

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 28, 2003

Cornelia G. Clark
Clerk of Court of Appeals

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.

**Appeal No. 03-0811-FT
STATE OF WISCONSIN**

Cir. Ct. No. 94FA000032

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

RICHARD G. BEDESSEM,

PETITIONER-APPELLANT,

v.

DONNA J. BEDESSEM,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

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

¶1 PER CURIAM. Richard Bedessem appeals¹ from a post-judgment order in a divorce case. The issue is whether the court properly supplied an essential term missing from a stipulation on maintenance. We affirm.

¶2 In a divorce post-judgment proceeding in September 1999, the parties stipulated orally to equalize their incomes by means of maintenance payments from Richard to Donna Bedessem. The stipulation was to be reduced to writing and entered as an order, but was not. Richard continued to pay maintenance at a fixed rate, but the parties have apparently not yet applied their stipulation to determine the proper maintenance amounts going back to April 1996. In other words, the parties are now attempting to settle the accounting to determine whether there has been a maintenance arrearage or overpayment for that time. As a result of that attempt, in November 2002 Donna moved for clarification of the stipulation. The only issue from that motion that is before us relates to the tax filing status that will be used for Donna in calculating the maintenance payment.

¶3 In the 1999 stipulation the parties agreed to equalize their incomes, but they also agreed to make that calculation based on certain conditions. For example, they agreed that Donna would be imputed an annual income of \$19,000, regardless whether she actually earned that much. They agreed that income Richard received as personal representative of his father's estate and certain other income that he received from that estate would not be imputed to Richard.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶4 The question about Donna's filing status arises because during the years in question her tax filing status has varied, due to her having assumed responsibilities for certain grandchildren. The parties appear to agree that during these years she has sometimes filed as head of household, with the children as dependents, and sometimes as single, without dependents. Richard now argues that in calculating maintenance Donna's actual tax filing status should be used for each year's calculation. Donna argues that calculations should be based on the imputed filing status of single for every year. The circuit court held in Donna's favor.

¶5 The stipulation, on its face, does not address the question of tax filing status, and neither of the parties is arguing that it does. Richard argues that because they did not agree to use a filing status other than what it actually was, they necessarily agreed to use the filing status that actually occurred. The problem with this argument is that the stipulation itself does not reflect any such agreement, either by specific reference to filing status, or through a more general statement of agreement that the calculations would be based on information provided in tax returns, except as otherwise stipulated. It might be reasonable to infer that such an agreement was implicit in the stipulation, but it is also possible to infer that one or both parties never considered the question at all.

¶6 Richard argues that because the parties were using a computer program to help them determine the proper maintenance amount, they are governed by case law that says the inputted data must be in accord with law. To Richard, this means that in the absence of other agreement, only actual data from actual facts can be used. We regard this case law as irrelevant. The current dispute is not about the reliability of a computer-produced figure, it is about what information should be used as a basis for the calculation, regardless of what

technology is used to actually make the calculation. Even if the parties were making the calculations by hand, the question of filing status would still have to be addressed, and the case law about computer programs would have no application.

¶7 Richard also argues that when interpreting a contract, a court cannot add terms, and when the contract is silent on an issue, the court cannot look outside the terms of the contract to interpret it. Richard is incorrect. We have held that when a stipulation is missing an essential term, the court may supply a reasonable term. *Spencer v. Spencer*, 140 Wis. 2d 447, 451-52, 410 N.W.2d 629 (Ct. App. 1987). Therefore, we turn to whether the term supplied by the court in this case was reasonable.

¶8 We conclude it is reasonable for Donna's filing status to be assumed as always single. It appears the parties agree the purpose of imputing her with \$19,000 of annual income was to acknowledge that this was her approximate earning capacity, regardless whether she chose to be more involved with the grandchildren instead of actually earning that amount of income. Because the stipulation assumes Donna will earn up to her capacity, regardless whether she earns any income at all, such an assumption reasonably carries with it the additional assumption, for purposes of calculating maintenance, that Donna opts to work rather than care for the grandchildren and, hence, file as a "single" taxpayer.

By the Court.—Order affirmed.

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

