COURT OF APPEALS
DECISION
DATED AND FILED

August 31, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-2380 **Cir. Ct. No. 02FA757**

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

IN RE THE MARRIAGE OF:

AHMAN GREEN,

PETITIONER-RESPONDENT,

V.

SHALYNN GREEN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: SUE E. BISCHEL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Shalynn Green appeals a judgment of divorce. She argues that the trial court erred as a matter of law by ordering what she claims to be inadequate child support and maintenance. She also argues the trial court erroneously exercised its discretion when it ordered an unequal property division.

She further contends that the court erroneously refused to consider her premarital contributions. The record does not support Shalynn's contentions. Because the record discloses the trial court made no error of law and reasonably exercised its discretion, we affirm the judgment.[1]

I. Background

¶2 The parties married in June 2000 and separated in March 2002. They have two children: their older daughter was born before their marriage in April 1997 and their younger daughter was born in April 2002. At the time of their May 2003 divorce, both parties were twenty-six years old, in good health and had attended college.

¶3 Before the marriage, Shalynn was employed at various times, working as a secretary, developing programs for the mentally handicapped, and working for the Gallup Poll. She attended colleges in Nebraska and in Florida, where she received an associate nursing degree in June 2000. During the marriage, she was, in her words, a "domestic engineer" and did not work outside the home. At the time of the divorce, Shalynn had returned to college part-time. She plans to obtain a bachelor's degree in criminal justice with an expected graduation date in May 2005. Her anticipated earnings will be approximately $30,000 to $40,000 a year as a probation or parole agent once she receives her bachelor's degree.

¶4 Ahman, a professional football player for the Green Bay Packers, began competing in sports when he was six years old. Throughout his youth,

[1] The details of Shalynn's arguments are set out in the opinion.

Ahman competed in a number of sports, maintained a rigorous training schedule, held a variety of jobs and achieved a high academic grade point average. After playing high school football, Ahman was awarded a full football scholarship from the University of Nebraska. In 1998, during his junior year in college, he was drafted by the Seattle Seahawks football team. In 2000, he was traded to the Packers where he earns a high income as a successful running back. The record shows that the average length of a running back's career is 2.57 years, a term Ahman has already exceeded.

¶5 The parties agreed to share joint legal custody of their two daughters and stipulated to placement issues. During the school year, Shalynn has primary placement and Ahman has short periods of placement. In the summer, Ahman has extended periods of placement. However, they contested child support. The court ordered Ahman to pay Shalynn $6,700 per month child support through May 31, 2005. Thereafter, the court ordered him to pay $5,500 per month until the older child reaches emancipation, at which time support is reduced to $4,000 per month. The court also required Ahman to provide the children's health and dental insurance.

¶6 Recognizing the uncertainty of Ahman's continued professional football career, the court ordered Ahman to fund a trust for the entire amount of child support ordered through the children's minority. Also, Ahman was ordered to provide an additional $320,000 in trust to fund the children's college educations. In addition, from 2003 to 2014, Ahman must make an annual $15,000 contribution to a separate trust fund to pay for the children's extracurricular activities, such as camps, clubs, lessons, uniforms and travel associated with school. In 2015, when their older daughter reaches majority, the trust balance

must be maintained at $10,000 annually until the younger daughter reaches majority. Both parties serve as joint trustees.

¶7 Shalynn sought $20,000 per month maintenance limited to the two-year term during which she plans to attend college to obtain her bachelor's degree. Upon consideration of the factors set out in WIS. STAT. § 767.26,[2] the court ordered Ahman to pay Shalynn $1,000 per month maintenance for twenty-four months. The court also required Ahman to pay $1,027 per month from the May 2003 trial date through the end of the lease term in August 2004 for Shalynn's Lexus automobile.

¶8 The trial court entered an unequal property division based upon the factors provided in WIS. STAT. § 767.255. The court awarded Shalynn the Nebraska residence, where she has resided since the separation, valued at $325,109. The court ordered Ahman to pay off the $231,078 mortgage balance so the property would be debt-free and Shalynn would be relieved of any mortgage obligations. The court also awarded Shalynn one-half of Ahman's National Football League pension benefit accrued for the years 2000 to 2002. As additional property division, Ahman was ordered to make payments to and on behalf of Shalynn totaling $320,000. The court found that Shalynn's share of the property division equaled $645,109.[3]

[2] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

[3] Upon stipulation, the court awarded the parties the household furnishings and jewelry in their possessions, without setting a value on the items. The court noted that the evidence at trial showed that their furniture and jewelry, although not appraised, was substantial. Shalynn states that she owns Rolex watches, two tennis bracelets, a diamond necklace, diamond earrings and a diamond ring, and spent $3,000 to purchase a bed for one of their daughter's bedrooms. The record indicates Ahman's personal property is of similar value.

¶9 Ahman was awarded the parties' home in Wisconsin, valued at $321,000, and is responsible for its associated debt. He was also awarded the home in which his parents reside in Louisiana valued at $98,500, vehicles, investments and retirement accounts. The court found that his net property division totaled $1,867,797. The court determined that Shalynn's property award represented 25.67% of the marital estate and Ahman's property reflected 74.33% of the marital estate. Additional facts will appear in the opinion.

II. Standards of Review

¶10 "The division of property, calculation of child support, and determination of maintenance in divorce actions are decisions entrusted to the discretion of the circuit court, and are not disturbed on review unless there has been an erroneous exercise of discretion." ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789.

> A discretionary determination, to be sustained, must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law. Additionally, and most importantly, a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.

Hartung v. Hartung, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶11 "Because the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions." ***Schneller v. St. Mary's Hosp. Med. Ctr.***, 155 Wis. 2d 365, 374, 455 N.W.2d 250 (Ct. App. 1990), *aff'd*, 162 Wis. 2d 296, 470 N.W.2d 873 (1991). Therefore, we must look to the record to determine whether the trial court undertook a reasonable

inquiry and examination of the facts, and the record discloses a reasonable basis for the court's determination. ***Hedtcke v. Sentry Ins. Co.***, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982) (citation omitted). In an exercise of discretion, a trial judge may reasonably reach a conclusion which another judge or another court may not reach. ***Hartung***, 102 Wis. 2d at 66.

