COURT OF APPEALS
DECISION
DATED AND FILED

April 19, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2603

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

IN RE THE MARRIAGE OF:

SHANNON ELIZABETH SINGER,

PETITIONER-RESPONDENT,

v.

JAMES JOSEPH SINGER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Waupaca County: PHILIP M. KIRK, Judge. *Affirmed.*

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

¶1 PER CURIAM. James Singer appeals from the judgment divorcing him from Shannon Singer. He challenges the physical placement schedule, the

property division, and maintenance. For the reasons discussed below, we reject his arguments and affirm the judgment.

BACKGROUND

¶2 The Singers divorced in August 2000 after a ten-year marriage during which they had shared the care of three children, with James being the primary wage earner and Shannon being the primary homemaker. Both parties were in their early thirties and in good health at the time of the divorce. The trial court found that, although Shannon had worked part-time following the birth of the children, she was capable of earning $15,996 per year working full time at Pick-N-Save. James earned $57,612 per year working at Wisconsin Tissue Mills (n.k.a. Georgia Pacific). James had a rotating schedule that required him to work one week from 6 a.m. to 2 p.m., one week from 2 p.m. to 10 p.m., and one week from 10 p.m. to 6 a.m. each month, with days off in between rotations. He could also be required to work overtime in the form of twelve-hour shifts from time to time.

¶3 The trial court awarded Shannon primary physical placement of the couple's three children during the school year, allowing James to have the children one evening and seven overnights on his days off during each rotation, with equal placement during the summer. The trial court also awarded the marital residence and some additional property to James and ordered him to pay Shannon an equalization payment of $42,660, plus $500 per month in maintenance for a period of two years. James now appeals, claiming the trial court erroneously exercised its discretion by: (1) failing to award the parties substantially equal physical placement when they had shared child care duties during the marriage; (2) failing to take into account for property division purposes the projected amount of capital

gains taxes James would have to pay on the property he was planning to sell in order to make the equalization payment; and (3) deducting child support amounts from the parties' disposable incomes and failing to take Shannon's earned income credit into account when calculating her need for maintenance.

STANDARD OF REVIEW

¶4 We review the trial court's placement and maintenance decisions under the erroneous exercise of discretion standard. ***Sellers v. Sellers***, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996) (maintenance); ***Wiederholt v. Fischer***, 169 Wis. 2d 524, 530, 485 N.W.2d 442 (Ct. App. 1992) (placement). The trial court properly exercises its discretion when it states its reasons and bases its decision on the applicable law and the facts of record. *See* ***Luciani v. Montemurro-Luciani***, 199 Wis. 2d 280, 294, 544 N.W.2d 561 (1996). The valuation of the marital estate is a factual finding which we will not disturb unless it is clearly erroneous. ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987).

ANALYSIS

Physical Placement

¶5 WISCONSIN STAT. § 767.24(5) (1999-2000)[1] requires the trial court to take into account all facts relevant to the best interests of the child when making physical placement decisions. The statute lists a number of specific criteria to be considered, including the child's interaction with each parent, the amount of time

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

the child spent with each parent during the marriage, the child's adjustment at home and school, and cooperation between the parents. ***Id.*** Here, the parties and the guardian ad litem agreed that the children had strong relationships with each parent, that both parents had actively participated in childrearing during the marriage, that the children were well-adjusted in school and in each household following the separation, and that the parents were able to cooperate with one another to promote the children's welfare. Each of these factors would support substantially equal physical placement.

¶6 Shannon and the guardian ad litem, however, argued that James' work schedule made equal placement unworkable. The dispute centered on the week each rotation during which James worked the 6 a.m. to 2 p.m. shift. James would be unable to get the children up and ready for school during this week and would be gone during the day on Saturday and Sunday. He proposed to have his mother sleep over at his house when he was on this shift, so that she would be able to get the children ready for school and baby-sit them on the weekend. The trial court rejected James' proposal, noting:

> The respondent's work schedule creates a difficult situation. Although the respondent has made reasonable efforts to jump the hurdles presented by his difficult job schedule, through the help of his mother, the children's grandmother, there are only two people who are the parents. The grandmother is not a parent.… Stability for the children is important. The children are used to one of their parents getting them ready for school. Having someone else do it when there is a parent available is not in the children's best interests. In addition, the Court is concerned as to how long the respondent's plan could work.

The trial court adopted the recommendation of the guardian ad litem, which explicitly considered each of the statutory factors, and concluded that Shannon should have primary physical placement during the school year.

