COURT OF APPEALS
DECISION
DATED AND RELEASED

June 26, 1997

NOTICE

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, STATS.

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

No. 96-1710

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:
CONNIE M. FESSENDEN,

PETITIONER-RESPONDENT,

V.

WILLARD A. FESSENDEN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: JOHN H. LUSSOW, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Willard A. Fessenden appeals from a judgment divorcing him from Connie M. Fessenden. The issues on appeal are whether the court erroneously exercised its discretion in awarding maintenance, in its distribution of personal property and by deducting the minor child's outstanding

medical expenses from the proceeds of the house sale before they were distributed, and whether the court erred in finding a child support arrearage. We conclude that the trial court properly exercised its discretion with regard to each issue and did not err with respect to the child support arrearage. We therefore affirm.

The parties were married on December 11, 1965. Connie Fessenden filed a petition for divorce on September 20, 1994. At that time the couple had one minor child. While the divorce was pending, the family court commissioner issued a temporary order requiring Willard to pay Connie a fixed sum of $339 each week as maintenance and child support. On Willard's motion, the family court commissioner reduced the payment to $150 per week plus seventeen percent of Willard's gross income.

At trial, Connie testified that she was a high school graduate who had worked as a homemaker for twenty years. During the time the Fessendens were married, Connie also worked outside the home for nine years. Connie currently earns $1,250 per month in gross income as a health care worker. Willard has income of $1,920 per month and is retired. Connie testified that her health problems could potentially affect her ability to earn income and that she might not be able to pay her bills or maintain her current residence without maintenance.

There was conflicting testimony about whether Willard concealed marital assets. Willard testified that he had in his possession six antique chairs, three bookcases, a leather bound book collection and a grandfather clock. He believed the bookcases and chairs were included in the appraisal. He testified that he took some bunk beds from the house before its sale and was unsure whether he showed the bunk beds to the appraiser. The Fessendens' adult daughter testified that Willard had a dresser, CD player and bunk beds in his possession sometime

after the divorce proceedings commenced. Willard testified that the CD player was never in his possession. The appraiser, whom the parties hired by agreement, testified that she specifically asked Willard if there were any furnishings in his possession and he replied there were none. None of the items mentioned above were listed in the appraisal.

With respect to medical expenses, Connie testified that she was "supposed to" reimburse Willard for a portion of the medical expenses that he already paid, but that she has been unable to pay him. She also testified that she had paid a portion of the Mayo Clinic bill. Willard testified that while he had paid his half of the outstanding medical expenses, Connie had not paid her half.

The trial court valued the marital assets at $126,779.64. It awarded Willard $77,670.18 in property, and awarded Connie $49,109.46 in property with an equalization payment of $14,280.36. The court awarded Connie maintenance of $150 per month until she remarried or one of the parties died.

In awarding maintenance, the trial court noted that the Fessendens had a long marriage in which Willard was primarily responsible for the support of the parties and Connie was primarily a homemaker. The court took into consideration Willard's health problems and limited earning capacity.

The trial court found that if Willard did have possession of additional personal property, he failed to make it available for appraisal. Therefore, the trial court concluded that it was fair and equitable to award each of the parties the personal property currently in the possession of each as the full, final and complete division of personal property, with the exception of the automobiles.

The trial court ordered Willard to pay child support of seventeen percent of his gross income from all sources. The trial court found no merit to Willard's claim of over payment for previous child support as a result of vacation pay, since that was "part of his gross income." The court also ordered that all of the minor son's outstanding medical expenses, totaling $1,998.09, be paid from the proceeds of the sale of the house prior to division of the proceeds between the parties.

The decision to award maintenance and the division of marital property are addressed to the sound discretion of the trial court, ***Sellers v. Sellers***, 201 Wis.2d 578, 585, 549 N.W.2d 481, 484 (Ct. App. 1996), as are the establishment and modification of child support. ***Roberts v. Roberts***, 173 Wis.2d 406, 408, 496 N.W.2d 210, 211 (Ct. App. 1992). We will affirm the trial court's exercise of discretion provided the trial court reached a rational decision based on the application of the correct legal standards to the facts on record. ***Id.*** We will not set aside the trial court's findings of fact unless they are clearly erroneous. *See* § 805.17(2), STATS.

First, Willard contends that the trial court failed to apply the statutory criteria[1] in awarding maintenance because it failed to assign enough

[1] Section 767.26(1)-(10), STATS., provides in pertinent parts:

> **Maintenance payments**. Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:
>
> (1) The length of the marriage.
>
> (2) The age and physical and emotional health of the parties.
>
> (3) The division of property made under s. 767.255.