¶12 We review questions of law de novo. ***Michael A.P. v. Solsrud***, 178 Wis. 2d 137, 148, 502 N.W.2d 918 (Ct. App. 1993). However, when reviewing the facts the trial court relied upon in reaching its discretionary decision, we do not overturn the facts found unless clearly erroneous. WIS. STAT. § 805.17(2); *see* also ***Michael A.P.***, 178 Wis. 2d at 148. Our role is to search the record for evidence to support the findings the trial court made, not for evidence to support findings the court could have but did not make. ***In re Estate of Dejmal***, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). When the trial judge is the finder of fact and there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility. ***Gehr v. Sheboygan***, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977).

III. Premarital Contributions

¶13 Shalynn claims the trial court "refused to consider, for the purpose of making an award of maintenance or property division, any testimony pertaining to Shalynn's premarital contributions" and the court's decision "runs afoul" of ***Meyer v. Meyer***, 2000 WI 132, 239 Wis. 2d 731, 620 N.W.2d 382.[4] Because

[4] In ***Meyer v. Meyer***, 2000 WI 132, ¶40, 239 Wis. 2d 731, 620 N.W.2d 382, the supreme court determined that WIS. STAT. § 767.26(9) did not restrict the circuit court's consideration of the wife's premarital contribution to the husband's medical school degree in making its maintenance determination. The ***Meyer*** case stated "these university degree-divorce decree cases are about discretionary application of the relevant statutory provisions, including § 767.26(9), and the objective of fairness and equity underlying the statutes." ***Id.***, ¶41.

Shalynn failed to preserve her legal objections for appeal and the record supports the trial court's decision, we reject her argument.

¶14 At trial, Shalynn testified at length regarding her premarital relationship with Ahman. She described her childhood in Omaha, her schooling, and her modest upbringing growing up in a single parent home. When she was a junior in high school and Ahman was a senior, they dated. After his freshman year in college, she learned she was pregnant. Shalynn decided to quit college to work full time as a secretary while living with her mother in Omaha. When five months pregnant, she moved to Lincoln where Ahman was attending college and obtained an apartment. Approximately three months later, Shalynn returned to her mother's home in Omaha. Two weeks after their daughter was born, her mother provided child care while Shalynn began working full time.

¶15 Shalynn testified that Ahman continued to live in Lincoln while attending college, when the court interjected and a lengthy exchange occurred:

> THE COURT: I am going to stop just for a moment. I could be really off the wall here and off the mark here. My understanding is if I am considering whether it be property division and whether or not to deviate from a 50/50 property division, maintenance, child support, I think the statute talks about the marriage. Not the relationship. *And while I don't want to cut you off from relevant and material information,* I don't think our Supreme Court has in any way indicated a desire or intention for me to consider premarital relationships …. If I am wrong about that –
>
> [SHALYNN'S COUNSEL]: I guess –
>
> THE COURT: Contributions made during their premarital relationships, I just don't – they want to encourage people to get married. I don't mean to be moralistic. But I think, I don't know where statutorily I am permitted to consider contributions they make premaritally. *But tell me if you think I am wrong about that.*
>
> [SHALYNN'S COUNSEL]: Well, what I am attempting to do is the *same thing* you allowed [Ahman's counsel] to do.

[Ahman] sat there this morning and told you everything about his family, *his lifestyle*, and I did not object to that. I allowed, I did not object and allowed that all *to come in for you to get a feel of this man.*

THE COURT: I didn't consider it for that reason …. I considered it for the *purpose of determining the level of support the children would have enjoyed had the parties stayed married and the type of lifestyle she would have enjoyed had they stayed married.* I didn't consider it for any purpose other than that. Not who contributed what prior to the marriage or what kind of, if he is a nice guy or not a nice guy or a hard worker or not a hard worker. It seemed to me it went to that analysis. That's what I was hearing it for.

[SHALYNN'S COUNSEL]: How can –

[AHMAN'S COUNSEL]: That is why I offered it.

[SHALYNN'S COUNSEL]: How his parents raised him and the morals, how does that –

[AHMAN'S COUNSEL]: No –

[SHALYNN'S COUNSEL]: How does that go to anything?

[THE COURT]: Stop. I would certainly like to hear from her about those same issues. You know, *the kind of lifestyle the children would have enjoyed had they stayed married, the kind of values she has for the children*. For that purpose. And I am not going to certainly deprive her of telling me more about the way she was raised. But if the point of it is to convince me that she made contributions to a relationship, and therefore, should be entitled to maintenance or therefore be entitled to an equal property division because of a contribution she made to a relationship premaritally, I won't consider it for that purpose. … But I don't think this is relevant or material whether I, whether I approve, whether I think she was a good person and certainly did a lot of things premaritally. She can convince me that she was just a wonderful partner. But I don't think I can consider it, unless it's for those limited purposes. So why don't you go ahead. … *Unless you think I am wrong on the law. If you think I am wrong on the law and that I can consider it for purposes of property division and maintenance, you can tell me that.*

[SHALYNN'S COUNSEL]: Well, I just think that *she should be afforded a fair, equal footing*, since [Ahman] sat there for a good 30 minutes talking about his college and his parents and his –

> [THE COURT]: And I just told you, … *I am going to afford her that*. … I am not going to be swayed in any way by who's good or bad or anything else. *I am going to listen to it from her for the same purpose for which I listened to it from him, which is as it goes to the style of life they might have maintained and what the children might have had for child support*. … If you want to offer it for those purposes, please go ahead. I draw no conclusions from what he told me about his upbringing. I consider it only for those limited purposes. Please go ahead ….
>
> [SHALYNN'S COUNSEL]: *Okay*. Where were we? (Emphasis added.)

¶16 As the record reflects, despite the court's repeated requests, Shalynn offered no legal theory or authority for admitting evidence of premarital contributions for other than the reasons Ahman offered it—to prove lifestyle. When the court indicated it would accept the evidence for the purposes of determining "the style of life they might have maintained," Shalynn's counsel acquiesced, stating, "Okay." Although the court gave Shalynn's counsel several opportunities to provide authority or an alternative legal theory to consider premarital contributions, Shalynn's counsel did not do so.

