

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 26, 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. 00-1899**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE MARRIAGE OF:**

**LORI L. FLEIG,**

**PETITIONER-APPELLANT,**

**v.**

**PATRICK A. FLEIG,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Rock County:  
RICHARD T. WERNER, Judge. *Affirmed.*

Before Vergeront, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Lori and Patrick Fleig are legally separated. Lori appeals from an order terminating her limited term maintenance. Lori argues that the threshold requirement to modify maintenance has not been met. In the

alternative, she argues that the trial court erroneously exercised its discretion in reducing maintenance. We affirm.

¶2 Under the judgment of legal separation, Patrick was ordered to pay Lori \$500 per pay period in limited term maintenance to expire on June 30, 2003, when they anticipated that their youngest child Nicholas would attend school full time. Nicholas died on November 15, 1999. About six months after Nicholas's death, Patrick moved to terminate the limited term maintenance, contending that Lori was now free to obtain full-time employment. The trial court terminated maintenance as of November 30, 2000.

¶3 Lori contends that Nicholas's death did not constitute "a substantial change in financial circumstances," a threshold requirement for maintenance modification. *Murray v. Murray*, 231 Wis. 2d 71, 77, 604 N.W.2d 912 (Ct. App. 1999). "A substantial change in circumstances should be such that it would be unjust or inequitable to strictly hold either party to the original maintenance award." *Id.* The trial court's *factual findings* regarding a change in circumstances will be upheld unless they are clearly erroneous. *Id.* Whether the change is *substantial* is a question of law that we review de novo, "[b]ut, because this legal determination is intertwined with the trial court's factual findings, we nevertheless give weight to the court's decision, despite our de novo standard of review." *Id.*

¶4 The trial court found that there was a substantial change in financial circumstances because its initial award was premised on Lori caring for Nicholas instead of working outside the home. The court explained:

[T]he main thrust of the reasoning for awarding maintenance revolved around [Lori's] providing care for Nicholas. On page six of the original decision this court noted that "when Nicholas goes to school full-time, circumstances will change." Further, "[Lori] has not

demonstrated a reason not to work full-time upon Nicholas' beginning school full-time." At page eight of the original decision, this court stated:

"Clearly [Lori] needs maintenance to support herself until she is able to obtain full-time employment. This court finds it reasonable for her to stay out of the full-time job market until Nicholas is in school full-time and then for a short time beyond for [Lori] to make the adjustment to full-time employment and meet the care obligations of her children."

Because the trial court's decision to award limited term maintenance was tied to Lori caring for Nicholas rather than maintaining paid employment, his death constituted a substantial change in financial circumstances.

¶5 Even if the threshold for modification is met, Lori argues that the trial court erroneously exercised its discretion in reducing the period of the limited term maintenance. She contends the trial court construed the support objective of maintenance too narrowly and that there was no evidence she was working full time or that she was self-supporting. One of the purposes of limited term maintenance is to place the recipient spouse in a self-supporting economic situation by the end of the maintenance period. *Id.* at 78. Whether to modify a maintenance award is committed to the trial court's discretion. *Id.*

¶6 The trial court reduced the period of limited term maintenance because it concluded Lori could become self-supporting now that she no longer needed to stay home full time to care for her children. A vocational expert had previously testified that Lori could readily find work with a starting wage of approximately \$24,000 per year and Lori does not dispute that she is capable of earning that much. The court anticipated that when Lori is earning \$24,000 per year, she should be self-supporting. Lori correctly contends that no evidence was

presented that she was working full time at a self-supporting wage at the present time, but this argument holds little weight because the trial court did not immediately terminate maintenance. It afforded Lori a year-long window from Nicholas's death to adjust to her loss and to find suitable work. The trial court's decision was grounded in proper legal principles and the facts of this case. We therefore conclude that the trial court properly exercised its discretion.

¶7 Lori argues that the trial court's decision inadvertently "slams the door" to her receiving maintenance based on her medical needs should the judgment of legal separation be converted to a judgment of divorce.<sup>1</sup> Although WIS. STAT. § 767.32(1)(a) does not allow "a judgment or order that *waives* maintenance payments" to be revised or altered, maintenance payments have not been waived for medical purposes in this case. The judgment of legal separation provides:

This Judgment is premised upon and based upon the assumption of the parties and the court that even after this Judgment of Legal Separation, Petitioner will continue to be maintained and covered under Respondent's comprehensive medical and hospitalization insurance policy provided through his employer, General Motors. If at any point that is not the case, such as if this case were converted to a Judgment of Divorce and thus Petitioner would be ineligible for Respondent's General Motors health care coverage, then the issue of maintenance shall be subject to review by the court.

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<sup>1</sup> WISCONSIN STAT. § 767.09(2) (1999-2000) provides that "upon motion of either party not earlier than one year after entry of a decree of legal separation, the court shall convert the decree to a decree of divorce." Conversion to a divorce decree is mandatory. *Bartz v. Bartz*, 153 Wis. 2d 756, 759, 452 N.W.2d 160 (Ct. App. 1989).

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

The judgment of legal separation reserves the issue of maintenance as it relates to Lori's health needs should Lori no longer be covered by Patrick's insurance. The trial court's order terminating limited term maintenance under the judgment of legal separation does not limit the trial court's ability to reconsider maintenance for health reasons should the parties divorce.<sup>2</sup>

*By the Court.*—Order affirmed.

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

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<sup>2</sup> If this were not the case, the trial court's decision terminating limited term maintenance would have been an erroneous exercise of discretion because the court did not take into account Lori's health needs.



