

**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

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

No. 96-1249-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

PAMELA E. JOCHUM,

Petitioner-Respondent,

v.

ROBERT J. JOCHUM,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Eau Claire County: GREGORY A. PETERSON, Judge. *Affirmed in part; reversed in part and cause remanded.*

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

PER CURIAM. Robert Jochum appeals those portions of his divorce judgment relating to property division and maintenance.¹ He argues that the trial court erroneously exercised its discretion when it deviated from an

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

equal property division and denied him maintenance. We conclude that the record supports the trial court's exercise of discretion with respect to the property division. Because the record does not support the denial of maintenance to Jochum, we reverse that portion of the judgment. Therefore, we affirm in part, reverse in part and remand for further proceedings.

The parties were married for over twenty-four years and had three children, who were minors at the time of the divorce. Pamela Jochum, a communications specialist with Ameritech, earns \$48,000 per year.² Robert, a vending machine repairman, earns \$17,000 per year.

Robert, age forty-five, is not a high school graduate, and began working at his father's gas station at age fourteen as a mechanic. The station closed the year before his father died in 1993. After the station closed, Robert spent the summer taking care of the children while Pamela worked, and later obtained a job as a school custodian. He currently is a repairman earning slightly under \$17,000 per year. He is required to pay 29% of his gross income as child support.³

Property division and maintenance are within the sound discretion of the trial court. *Pelot v. Pelot*, 116 Wis.2d 339, 342, 342 N.W.2d 64, 66 (Ct. App. 1983). "The term 'discretion' contemplates a process of reasoning which depends on facts that are in the record or reasonably derived by inference from the record and yields a conclusion based on logic and founded on proper legal standards." *Mullen v. Coolong*, 153 Wis.2d 401, 406, 451 N.W.2d 412, 414 (1990). 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).

PROPERTY DIVISION

² Pamela's financial declaration shows a monthly gross income, before child support, of \$3,730.85 and monthly expenses of \$2,022.83.

³ Robert's financial declaration shows a monthly gross income of \$1,402.88 and monthly living expense of \$1,030. In addition, a monthly child support obligation of \$406.84 was ordered.

First, Robert challenges the property division. The trial court awarded approximately 65% of the parties' property to Pamela, finding:

This divorce case is an unusual case and the facts presented at trial justify a variance from the statutory presumption of a 50/50 division. There is an extensive disparity in regards to the contribution of each of the parties to the marriage with the petitioner providing the vast majority of income, and basically all of the homemaking and child care. Undoubtedly the respondent provided emotional support and other nonmonetary benefits to the marriage which are non quantifiable in nature.

In considering property division, the trial court is to presume an equal division but may deviate from an equal division after considering the relevant factors. Section 767.255, STATS. Those factors include the length of the marriage, the property brought to the marriage; whether a party has substantial assets not subject to division; the contribution of each party to the marriage, giving appropriate economic value to homemaking and child care services; the age and health of the parties; the contribution of one party to the other's education or increased earning power; the parties' earning capacities; child custodial responsibilities and absence from the job market; and the desirability of awarding the family home to the party with whom the children spend the most time. *Id.*

The weight to be accorded each factor is within the trial court's discretion. The trial court found that the disparate contributions to the marriage compelled an unequal property division. Robert concedes that the record supports the finding that Pamela contributed the greater amount of child care and homemaking services. He also agrees that it supports the finding that Pamela contributed the greater share of economic benefits through her increased earning power. That this was a long-term marriage, to which neither party brought much in the way of assets, and that neither party has any substantial assets not subject to division, do not detract from the court's reasoning. We conclude that the record reasonably supports the court's exercise of discretion.

Robert argues that the trial court failed to appropriately weigh his contribution to Pamela's greater earning capacity. Because Pamela was required to work out of town, he provided child care in her absences. He encouraged her job advancement and put in long hours at his family's gas station.

The court's implicit conclusion that Robert's contributions did not advance Pamela's earning capacity are supported by the record. The record shows that the out-of-town work was of limited duration, during which Pamela was gone only a few nights per week. At that time the parties had only one child. Pamela testified that her mother came and performed many of the household tasks in her absence. Under these facts, the trial court implicitly concluded that Robert's contributions to Pamela's advanced earning capacity were minimal and, as a result, gave them little weight.

MAINTENANCE

Next, Robert argues that the trial court erroneously denied him maintenance. We agree. In a long-term marriage, it is reasonable to consider an equal division of total income as a starting point in determining maintenance. *LaRocque v. LaRocque*, 139 Wis.2d 23, 39, 406 N.W.2d 736, 742 (1987). "However, *LaRocque* mandates an approach, not a result." See *Enders v. Enders*, 147 Wis.2d 138, 144, 432 N.W.2d 638, 641 (Ct. App. 1988). There are two objectives to maintenance: "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*, 139 Wis.2d at 33, 406 N.W.2d at 740.

Here, the trial court denied Robert maintenance "based on the facts that [he] chose to earn less than he was capable of earning during the term of the marriage, is 45 years old in good health and is in a position to get re-training or find appropriate employment in order to support himself." The reasons advanced by the trial court are an insufficient basis to deny maintenance altogether. If the trial court anticipates enhanced earning capacity by future training or education, limited term maintenance during this transitional period is appropriate to meet this goal. The existence of the ability to enhance earning capacity through retraining alone is insufficient to deny maintenance.

The facts of this case distinguish it from *Gerth v. Gerth*, 159 Wis.2d 678, 465 N.W.2d 507 (Ct. App. 1990), wherein we affirmed the trial court's denial of maintenance. In *Gerth*, the trial court found that the potential recipient spouse did not contribute to enhanced earnings of the potential payor, *and* based on financial declarations, that payor did not have the financial ability to contribute and the recipient did not require maintenance. Here, the trial court did not make such findings. Robert's and Pamela's respective financial declarations appear to militate against such a finding; Robert's living standard appears to be at a subsistence level before he makes his \$406 per month child support payment.

The amount and the duration of limited term maintenance are matters for the exercise of trial court discretion. On remand, the trial court may elect in its discretion to receive additional evidence on this issue.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded. No costs on appeal.

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