¶17 At closing arguments, the court again raised the question of the relevancy of the parties' premarital relationship. The court reminded the parties that during the trial, it requested Shalynn to provide a legal theory to support the consideration of contributions to the premarital relationship. She had provided none. Nonetheless, the court independently came across ***Ulrich v. Zemke***, 2002 WI App 246, 258 Wis. 2d 180, 654 N.W.2d 458, involving the theory of unjust enrichment in an out-of-wedlock relationship. The court explained:

> I remember at the time I said to [Shalynn's counsel] if you think I don't know what the law is or I am missing some legal theory here, *you should tell me*. And I didn't hear anything about unjust enrichment. But I just wanted to be

> sure I hadn't erred by not allowing that testimony in. And after reading the case, I don't think I did.
>
> ….
>
> And I don't know that that same principle [of unjust enrichment] applies for purposes of a divorce where issues are maintenance and child support or even property division. I am not sure.
>
> ….
>
> But I don't see that it would apply to the facts of this case in any event. They seem to me to be very dissimilar. (Emphasis added.)

¶18 The court reviewed its notes and proceeded to make the following findings regarding the parties' premarital relationship:

> I wanted to be sure I had a pretty good understanding of the nature of this relationship between the Greens. … [T]hey met when she was a junior in high school and he was a senior. And then he went off to college in Lincoln [and] lived in the dorms as a freshman. She would have been finishing her senior year of high school.[5] His sophomore and senior years he lived with his parents off campus. [His parents] had moved to Lincoln. … [Shalynn] became pregnant I believe the summer of '96, which would have been the summer before [Ahman's] sophomore year …. And then [Ahman] was visiting her at her mother's home. She lived with her mother and brother in Omaha. And he was visiting her there with some regularity. And I think this is her version of the facts, not his even. But they agreed that she would move in with him in Lincoln when she was about five months pregnant. She got an apartment. There is obviously a dispute as to how much time he spent with her and how much time he spent with his parents. But clearly, she moved to Lincoln, got an apartment, and he spent some time there, perhaps even a significant amount of time. … And then she moved back in with her mother when she was eight months pregnant. So, she was there about three months.

[5] The record shows Shalynn attended high school in Omaha.

¶19 The court also found that when Shalynn realized she was pregnant, she quit her first semester at a community college and worked full time. The court found:

> Then [Ahman] came out of college a year early and was drafted by Seattle in April of '98. And then he went to California … for some sort of training. And she was there for a short time. I think about three months again. And then back to Omaha. And then they were apart apparently for a fairly long stretch of time.

The court found that Shalynn relocated to Florida and obtained a nursing degree. The parties began discussing marriage in the fall of 1999 and were married in Florida in June 2000.

¶20 The court described their premarital relationship this way:

> But this was a, for lack of a better term, by any account, a pretty turbulent relationship. It was back and forth, in and out, ups and downs.
>
> ….
>
> I just don't think this is the sort of relationship that's described in the ***Ulrich*** case. … I am not saying [Shalynn] didn't work hard when she quit the community college and she worked full-time. I expect she did. I am not saying she didn't work hard for several years. But this wasn't a situation where they were equally contributing to the marital estate.

¶21 The court was not convinced that ***Ulrich*** applied to divorce, but in any event found there was "no dispute that the vast bulk of this substantial marital estate comes from [Ahman's] earnings." The court concluded "this wouldn't be a case where unjust enrichment would come into play." The court permitted the parties to proceed to arguments. Neither party offered objection or comment

regarding the court's findings of fact and conclusions of law. No legal theory, authority or objection was offered.

¶22 We conclude Shalynn failed to preserve for appellate review her argument that the court erred by failing to consider premarital contributions. Because Shalynn never brought to the court's attention her legal theory that under ***Meyer***, premarital contributions may be considered for maintenance and property division, Ahman was never given an opportunity to respond. In addition, the trial court was never given an opportunity to consider the argument and make a ruling that this court could review. *See* ***State v. Rogers***, 196 Wis. 2d 817, 829 n.5, 539 N.W.2d 897 (Ct. App. 1995). he trial court cannot be faulted for failing to apply a legal theory it was never asked to consider. "We will not, however, blindside trial courts with reversals based on theories which did not originate in their forum." ***Id.*** at 827. "[T]he appellant [must] articulate each of its theories to the trial court to preserve its right to appeal." ***Id.*** at 829. Raising issues at the trial level allows the trial court to correct or avoid the alleged error in the first place, eliminating the need for appeal. ***State v. Huebner***, 2000 WI 59, ¶12, 235 Wis. 2d 486, 611 N.W.2d 727.

¶23 This rule is "not merely a technicality or a rule of convenience; it is an essential principle of the orderly administration of justice." ***Id.***, ¶11. "The rule promotes both efficiency and fairness, and 'go[es] to the heart of the common law tradition and the adversary system.'" ***Id.*** (quoting ***State v. Caban***, 210 Wis. 2d 597, 604-05, 563 N.W.2d 501 (1997)). The rule serves several important objectives:

> Raising issues at the trial court level allows the trial court to correct or avoid the alleged error in the first place, eliminating the need for appeal. It also gives both parties

> and the trial judge notice of the issue and a fair opportunity to address the objection. Furthermore, the waiver rule encourages attorneys to diligently prepare for and conduct trials. Finally, the rule prevents attorneys from "sandbagging" errors, or failing to object to an error for strategic reasons and later claiming that the error is grounds for reversal.

Huebner, 235 Wis. 2d 486, ¶12 (citations omitted). This rule is essential to the efficient and fair conduct of our adversary system of justice. ***Id.*** The record establishes that Shalynn did not preserve for appellate review her argument that the trial court erred as a matter of law by failing to consider evidence of her premarital contributions in light of ***Meyer***.

¶24 In her reply brief, Shalynn claims that the "circuit court considered at length the relevance of Shalynn's premarital contributions" and she should not now be precluded from making new or additional arguments relating to the issue, "since the circuit court has already raised and considered the issue." She argues that her "counsel repeatedly argued that the court's refusal to allow Shalynn to develop her testimony regarding her premarital contributions was inequitable to Shalynn" and "[t]his argument encapsulates the essence of Shalynn's argument on appeal that the circuit court erroneously exercised its discretion in refusing to consider Shalynn's premarital contributions." Shalynn claims she "objected repeatedly to the court's refusal to consider her premarital contributions," though she did not cite specific authority for her position.[6]

[6] Shalynn cites no record reference for this assertion. ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (A party who appeals has the burden to establish "by reference to the record, that the issue was raised before the circuit court.").