¶7 James' contention that the trial court should have adopted a schedule which maximized his time with the children amounts to little more than a request for this court to give greater emphasis to the role he played in raising the children during the marriage and less emphasis to the hours which his proposal would require the children to spend with a grandparent rather than a parent. It is not our function to reweigh the relevant factors, however; that is the essence of the trial court's discretion. We are satisfied that the trial court's decision represented a reasonable application of the best interests standard to the facts presented.

Property Division

¶8 James does not challenge the trial court's determination that the parties' property was to be equally divided, but claims the trial court erred in the valuation of the marital estate. The trial court awarded James an interest[2] in eighty-nine acres of property that it valued at $73,425. This amount represented a compromise between the appraisal value of $1,797 per acre and the $1,500 per acre which James testified his brother had offered him for a portion of the land.

¶9 James contends the value of the eighty-nine acres should have been further reduced by $9,200 to take into account the capital gains taxes which he estimated he would need to pay upon selling the property. He relies upon ***Liddle*** to support his contention. In ***Liddle***, this court determined that the trial court

[2] James' brother held the remaining interest in the property.

reasonably reduced the value of certain partnerships, one of which was being used as a loss-generating tax shelter, by the estimated amount of future gains taxes which would be incurred when they were sold. ***Liddle***, 140 Wis. 2d at 135-145. We did not, however, hold that the trial court was required to make such a reduction. It is frequently the case that there may be more than one reasonable approach to determining the value of an asset, particularly ones as complex as those at issue in ***Liddle***.

¶10 Here, the trial court accepted James' testimony regarding the offer which he had received for the part of the property from his brother in order to reduce the valuation offered by the appraiser. However, the trial court noted that the proposed sale between the relatives was not necessarily an arm's length transaction, and furthermore, that James could decide not to go through with the sale after the divorce. It therefore considered the estimated capital gains taxes to be speculative in nature, and refused to adjust its valuation of the property to take them into account. This decision seems entirely reasonable, particularly since James could undertake to sell less than his entire interest to his brother in order to make the equalization payment. In short, the trial court's valuation was not clearly erroneous.

Maintenance

¶11 WISCONSIN STAT. § 767.26 lists a number of factors for a trial court to consider when determining the amount and duration of a maintenance award, including the length of the marriage, the age and health of the parties, the property division, the parties' respective educational levels and earning capacities, the contributions of one party to the education or earning power of the other, tax

consequences, and the standard of living enjoyed during the marriage. These factors

> are designed to further two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective).

LaRocque v. LaRocque, 139 Wis. 2d 23, 33, 406 N.W.2d 736 (1987).

¶12 Here, the trial court based its maintenance award primarily upon the fairness objective. It noted that Shannon had devoted a substantial amount of time to childcare and homemaking during the marriage, during which time James was able to maintain an excellent job and provide financial stability for himself. It concluded that two years would be a reasonable length of time to allow Shannon to become self-supporting, since she was just reentering the workforce on a full-time basis. Using maintenance for compensation purposes, when one spouse has been socially or economically handicapped by his or her contribution to the marriage, is entirely appropriate. ***Lundberg v. Lundberg***, 107 Wis. 2d 1, 14-15, 318 N.W.2d 918 (1982).

¶13 The trial court also took the support objective into account when setting the amount of maintenance, calculating that James had a monthly disposable income of $2,177, while Shannon had a monthly disposable income of $677. It noted that an award of $500 per month, while $250 less than required to achieve a mathematically equal division of disposable incomes, would "give Ms. Singer the basic ability to have money for her own support during this period of time."

¶14 James first claims the trial court should have included his child support payments to Shannon in her income. The trial court's methodology was proper, however, under ***Erath v. Erath***, 141 Wis. 2d 948, 953, 417 N.W.2d 407 (Ct. App. 1987), in which we held that a trial court is not required to take into account a child support obligation when determining maintenance. James next claims that the trial court should have included earned income tax credits for which Shannon would presumably qualify when it calculated her disposable income. The trial court specifically declined to do so, on a dollar for dollar basis, because it reasoned it could not project whether Shannon might be able to significantly increase her income by the end of the year. It noted, however, that awarding maintenance in the amount of $500 rather than $750 per month would also take into account the possibility that she might claim some additional tax benefits. We are satisfied that the trial court's treatment of this issue was well within its discretion.

By the Court.—Judgment affirmed.

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