses while they attended college. At the time of the divorce, Norman Hans Rechsteiner, forty-three, works as a surgeon and earns \$186,000 per year plus a \$15,000 contribution to a retirement plan. Karen, earns \$32,000 per year as a teacher.¹ Hans testified that he works in three rural communities and has not had a week off in three years. He testified that he puts in between forty to forty-five hours per week and is on call twenty-four hours per day.

Of their two children, one is still a minor, age fourteen, and in ninth grade. The parties share joint legal custody. Karen has primary physical placement, subject to reasonable placement times with Hans. Based on their agreement, each received an equal property division valued at approximately \$250,000, a sum stipulated to represent one half of the net marital estate.

The trial court ordered \$1,580 per month child support based upon Karen's request. However, Karen's request was based upon the assumption that maintenance would be set at \$3,750 per month. Although the trial court did not set maintenance at \$3,750 per month, it found that the child's needs would be easily met with the sum of \$1,580 per month.

The trial court awarded limited term maintenance in the sum of \$2,500 per month for seven years. The trial court also ordered that Hans contribute \$1,500 to Karen's attorney fees.

Child support and maintenance issues are addressed to trial court discretion. *Peerenboom v. Peerenboom*, 147 Wis.2d 547, 554, 433 N.W.2d 282, 285 (Ct. App. 1988). "It is recognized that a trial court in an exercise of its discretion may reasonably reach a conclusion which another judge or another court may not reach, but it must be a decision which a reasonable judge or court could arrive at by the consideration of the relevant law, the facts, and a process of logical reasoning." *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20-21 (1981). We sustain a trial court's exercise of discretion if the record shows a reasonable basis for its decision. *Vier v. Vier*, 62 Wis.2d 636, 639-40, 215 N.W.2d 432, 434 (1974).

¹ There was evidence of other figures with respect to the parties' incomes, but these findings are not challenged on appeal.

CHILD SUPPORT

To set child support, the trial court must apply percentage standards found in WIS. ADM. CODE § HSS 80 unless the court finds that the application of those standards would be unfair. Sections 767.25(1j) and (1m), STATS. That a support payor has an exceptionally high income is not in itself reason to deviate from the percentage standards. *Hubert v. Hubert*, 159 Wis.2d 803, 813-17, 465 N.W.2d 252, 256-57 (Ct. App. 1990). However, if the trial court determines that the application of the percentage standards, here 17% of gross income, is unfair, the court determines child support based on the factors set forth in § 767.25. The child's needs are appropriate considerations.

Here, the trial court did not apply the standards, observing that "neither party urges the court to apply the § HSS-80 standard." The trial court also stated: "This child has become accustomed to a lifestyle most teenagers only dream about, however, this has little or nothing to do with child support." It concluded that 17% of Hans's gross would be unfair to Hans, a windfall to Karen and be over and above the needs of the child. The court concluded that in view of Karen's earnings and maintenance, the child's needs would be met with a \$1,580 per month child support payment.

We cannot fault the trial court's reasoning. Applying the standards to Hans's gross income would result in a monthly child support payment of \$2,635. No basis exists in the record for a finding that the child has a need even approaching that amount.

Karen does not argue that the child's needs exceed the amount ordered. Instead, she argues that a child's economic needs are not a factor listed under § 767.25, STATS. We conclude that although not expressly listed, the child's economic needs are an appropriate consideration. *Parrett v. Parrett*, 146 Wis.2d 830, 841-42, 432 N.W.2d 664, 668-69 (1988). Karen also argues that the trial court failed to make specific findings with respect to their child's needs. We agree that support based on need should require findings as to the child's needs and the parents' ability to pay. *Id.* at 842, 432 N.W.2d at 669. But here, as in *Parrett*, the error is harmless because Karen offers no separate evidence of the child's needs. *See id.* The trial court ordered support in the amount she requested, although her request was combined with a higher than ordered maintenance award.

Karen also argues that the court misstated the law when it stated that the child's accustomed lifestyle had nothing to do with child support, citing one of the factors to be considered, § 767.25(1m)(c), STATS.: "The standard of living the child would have enjoyed had the marriage not ended." Taken in context, we interpret the court's statement as indicating that it was putting little weight on this factor. Because the record demonstrates the child will continue a standard of living reasonably comparable to that enjoyed before the divorce, any error with respect to this statement is harmless beyond a doubt.

MAINTENANCE

Next, Karen argues that the trial court erroneously exercised its discretion when it ordered limited term maintenance of \$2,500 per month for seven years. Karen argues that the trial court should have started with an equal division of the total gross earnings, adjusted after consideration of the factors listed in § 767.26, STATS. See *LaRocque v. LaRocque*, 139 Wis.2d 23, 39-40, 406 N.W.2d 736, 742 (1987). Karen argues that "[t]here are no statutory factors which would justify a reduction from the 50-50 starting point for maintenance." She contends that all the evidence points to an increase from the 50-50 starting point of \$7,042 per month. She also argues that the court should not limit the duration of maintenance because she will probably never reach a level of income where she can afford her former lifestyle.

Karen argues that the trial court erred in several specific respects: (1) it insinuated that Karen treated her husband like a slave; (2) it stated that *LaRocque* did not require the parties to share in the income stream; (3) it erroneously stated that Karen requested \$7,400 per month maintenance; (4) it relied on the factor that Karen elected to pursue a lower paying job; (5) it stated that an equal division of earnings would be unfair to Hans without analysis of after tax impact, statutory factors or findings of need; (6) the record fails to support the finding that Hans's income would be reduced if Hans worked his wife's schedule; (7) the court failed to give economic benefit to child care and household duties; (8) it required that Karen can sell the house in seven years to support herself; and (9) erroneously found that \$2,500 per month will permit Karen to maintain a standard of living reasonably comparable to that enjoyed during the marriage.