¶25 Her arguments are not borne out by the record. The parties agreed with the trial court that evidence of the parties' premarital relationship was to be admitted only for the purpose of proving the lifestyle the parties would have maintained had their marriage not ended. Shalynn's repeated failure to respond to the trial court's request for legal authority does not preserve a claim that the court failed to adequately consider such legal authority. To reverse the trial court because it decided not to consider the evidence for purposes other than those agreed upon by counsel would "blindside" the court with a theory not originating in its forum. *See* ***Rogers***, 196 Wis. 2d at 827.

¶26 Shalynn concedes the general rule that an issue not raised at trial cannot be argued on appeal, but relies on ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), to argue that the issue is merely one of law, not fact, and therefore we should address it. However, embedded in Shalynn's claim that the court legally erred by refusing to consider her premarital contributions is a series of disputed factual contentions, not labeled as separate issues. *See* WIS. STAT. RULE 809.19(1)(e). Therefore, her argument itself demonstrates it is not merely one of law, but includes issues of fact. Thus, the issue of premarital contributions is properly addressed to trial court discretion, which must be exercised on the basis of the facts of record and appropriate law. *See* ***Meyer***, 239 Wis. 2d 731, ¶¶15-16, 43. Because it is not solely a question of law, we do not address it for the first time on appeal.

¶27 Additionally, the facts Shalynn alleges lack record support and in several respects conflict with the court's express and implied findings.[7] *See* WIS. STAT. § 805.17(2). For example, Shalynn argues that "both before and during the marriage," she made many sacrifices to enhance Ahman's career, claiming, "because the family relocated so frequently to accommodate Ahman's career, Shalynn repeatedly dropped out of school or left full-time jobs so that her family could remain intact." Ahman disagrees with her assertions. As the trial court found, the parties' relationship was "by any account, a pretty turbulent relationship. It was back and forth, in and out, ups and downs." Accordingly, the court was entitled to find that a number of Shalynn's moves were due to the turbulent, back and forth nature of the parties' relationship. This finding may be implied from the findings the court actually made. *See* ***Englewood Apts. P'ship v. Grant & Co.***, 119 Wis. 2d 34, 39 n.3, 349 N.W.2d 716 (Ct. App. 1984). The record does not establish that Shalynn moved to enhance Ahman's career.

¶28 Further, the record contradicts Shalynn's claim that she dropped out of college repeatedly. Shalynn testified that she left college in 1996, when she lived in Omaha with her mother and learned she was pregnant. After she returned to college to earn an associate nursing degree in Florida, she points to no evidence she left college a second time. Thus, the record shows she left college once, but returned to earn a degree. Also, although the record may permit the inference that Shalynn left full-time jobs, it does not explain her reasons for leaving. There is no

[7] On appeal, Shalynn does not specifically challenge the court's findings of fact. ***Reiman Assocs., Inc. v. R/A Adv., Inc***., 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981) (issues not briefed are deemed abandoned).

evidence that Shalynn's earning capacity was impaired by her decisions. Shalynn's assertions are simply unsupported.

¶29 Next, Shalynn contends that she provided "virtually all of the day-to-day care" for their daughter "both during the three years prior to the marriage and during the marriage." Ahman disputes this contention. At trial, Shalynn testified that two weeks after the birth of their older daughter, her mother provided child care while Shalynn worked full time. Ahman testified that both he and Shalynn cared for their daughter before their marriage when they lived together in Seattle and during the marriage. The court found that Ahman was very involved in parenting during evenings, weekends and the lengthy off-season. Ahman also paid for baby-sitters, day care and cleaning help. At the time of trial, the children were in full-time day care, so that Shalynn could attend college. Shalynn's contention that she provided "virtually all" of the child care is at best an inference she seeks this court to draw.[8] However, we must accept the reasonable inferences drawn by the trial court. WIS. STAT. 805.17(2).

¶30 Shalynn further argues, "[s]he also provided most of the financial support for the family while Ahman was in college." Ahman disagrees. When Ahman was a college freshman, Shalynn was a high school senior. The parties were unmarried, living in separate cities. There is no evidence that Shalynn made any contribution to Ahman.[9] During his sophomore and junior years, Ahman's

[8] "A lawyer must distinguish a fact from an inference he seeks to press on the court." ***Skycom Corp. v. Telstar Corp.***, 813 F.2d 810, 819 (7th Cir. 1987).

[9] Ahman testified that due to his full scholarship, "The University of Nebraska fed, clothed us, and gave us a bed my freshman year to lay my head on."

parents, who moved from Omaha to Lincoln, provided him a home. Ahman received scholarship funds and a monthly stipend from the university.

¶31 For approximately three months during Ahman's sophomore year, Shalynn lived in Lincoln. She claimed that he lived with her the majority of the time. Ahman testified, however, he lived with his parents "95%" of the time. The court found that Ahman stayed with Shalynn "part-time" during these three months. Thereafter, he lived with his parents. Thus, except for a part-time three-month period, the parties lived in separate cities during Ahman's college years and there is no evidence that Shalynn provided "most of the financial support" for Ahman.

¶32 In addition, Ahman sent Shalynn $100 to $150 per month from his college stipend to support their daughter. Consistent with his testimony, the court could find that both families asked what was needed and helped out. His family provided clothing and diapers. The record fails to disclose the expenses needed to support the child and the court never found that Shalynn provided "most of the financial support." Although Shalynn claims that she "received no support from Ahman during this period,"[10] her record citation lacks support for this contention. *See* WIS. STAT. RULE 809.19(1). The trial court's findings to the contrary are never specifically challenged on appeal.

¶33 Shalynn also claims that her "wages supported herself and Ahman" and "Ahman was unemployed and could not afford an apartment." Apparently,

[10] Shalynn concedes that before their marriage, Ahman supported her and their daughter while living in Seattle before she moved to Florida. She refers to Ahman's testimony that both of them cared for their daughter during this time frame, and that he supported the three of them.

Shalynn is referring to her three-month stay in Lincoln during Ahman's sophomore year when he lived part-time with Shalynn and the two shared food she purchased. It is undisputed, however, that Ahman, who was on a full scholarship, had a home with his parents. There is no indication that together with the housing provided by his parents, his scholarship funds were insufficient.[11] Shalynn's claim that her wages "supported … Ahman" lacks record support.

