

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 99-0996-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

GORDON GRAHAM F/K/A GORDON GERRY,

PETITIONER-APPELLANT,

V.

LINDA GERRY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
ROBERT A. DeCHAMBEAU, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Gordon L. Graham (f/k/a Gerry) appeals from an order denying his motion to reduce his maintenance and child support obligations for a six-month period during which he was unemployed. He challenges the trial court's determination that he voluntarily and unreasonably terminated his prior

employment. We conclude that the record contains sufficient credible evidence to support the trial court's determination and, accordingly, we affirm the order.

Graham accepted a position with Montgomery Watson Asia in Hong Kong in May 1996. In November 1996, Graham informed his ex-wife, Linda Gerry, that he planned to return to the United States in June 1997. He did so, but he did not secure a new job until January 1998.

Graham testified that he returned to the United States because changing conditions in Hong Kong such as the disbanding of the local legislature and the loss of government support for the sewerage project he was working on undermined his job security there. He said he began actively seeking a new job in April 1997, and that he had a lead on a job in early June 1997 which he believed was going to work out at the time he returned to the States.

In support of his contention that he would have lost his job if he hadn't agreed to leave, Graham presented a letter from his supervisor in Hong Kong which stated:

[Graham] was transferred from our Montgomery Watson Americas office to our Hong Kong office last year. During this period, he was principally involved in one of our large sewage project[s] in Hong Kong. Earlier this year, [Graham] had indicated that he would like to return to the United States. In addition, we do not have enough work in [the] Hong Kong office to keep him full time. Therefore, by mutual agreement between [Graham] and the Company, his employment was terminated on June 15, 1997.

In addition, Graham presented evidence that his position was not filled by anyone else after he left, and that the Hong Kong office had decreased from more than 200 employees to less than 70 by January 1988.

However, there was also testimony that while in Hong Kong, Graham became engaged to and eventually married a woman who lived in Wisconsin with her three children and could not relocate to Hong Kong. Graham's second wife testified that she did not recall him ever telling her he was being laid off, or that his job was being eliminated. Rather, he told her that he was searching for opportunities and exploring other options, and sent her an e-mail in April 1997 asking her to "HELP ME GET HOME."

The trial court found that Graham had failed to establish by a preponderance of the evidence that the termination of his employment was involuntary, and concluded that Graham's voluntarily leaving his job without having an offer for another job was unreasonable in light of Graham's support obligations to his ex-wife and children, who needed public assistance and charity to subsist during his period of unemployment. This appeal followed.

It is proper to set a support obligation based upon earning capacity rather than actual earnings when the obligor voluntarily and "unreasonably diminishes or terminates his or her income in light of the support obligation." *Van Offeren v. Van Offeren*, 173 Wis.2d 482, 492, 496 N.W.2d 660, 663 (Ct. App. 1992). Graham contends that we should review *de novo* the trial court's determination that his departure from Hong Kong was voluntary and unreasonable, because it was based solely upon documentary evidence which the trial court was in no better position to evaluate than this court would be. However, we disagree with the appellant's characterization of the evidentiary basis for the trial court's determination. In addition to two letters from the appellant's Hong Kong supervisor, the record includes the appellant's testimony and that of his second wife. The trial court needed to evaluate this testimony as well as the documents received into evidence in order to reach its determination that Graham

voluntarily and unreasonably terminated his employment, and it was in the best position to do so.

Thus, whether Graham's action was voluntary is a determination of fact which we shall not disturb unless it is clearly erroneous. *See State v. Gaulrapp*, 207 Wis.2d 600, 607, 558 N.W.2d 696, 699 (Ct. App. 1996); § 805.17(2), STATS. Furthermore, although the legal standard of reasonableness presents a question of law, we give weight to the trial court's reasonableness conclusion because it is intertwined with the factual findings which support it. *Van Offeren*, 173 Wis.2d at 492-93, 496 N.W.2d at 663-64.

We cannot say the trial court's determination that Graham voluntarily terminated his employment was clearly erroneous. The record contains ample evidence that Graham wanted to return to the States to be with his new wife; that he communicated that desire to his employer; and that the employer accommodated that desire by terminating his employment. The record also supports the trial court's conclusion that Graham's decision to leave his job before he had another job lined up was unreasonable in light of his support obligations.

By the Court.—Order affirmed.

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