(continued)

weight to his health problems and failed to consider his attempts to provide for his wife through other means.

The weight to be assigned to each of the factors under § 767.26, STATS., is within the discretion of the trial court. ***Trattles v. Trattles***, 126 Wis.2d 219, 228, 376 N.W.2d 379, 384 (Ct. App. 1985). The trial court did take into account Willard's health problems and limited earning capacity. However, it also considered the long marriage and Connie's primary role as homemaker and her more limited earning capacity. Its decision to award maintenance of $150 per month is a reasonable one, arrived at after considering the statutory factors. We conclude that the trial court did not erroneously exercise its discretion in awarding maintenance.

> (4) The educational level of each party at the time of marriage and at the time the action is commenced.
>
> (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
>
> (6) The feasibility that the party seeking maintenance can 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.
>
> (7) The tax consequences to each party.
>
> ….
>
> (9) The contribution by one party to the education, training or increased earning power of the other.
>
> (10) Such other factors as the court may in each individual case determine to be relevant.

Second, Willard contends that the trial court erroneously exercised its discretion in dividing the personal property between the parties. Under §767.255(3)(m), STATS.,[2] when dividing marital property, the court may properly

[2] Section 767.255, STATS., provides in pertinent part:

> (3) The court shall presume that all property not described in sub. (2) (a) is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering all of the following:
>
> (a) The length of the marriage.
>
> (b) The property brought to the marriage by each party.
>
> (c) Whether one of the parties has substantial assets not subject to division by the court.
>
> (d) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
>
> (e) The age and physical and emotional health of the parties.
>
> (f) The contribution by one party to the education, training or increased earning power of the other.
>
> (g) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
>
> ….
>
> (i) The amount and duration of an order under s. 767.26 granting maintenance payments to either party, any order for periodic family support payments under s. 767.261 and whether the property division is in lieu of such payments.
>
> (j) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.
>
> (k) The tax consequences to each party.
>
> ….

(continued)

consider a spouse's failure to account for assets once in their possession. *See* ***Gardner v. Gardner,*** 175 Wis. 2d 420, 427, 499 N.W.2d 266, 268-69 (Ct. App. 1993). The conflicting testimony of the parties and witnesses concerning the concealment of marital assets provides a reasonable basis for inferring that Willard's actions led to an inadequate accounting. We conclude that the trial court did not erroneously exercise its discretion when distributing the personal property.

Third, Willard contends that the trial court erroneously exercised its discretion in deducting the cost of the minor son's uninsured medical expenses from the house sale proceeds before distribution. He maintains that the $10,000 advance each party was given on their final property division under a temporary order was "presumably" to pay their son's medical bills, and that Connie did not use her portion to pay these bills. Therefore, Willard argues, deducting the outstanding medical expenses from the house sale proceeds is unfair because he will have to pay more than half of the medical expenses.

The temporary order did not direct how the parties should use the $10,000 advance. It appears the parties may have informally agreed to each pay one-half of their son's medical bills from this advance. However, even if there were a temporary order requiring Connie to pay half of her son's medical expenses, the trial court would not be bound by it because temporary orders terminate at the time the divorce is granted. ***Hengel v. Hengel,*** 120 Wis.2d 522, 526, 355 N.W.2d 846, 848 (Ct. App. 1984). We think the same reasoning applies to any informal agreement the parties had pending the final divorce hearing. Accepting Willard's premise that the result of the court's order is an unequal assignment of the debt, he received approximately $1,000 less in assets than

---

(m) Such other factors as the court may in each individual case determine to be relevant.

Connie. Based on the parties' disparity in incomes, the economic value of Connie's contribution in homemaking and child care services, and the length of the marriage, the trial court could reasonably conclude that this division of the marital assets is fair.

Fourth, Willard argues that the trial court erroneously allowed child support to be withheld from his pay check twice. However, we are unable to find anything in the record to support this contention. He refers to his testimony which was, "in the past, one of our court dates, I was given the okay to keep my vacation pay." We do not see how this testimony supports his argument. The argument itself, apart from the lack of factual support in the record, is scant and unclear. We do not consider undeveloped arguments. *See* ***State v. Gulrud,*** 140 Wis.2d 721, 730, 412 N.W.2d 139, 142-43 (Ct. App. 1987). In light of Willard's inadequate briefing on this issue, we decline to address it further.

By the Court.—Judgment affirmed.

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