¶34 Shalynn, nonetheless, claims that she "sacrificed her education and future earning capacity" in order to work full time so that Ahman would not have to quit school and work while playing football, claiming that without her efforts, Ahman would have "likely been forced to abandon his football career" to support their daughter. Ahman disputes her claim. The record demonstrates that education and employment are not incompatible with providing care for one's child. In April 1997, when their daughter was born, Shalynn had a home with her mother. The record shows that Shalynn worked and obtained a nursing degree. Ahman, who was nearing the end of his sophomore year, also lived with his parents until he was drafted into professional football. The record provides no suggestion that Ahman would have had to quit college and football because he would not have been able to arrange child care.

¶35 Shalynn argues, nonetheless, that like the wife in ***Meyer***, she made these sacrifices believing she would share in the marital partnership's good fortune. However, her analogy to ***Meyer*** is not preserved for review. Also, Shalynn neglects the distinctions between the facts of record and those in ***Meyer***.

[11] Shalynn refers to Ahman's testimony that his scholarship was insufficient to provide off-campus housing. Because his parents provided off-campus housing for Ahman, the testimony on which she relies does not support her argument.

She omits reference to any testimony regarding her beliefs or expectations during the parties' "turbulent" relationship. In large part, the Greens resided in different cities during their premarital relationship. Although they had a daughter in 1997, they did not become engaged until November of 1999 and were married the following June, approximately seven months later. Shalynn points to nothing in the record to suggest what expectations she may have had prior to their brief period of engagement.

¶36 Shalynn also claims that she deferred her dream of completing her criminal justice degree. She neglects to mention, however, that she obtained a nursing degree and provides no explanation why she chose to obtain a nursing degree rather than a criminal justice degree. The record fails to demonstrate that moving or interrupting her studies impaired Shalynn's earning capacity or enhanced Ahman's career.

¶37 The argument sections of Shalynn's brief also contain inaccuracies. For example, she contends that "[t]he record in this case demonstrates that Shalynn made significant premarital contributions over a period of four years that enabled Ahman to concentrate on his career as a professional football player." In support of this claim she asserts that the parties "agreed that Shalynn would withdraw from school and work to support their family," citing to "R. 38 at 174-175."[12] Without recounting each line of testimony on those two pages, it is sufficient to observe that the pages cited contain no testimony regarding any agreement that Shalynn would withdraw from school and work to support their

[12] Record 38 is the court's opinion, which contains only fifty-seven pages. Consequently, we interpret Shalynn's citation to be to the trial transcript, Record 39.

family. Our review of the entire transcript fails to reveal any testimony to this effect. As we previously discussed, the record indicates that Ahman's scholarship and his parents provided Ahman's support while in college, and allowed Ahman to contribute to their daughter's support.

¶38 Many facts Shalynn alleges contradict facts specifically or implicitly found by the court and lack support in the record. *See* ***Englewood***, 119 Wis. 2d at 39, n.3. The court recognized that Shalynn contributed to the short-term marriage in terms of homemaking and child care and, therefore, a fair financial arrangement must appropriately compensate her for those contributions. The court determined, nonetheless, that Shalynn was not disadvantaged but was benefited by the short marriage; that her earning capacity was not harmed by her nursing degree and being a homemaker during the short marriage and that Ahman and his family contributed to raising the parties' daughter. It also found that Ahman's multi-million dollar income largely reflects his rigorous training, his efforts and his natural abilities that he brought to the marriage. We conclude that Shalynn's factual assertions, on which her argument is based, lack record support. Therefore, we decline to apply ***Wirth*** to review an issue addressed to trial court discretion.

IV. Child Support

¶39 Shalynn argues that the trial court erred as a matter of law by awarding inadequate child support to maintain the children at the standard of living they would have enjoyed had the marriage continued. She argues that the trial court deviated dramatically from the percentage standard established in WIS. ADMIN. CODE § DWD 40.03(1)(b) of 25% for two children. Because the record

reveals no error of law and that the trial court properly exercised its discretion, we reject her argument.

¶40 Absent a showing of unfairness, the court must determine a parent's child support obligation by using percentage standards. ***Grohmann v. Grohmann***, 189 Wis. 2d 532, 536, 525 N.W.2d 261 (1995).

> [T]hese percentage standards are an evidentiary shortcut for establishing the need of the child for support. The standards [establish] the cost of maintaining a child as an equivalent to that percentage of the family income and disposable assets that a parent shares with children in his or her custody.

Luciani v. Montemurro-Luciani, 199 Wis. 2d 280, 294-95, 544 N.W.2d 561 (1996) (quoting ***Weidner v. W.G.N.***, 131 Wis. 2d 301, 318, 388 N.W.2d 615 (1986)).

¶41 However, "it is reasonable to refuse to apply guidelines based on statistical generalities when the facts before the court bear little relationship to a statistical norm." ***Parrett v. Parrett***, 146 Wis. 2d 830, 842, 432 N.W.2d 664 (Ct. App. 1988). To deviate from the presumptive percentage standards, a party has the burden of demonstrating by the greater weight of credible evidence that their application would be unfair to the children or either of the parties. WIS. STAT. § 767.25(1m). In making its decision whether to deviate from the percentage standards, a court must consider the factors set forth in WIS. STAT. § 767.25(1n) and articulate a basis for its decision.[13]

[13] WISCONSIN STAT. §§ 767.25(1m) and (1n) provide:

(continued)

(1m) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1j) if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

(a) The financial resources of the child.

(b) The financial resources of both parents.

(bj) Maintenance received by either party.

(bp) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC § 9902 (2).

(bz) The needs of any person, other than the child, whom either party is legally obligated to support.

(c) If the parties were married, the standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.

(d) The desirability that the custodian remain in the home as a full-time parent.

(e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

(ej) The award of substantial periods of physical placement to both parents.

(em) Extraordinary travel expenses incurred in exercising the right to periods of physical placement under s. 767.24.

(f) The physical, mental and emotional health needs of the child, including any costs for health insurance as provided for under sub. (4m).

(g) The child's educational needs.

(h) The tax consequences to each party.

(hm) The best interests of the child.

(hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.

(continued)

¶42 The record shows that the trial court reasonably exercised its discretion when it deviated from the percentage standards in setting child support. Our analysis begins with an examination of the trial court's decision. The court first considered WIS. STAT. § 767.25(1m)(a) and (b), the financial resources of the parties and children. It found that Ahman's current salary "significantly exceeds what he made in his early years in professional football." In 1998, Ahman's contract was for $144,000 per year. In 1999, it was for $180,000. In 2000, his salary increased to $216,000. In July 2001, Ahman negotiated a contract with the Green Bay Packers that provided a $418,000 salary for 2001, $1,150,000 for 2002, $2,800,000 for 2003 and $3,632,000 for 2004. In 2005, Ahman's contract salary will be $4,375,000.