The record discloses that Karen requested maintenance in the sum of \$3,750 per month, apparently for indefinite duration. Karen argued that this was not enough for either party to meet their obligations and maintain their lifestyle, but it fairly distributes the economic pain of the divorce. Karen's financial statement declared gross wages of \$2,576 per month. Together with child support of \$1,580 and maintenance of \$2,500, her total monthly income equals \$6,656. Karen submitted a budget of \$7,400 per month for herself and her child, which included payments of \$2,641.11 for mortgage, taxes and heat. Karen's monthly expenses include \$694 for travel, \$250 for recreation, \$385 for donations, and monthly auto expenses of \$225 for gas, oil and repairs, plus \$417 monthly depreciation.

The trial court reasoned that the after tax division of income would not support a \$7,400 per month budget. It found that both parties made sacrifices during the marriage, and both parties successfully achieved their career goals. The court then stated that Karen "deserves support in accordance with her needs and the earning capacities of the parties, however, the husband is not her slave."

It concluded that \$2,500 adequately met Karen's needs, and that Hans's increased earning capacity is in part based not only on his position as a surgeon, but also on long hours and oftentimes seven days a week schedule. The court concluded that if Hans worked Karen's teaching schedule, of approximately 190 eight-hour days per year, his income would be closer to \$100,000 per year. The trial court concluded that an equal division of the income stream or a longer term of maintenance would be unreasonably burdensome to Hans because "it would require him to go through life at his present all work no play pace." We conclude that the trial court's comment, that Hans is not a "slave" is an inartful expression of the court's finding that Hans's elevated earnings in the result of the long hours he puts in as a surgeon. The trial court limited the term of maintenance to seven years, explaining that at that time both parties would be fifty years old, the children will be out of college, and Karen would have the option of selling the house.

We conclude that the record supports the trial court's decision. "The object of maintenance determination is to leave each party with adequate means of support and to treat each party fairly and equitably." *Enders v. Enders*, 147 Wis.2d 138, 142, 432 N.W.2d 638, 640 (Ct. App. 1988). As long as the trial court's analysis is reasonable and the result is fair, we will not disturb the trial

court's discretionary determination. *Id.* Because the analysis is reasonable and the result is fair, we will not overturn the maintenance award.

Karen argues that the trial court misstated the law when not concluding that *LaRocque* did not require the parties to share the post-divorce income stream. We disagree. "There is no rule of law in Wisconsin stating that a recipient spouse is entitled to one-half of the other's salary for the rest of his or her life." *Enders*, 147 Wis.2d at 145, 432 N.W.2d at 641. *LaRocque* requires the court to consider the parties' gross income when it determines maintenance, not that gross income be used in some mechanical way to calculate maintenance. In any event, the trial court's misstatement of the law, if any, is harmless here because the record reflects that the trial court considered the parties' gross incomes when determining maintenance.

Karen also argues that the trial court erroneously stated that she requested \$7,400 per month maintenance. We disagree. This statement reflected the court's consideration of a maintenance amount close to one-half the parties' total gross income. The court reasoned that maintenance at that sum would be unfair because of the extra hours Hans must work to achieve his elevated level of income. This is a reasonable consideration.

Karen contends that the court erroneously considered that Karen chose to pursue a lower paying job. We disagree. We interpret the court's comment to be that Karen succeeded in her career objective, instead of subordinating her education or career objective to the education and career of the spouse. *See LaRocque*, 139 Wis.2d at 37-38, 406 N.W.2d at 741-42.

Karen argues that the trial court failed to provide analysis of tax impact, statutory factors or need. We disagree. The record shows that the court specifically considered relevant factors, including the needs of the parties, as well as the factors relating to property division, educational levels, length of the marriage, and the sacrifices and contributions of both parties. *See* § 767.26, STATS.

Next, Karen argues that the trial court failed to consider the benefit of Karen's child care and household duties. We disagree. The trial court found that both spouses made sacrifices and that neither would have succeeded without the help of the other: "This woman did everything right ... [s]he has

both family and career." The award of \$2,500 per month maintenance reflects consideration of Karen's nonmonetary contributions.

Next, Karen argues that the trial court suggests that she sell her major asset, the home, in seven years to support herself. We conclude that requiring only one spouse to liquidate property division to support herself, without explanation, is unfair. See *LaRocque*, 139 Wis.2d at 34-35, 406 N.W.2d at 740-41. Here, however, the record shows that Karen has achieved her career objective, is fully employed and is self-supporting. The house, stipulated to be worth over \$300,000, has present equity of over \$150,000. The court's statement does not suggest the liquidation of the asset for support purposes; rather, it suggests to translate the equity into a less encumbered property would coincide with a reasonable financial plan as the parties approach retirement. We conclude the court did not erroneously exercise its discretion.

Finally, Karen argues that the trial court erroneously found that the sum awarded would allow her to maintain her former standard of living. We disagree. The trial court found that neither party would maintain their former style of living. Also, the court found that her \$7,400 budget is inflated. Because Karen's budget includes expenditures for vacations, recreation, donations and auto expenses that could be modified to bring her budget closer to her \$6,656 monthly income, without substantially reducing her overall living standard, the court's finding has a reasonable basis and will not be disturbed on appeal.

By the Court. – Judgment affirmed.

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