

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2000

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. 00-2209-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

DAVID ARENDT,

PETITIONER-APPELLANT,

v.

BARBARA ARENDT,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Wood County:
DENNIS D. CONWAY, Judge. *Affirmed.*

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

¶1 PER CURIAM. David Arendt, *pro se*, appeals from the trial court's judgment awarding Barbara Arendt \$1,500 per month in maintenance. He argues: (1) that the trial court did not adequately explain its factual findings regarding

income; (2) that the trial court failed to look at his debts and ability to pay maintenance; (3) that the trial court failed to consider the tax consequences of a maintenance award; and (4) that the trial court failed to consider Barbara's earning capacity. We resolve these issues against David and affirm.

¶2 David and Barbara were married for thirty-two years. When their marriage ended, David was earning approximately \$4,800 per month, or \$58,000 per year, as an instrument technician at Georgia-Pacific Corporation and Barbara was employed as a teacher's aid earning approximately \$700 per month, and seasonally employed as a waitress earning an additional \$400 per month, for a total of approximately \$11,000 a year. After considering the length of the marriage and various other factors, the trial court awarded Barbara \$1,500 per month maintenance for an unlimited term.

¶3 We will uphold the trial court's determination of the amount and duration of maintenance unless the trial court misuses its discretion in setting the award. *Bisone v. Bisone*, 165 Wis. 2d 114, 118, 477 N.W.2d 59 (Ct. App. 1991). The purpose of maintenance is "to support the recipient spouse in accordance with the needs and earning capacities of the parties and to ensure a fair and equitable financial arrangement between the parties in each individual case." *Id.* at 119-20. In setting maintenance, the trial court must consider a host of factors, including the length of the marriage, the physical and emotional health of the parties, the earning capacity of the party seeking maintenance, and whether one party contributed to the education, training, or increased earning power of the other. WIS. STAT. § 767.26 (1997-98).¹

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶4 David first argues that the trial court misused its discretion because it did not adequately explain why it based the maintenance award on his salary in 1999. He argues that he presented evidence that his overtime hours were being substantially cut. Although the trial court was informed that David's overtime hours were being cut, but not eliminated, evidence was also presented that David's income regularly fluctuated from year to year and at times he made nearly \$70,000 per year. In two of the three years prior to the divorce, David earned at least \$58,000. Based on this evidence, the trial court could reasonably conclude that David's salary for the year 2000 would be approximately \$58,000 despite the reduction in overtime hours.

¶5 David also contends that the trial court failed to consider Barbara's income from her second seasonal job. This is refuted by the record. Barbara earned approximately \$700 per month as a teacher's aid and \$400 per month as a waitress six months of the year. Before setting maintenance, the trial court stated that Barbara's total income was approximately \$11,000 or \$12,000 a year. Thus, the trial court considered Barbara's income from both jobs.

¶6 David next argues that the trial court failed to look at his debt and ability to pay maintenance. The trial court did consider these factors, noting that David may have to adjust his debt payments to accommodate paying maintenance. The trial court noted that David's desire to pay off his creditors and his previous decisions to incur consumer debt did not obviate his obligations to Barbara. That David must pay Barbara before paying his debts is an unfortunate fact. But that fact is not caused by an erroneous exercise of discretion.

¶7 David next argues that the trial court failed to consider the tax consequences of a maintenance award. As aptly noted by Barbara in her brief,

“the higher the maintenance award, the higher the tax savings for David.” Not only did the maintenance award benefit David from a tax standpoint, the trial court’s oral decision indicates that it did consider income tax consequences to him in making the award.

¶8 Finally, David argues that the trial court did not consider Barbara’s earning capacity in setting the award. To the contrary, the trial court noted that Barbara had attempted to obtain better employment, but that she was unable to do so. The trial court explained that it did not believe Barbara could become self-sufficient at a standard reasonably comparable to that she enjoyed during the marriage because she had been out of the labor market during part of the marriage and was now fifty-three years old. The trial court considered Barbara’s earning capacity.

By the Court.—Judgment affirmed.

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