¶43 In addition to salary, Ahman receives bonuses and additional income from marketing arrangements. In 1999, Ahman's gross earnings were $237,803. In 2000, his gross earnings increased to $420,968. In 2001, Ahman's gross earnings exceeded $4,000,000. However, as the court found, the NFL has no guaranteed contracts. As a result, if a player is injured and unable to play, the team is obligated to pay the player for the remainder of the contract year and no more than $150,000 the following year.

> (i) Any other factors which the court in each case determines are relevant.
>
> **(1n)** If the court finds under sub. (1m) that use of the percentage standard is unfair to the child or the requesting party, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.

¶44 The court also considered earning capacity. *See* WIS. STAT. § 767.25(1m)(hs). The court found that when Shalynn graduates from college in 2005, her anticipated earning capacity will be between $30,000 and $40,000 annually. The court found that Ahman's future earnings were somewhat speculative. Of the approximately one million high school football players in any given year, just 150 may be expected to play professionally for four years. The average length of a running back's career is 2.57 years, a time span that Ahman has already exceeded. The court commented that Ahman's income is not guaranteed and "[n]one of us knows if [Ahman] is going to collect on each of those contracts or whether he might be injured and receive a very small portion of … them." As a result of the uncertainty of Ahman's future earnings, the court structured the child support order to include two trusts to fund the children's college and extracurricular activities. In addition, the court ordered a third trust to fund Ahman's entire child support obligation through the children's minority.

¶45 Next, the court considered at length the standard of living that the children would have enjoyed had the marriage not ended in divorce. *See* WIS. STAT. § 767.25(1m)(c). The court acknowledged that the parties' dispute focused on this factor, as well as the children's best interests, WIS. STAT. § 767.25(1m)(hm). The court recognized that the children's standard of living would not be "capped" at divorce, but would "accommodate a parent's subsequent financial prosperity or adversity."

¶46 The court considered the parties' testimony concerning their lifestyles and expenses. The court found that with the exception of 2001, when Ahman received a number of bonuses, the parties did not live extravagantly. That year the parties made a number of purchases and took some trips. However, the court found credible Ahman's testimony, as well as that of his agent, that Ahman

has attempted to set aside a significant portion of his earnings for the days when he will no longer be earning a substantial income. The agent stated that Ahman was in the top one percent of his clients in terms of how he managed his money. The court noted: "[I]t was [the agent's] opinion that [Ahman] was living a fairly frugal life considering the monies that he had earned and might expect to earn if he is not injured."

¶47 The court referred to Ahman's testimony regarding his modest upbringing and that he wanted to transmit his work ethic to his children. He did not desire to spoil or overindulge them. Ahman wanted to teach them "that hard work pays off … [t]hat you don't live beyond your means … [t]hat you work hard at school and perhaps at sports and you earn your rewards." Ahman testified that during the marriage, household expenses generally ranged from $5,000 to $7,000 per month. This figure included mortgage payments, car payments, food, clothing, baby-sitters and entertainment. At trial, Ahman testified that his monthly expenses were $5,727. This included a $1,500 mortgage payment, Shalynn's $1,027 Lexus payment and a $670 monthly travel expense to visit the children.

¶48 The court also considered Shalynn's testimony that it described as "a bit of an indulgent lifestyle for the little ones," including a Barbie doll collection, many toys, a TV, VCR, and DVD player, designer clothes, weekly trips to the hair salon, and two vacations a year. In addition, the children had gymnastic lessons, ballet classes and private educations. Nonetheless, the court found that to maintain this lifestyle, including trips to the hair salon and private schooling, application of the percentage standards was unnecessary.

¶49 Shalynn submitted a financial disclosure statement at trial claiming monthly expenses for herself and the children of $18,819.65. The court expressed

its disbelief regarding Shalynn's expenses, stating: "I truthfully could not find her budget to be very credible." The court determined that her budget submitted at trial "exceeded budgets that she had submitted for the purposes of a temporary order hearing by several thousand dollars."

¶50 The court examined each item of Shalynn's proposed budget and analyzed the testimony and exhibits submitted at trial. It found certain items listed were unreasonable and unnecessary to maintain the children at the same standard had the marriage continued. For example, the court found a monthly clothing expense of $2,500 was excessive. Based upon the testimony and exhibits regarding clothing expenses, the court found that a $300 per month clothing allowance would keep the children attired at the standard they would have enjoyed had the marriage continued.[14]

¶51 Additionally, the court ordered Ahman to pay in full the mortgage on the Omaha home where Shalynn lived, eliminating her $1,935.56 monthly mortgage expense. Thus, the children would remain living in a home at a standard they would have enjoyed had the marriage continued. Because it was a new home, the court adjusted monthly home repair expenses to $100, eliminating $2,600 listed for repairs, marked "one time expense."

¶52 Also, the court also noted that Shalynn did not express a desire to be a full-time stay-at-home parent, but attended college part-time and planned to

[14] The trial court disbelieved Shalynn's testimony that the children wear only designer clothing. The court stated: "While [Shalynn] testified that they wear only designer clothes, she also testified that she shops at Old Navy. ... I have seen receipts. That is really quite inexpensive clothing. There are receipts here for Burlington Factory outlet for outerwear. That's really quite inexpensive. There are a lot of receipts for Wal-Mart, J.C. Penney's."

work full time upon her graduation. *See* WIS. STAT. § 767.25(1m)(e). Therefore, the court found reasonable $1,075 per month for full-time day care and after-school care. In doing so, however, the court reduced an additional baby-sitter expense from $400 to $300 per month.

