

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 15, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1181

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

MYRA LEVINE (HEILPRIN),

PETITIONER-RESPONDENT,

v.

RICHARD HEILPRIN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Richard Heilprin appeals from a money judgment in favor of his ex-wife, Myra Levine. The issues are whether Heilprin settled

Levine's claim against him with an earlier payment and whether the trial court erred by awarding interest on the balance due Levine. We affirm.

¶2 The parties divorced in 1985, and the trial court ordered Heilprin to pay maintenance. The court terminated his obligation in 1994, but he remained liable for over \$61,000 in arrearages. In 1995, Heilprin became a party to his second wife's bankruptcy action. In December 1995, Heilprin negotiated an agreement with Levine for release of a lien on property in exchange for a \$17,500 payment toward the arrearage. A memorandum from Levine's attorney to Heilprin's attorney set forth the terms of the agreement and provided that "[t]his agreement does not constitute a waiver by Myra Levine of any rights to collect maintenance owed by Richard Heilprin to her other than that [sic] what is expressly stated herein"

¶3 Heilprin made no further payments and Levine sued for the remaining arrearage plus accumulated interest. Heilprin's defense consisted of his assertion that the \$17,500 payment fully satisfied his debt under the doctrine of accord and satisfaction. The trial court disagreed and granted judgment for the full amount sought plus interest.

¶4 The \$17,500 payment did not discharge Heilprin's debt to Levine. An accord and satisfaction defense requires an agreement to discharge an existing debt and a dispute as to its amount. *Hoffman v. Ralston Purina Co.*, 86 Wis. 2d 445, 453, 273 N.W.2d 214 (1979). Here, when Heilprin paid the \$17,500, the parties had already litigated the amount of the claim and the \$61,000 debt was no longer disputed. Additionally, Heilprin presented no proof that he offered the \$17,500 in full satisfaction, and in her memorandum Levine plainly and unmistakably stated that she was not agreeing to a full satisfaction.

¶5 The trial court properly awarded interest on the outstanding arrearage. Heilprin contends that the trial court erroneously exercised its discretion by failing to consider the factors pertaining to maintenance awards set forth in WIS. STAT. § 767.26 (1999-2000).¹ He further contends that had the trial court considered those factors, the only reasonable outcome would have been a waiver of interest on the arrearage balance. However, the determination of interest on an amount previously ordered paid is not an award of maintenance. The factors set forth in § 767.26 are irrelevant to the calculation.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