¶53 Based on the parties' testimony, the court found that $100 per month for toys, $50 a month to buy gifts for others and $200 per month for entertainment expenses were sufficient for the children to enjoy the same standard of living they would have had the marriage continued. After adjusting a number of other items, the court determined that household expenditures in the sum of $6,680 would support the children at a standard of living that they would have enjoyed had the marriage not ended in divorce.[15]

¶54 In assessing the credibility of Shalynn's proposed budget, the court referred to "problems with the missing carbons" of check registers Shalynn provided during discovery. The court was concerned about the "substantial testimony" regarding missing carbons from packets of checks that Ahman had subpoenaed for deposition. The court found that there were eleven carbon copies

[15] Other adjustments the court made included its finding that $450 per month hair care was excessive, and allowing $200 per month for the two children. The court disallowed a phone expense of $500 per month and allowed $350 per month. The court found that dry cleaning and laundry expenses of $400 per month for two children were excessive and reduced that expense to $200 per month. The court found that the children's necessary life insurance cost $197 per month. The court disallowed an item marked "attorney fees $3,000 until [paid] in full." The court also found that snow removal and lawn care of $500 was excessive, reducing that item to $110 per month. The court found that the evidence did not support a need for $546.10 per month cleaning service, but permitted $430 per month. Due to the cleaning service, the court found that Shalynn's proposed cleaning supplies of $100 per month were overstated and reduced them to $50 per month. The court found that the children's $200 per month church donation could reasonably be reduced to $100 per month. The court allowed an $850 per month lease payment for a Ford Expedition vehicle, though questioning its reasonableness in view of the leased Lexus that was available for transportation. The court increased Shalynn's proposed monthly utility expense, from $150 to $255 per month.

of checks missing, all of them made out to Shalynn's boyfriend or to Shalynn's mother. The checks ranged from $465 to $2,500.[16] The court concluded these missing check carbons represented funds Shalynn derived from child support monies paid under the temporary order and shared with others.

¶55 The court found:

> I am satisfied that she has used child support monies for her boyfriend and for her mother. They are not exorbitant, but I think the evidence is clear that she has spent several thousand dollars on each of them. And that she is aware that it should not have been done with child support monies, because I do believe that she attempted to hide the evidence of that with the missing carbons.

¶56 Next, the court considered that the children had no extraordinary physical, mental or emotional health needs. *See* WIS. STAT. § 767.25(1m)(f). The court found that while they had no special educational needs, the parties planned for the children to attend private schools and that its child support order would accommodate private education. *See* WIS. STAT. § 767.25(1m)(g). The court recognized that Ahman would be expending money for their support when the children live with him during his extended periods of physical placement.[17] *See* WIS. STAT. § 767.25(1m)(ej). Additionally, the court considered the extraordinary travel expenses that Ahman will incur traveling from Green Bay to Omaha to exercise rights to periods of physical placement. *See* WIS. STAT. § 767.25(1m)(em).

[16] The memo section of the various checks were marked "personal," "car," "for my loving mother" and "for my loving boyfriend."

[17] Ahman's support obligation will not be reduced during that time.

¶57 Applying the percentage standards to Ahman's 2003 salary of $2,800,000, the court found, results in a child support order of $58,333 per month. *See* WIS. STAT. § 767.25(1n). The court noted that under the temporary order, Shalynn had received $25,880 per month, but was not spending this amount of money every month.[18] Based on the parties' testimony regarding their lifestyle, the court found that there was no proof that the parties would spend anything close to $20,000 to $30,000 a month on their children had their marriage not ended.

¶58 The court also found that the application of the percentage standards, *see* WIS. STAT. § 767.25(1m)(hm), was contrary to the children's best interests, explaining,

> I think it would be contrary to the best interests of most any child to have that sort of money spent on them; because you are inviting a situation where children do not learn that they some day need to be self-reliant and self-sufficient. And they do not learn to work to achieve success and to earn money so that they can take care of themselves some day. This kind of money being spent on children I think would in fact cause them to be overly indulged and overly concerned about monetary possessions.

¶59 The court concluded that Ahman met his burden to show that the application of the percentage standards would be unfair. The court found that the percentage standards would result in a tremendous windfall to Shalynn in the guise of child support. The court determined that excessive child support "would be contrary to [the children's] best interests and their growing into responsible adults, and constitute maintenance." The court concluded that the amount ordered "is

[18] Upon stipulation, under the temporary order Shalynn was required to invest portions of the child support in a money market account. Shalynn did not fully comply with the order.

clearly sufficient to meet these children's not only basic needs, but the type of needs that they would have had and the lifestyle that they would have enjoyed had the parties stayed married." The court considered that Shalynn will also benefit from child support because it calculated sufficient child support to pay household and transportation expenses for a family of three.

¶60 The trial court also concluded that Shalynn bears some responsibility for the support of the children.[19] The court considered that in May 2005, Shalynn would have two college degrees, one in nursing and one in criminal justice, and she anticipates becoming employed full time at an annual salary of $30,000 to $40,000. The court noted following the reduction, the youngest child would soon be entering school, substantially reducing the full-time day care expense. Consequently, the court concluded that in May 2005, Ahman's child support obligation should be reduced from $6,700 to $5,500 per month, without lowering the children's standard of living. In 2015, when the older daughter reaches the age of majority, the support order would be reduced to $4,000 per month.

¶61 We conclude the trial court properly exercised its discretion deviating from the percentage standards and setting child support. Shalynn does not challenge the court's findings of fact with respect to the parties' expenditures and our review of the record reveals no basis for doing so. The court scrutinized the testimony and exhibits and made detailed fact-findings regarding the parties' financial resources, lifestyles, and expenses. The record supports the court's finding that there was no proof that the parties would spend anything close to $20,000 to $30,000 a month on their children had their marriage continued. The

[19] Shalynn does not challenge this conclusion.

court reasonably concluded that because it was faced with an incredible budget proposed by Shalynn, it needed to impose common sense.

¶62 As required, the court carefully considered the relevant statutory factors before it decided to deviate from the percentage standard. *See* WIS. STAT. § 767.25(1n). The court considered each factor individually and at length. *See* ***Mary L.O. v. Tommy R.B.***, 199 Wis. 2d 186, 195, 544 N.W.2d 417 (1996). The court balanced the children's welfare against any potential unfairness to either party. *See* ***Hubert v. Hubert***, 159 Wis. 2d 803, 815, 465 N.W.2d 252 (Ct. App. 1990). The court recognized that the children are entitled to live at the same standard they would have enjoyed had the marriage continued. *See* WIS. STAT. § 767.25(1m)(c).

¶63 The court was determined to structure child support to allow the children to continue their lifestyle substantially unchanged from what they would have enjoyed had the marriage not ended, and the record demonstrates the court succeeded. *See* ***id.*** Its decision allows that when in Shalynn's care, the children will remain living in a similar, if not larger, furnished home than they had before the parties separated.[20] They will attend private schools. They will have generous amounts for clothing, toys, gifts, entertainment and trips to the hair salon. They will have substantial trusts available to fund the child support, extracurricular activities and college expenses. The record supports the trial court's finding that household expenditures in the sum of $6,680, along with the $320,000 college trust fund and the $15,000 annual extracurricular activities trust fund, will support

[20] The court found that the testimony at trial indicated the Nebraska home was larger than the Wisconsin home.

the children at a standard of living that they would have enjoyed had the marriage not ended in divorce.

¶64 The record discloses a rational basis for the child support order. The application of the 25% child support standard to Ahman's 2003 salary of $2,800,000 would result in a child support order of $58,333 per month. The record establishes that this is a case "where the parties have a substantial marital estate and income far beyond the average income of most people" and "the robotistic utilization of the percentage standards" give absurd results. ***Hubert***, 159 Wis. 2d at 814.

¶65 The record also supports the court's conclusion that the use of the percentage standard was unfair to Ahman, because it would result in a windfall to Shalynn. *See* ***Ayres v. Ayres***, 230 Wis. 2d 431, 442-44, 602 N.W.2d 132 (Ct. App. 1999). Its finding that Shalynn shared excess support money with her boyfriend and mother, spending several thousand dollars on each of them, is unchallenged. The court correctly applied WIS. STAT. § 767.25(1n), explaining on the record the amount of support that would be required by using the percentage standard and the amount reasonably needed to meet the support objectives under WIS. STAT. § 767.25(1m). Because the court explained its reasons for finding that use of the percentage standard was unfair to Ahman, its reasons for the amount of the modification and the basis for the modification, the court made no error of law and correctly exercised its discretion.

¶66 Shalynn claims, however, "Nothing in the record suggests that such a drastic limitation on the children's entitlements is necessary to achieve fairness to Ahman." First, for reasons the court carefully explained, the support ordered does not limit the children's entitlements. It permits the children to live at the

standard they would have enjoyed had the marriage not ended. *See* WIS. STAT. § 767.25(1m)(c). Second, the court determined that the enormous sums of money requested was opposed to the children's best interests, *see* WIS. STAT. § 767.25(1m)(hm), and would not be used for the children's benefit. The record supports the court's decision to deviate from the percentage standard because fairness to Ahman requires ample, but not excessive, child support obligations.

¶67 Shalynn further argues that a child support order of only 2.8% of Ahman's current income is inadequate as a matter of law. We are unpersuaded. Where the record supports the trial court's deviation from percentage standards, the law does not mandate a minimum percentage to which the court must adhere. When an extraordinarily high income is involved, as here, a small percentage may be more than sufficient to provide ample child support. Shalynn's argument identifies no error of law. Also, Shalynn fails to identify any fact of record to support a conclusion that the child support award is inadequate to meet the objectives of WIS. STAT. § 767.25.

¶68 Shalynn also complains that the $15,000 annually in trust to fund the extracurricular activities and the $320,000 college trust are "nominal" and insufficient to overcome the inadequacy of child support. The trial court found that $15,000 per year was sufficient to fund the children's extracurricular activities and $320,000 in trust would appreciate over time and allow each child "to attend four years of college at some of the most expensive and private schools in the country." Shalynn points to no facts demonstrating why the trusts are inadequate. She fails to identify what expenses would not be covered by the child support and

trust fund amounts ordered. Because her argument finds no support in the record, it must be rejected.[21]

¶69 Shalynn criticizes the trial court for erroneously characterizing Ahman's testimony and stating that the parties lived on $5,000 to $7,000 per month "when there were four of them in the household." The transcript reveals that Ahman referred to the time when the parties lived together as a family of three. The youngest child was born the month following their separation. Nonetheless, we conclude that Shalynn's criticism is unfounded.

¶70 As Ahman points out, "[I]t is nonsensical for Shalynn to attempt to argue that her household budget for one adult, a six year old and a one year old is more than the marital budget for two adults and a child." Because Ahman's testimony referred to a budget for a family of three, and Shalynn's budget referred to expenses for a family of three, the trial court's reliance on Ahman's testimony does not constitute reversible error.

¶71 Shalynn further contends that the trial court erred because the support decreases in 2005 and again in 2015, "just as the girls reach adolescence, a time in which they will likely need increased support." Shalynn neglects to mention, however, that the 2005 reduction coincides with Shalynn's college graduation date when she anticipates full-time employment between $30,000 and $40,000 per year. Also, the cost of full-time day care will be eliminated when the youngest begins school. The 2015 reduction follows the oldest daughter's

[21] Consistent with our supreme court's observation in ***Mary L.O. v. Tommy R.B.***, 199 Wis. 2d 186, 197, 544 N.W.2d 417 (1996), Shalynn "can always seek modification of the family court's support order" if the children's future expenses do not conform to the projections made by the family court.

nineteenth birthday. Because the reductions are reasonably related to lower expenses and increased income, the decision reflects a rational basis.

¶72 Shalynn also argues that the uncertain nature of Ahman's future income militates against deviation from the percentage standard. We disagree. The trial court took this factor into account when it ordered the fixed amount of child support to be funded with a trust. Therefore, in keeping with the case of ***Mary L.O.***, 199 Wis. 2d at 199, the trial court here ensured a consistent level of future support and a college education through trust funds. That the court exercised its discretion to fund the trust with a fixed sum, rather than a percentage of income, is not reversible error.

¶73 Finally, Shalynn contends that the court "has created an untenable situation in which the children will enjoy drastically disparate standards of living in their parents' respective homes." In order for us to accept this argument, we would have to reverse the trial court's credibility finding. We would have to find that Ahman's testimony about his monthly expenses, and about how he planned to raise his children was false. We would also have to reject the parties' stipulation regarding the respective values of the homes in which they lived.

¶74 Shalynn's argument omits reference to our standard for reviewing facts. *See* WIS. STAT. § 805.17(2). We do not review questions as to weight of testimony and credibility of witnesses. *See* ***id.*** These are matters to be determined by the trier of fact and, when more than one reasonable inference can be drawn from the evidence, its determination will not be disturbed. ***Valiga v. National Food Co.***, 58 Wis. 2d 232, 244, 206 N.W.2d 377 (1973). Such deference to the trial court's credibility assessment is justified, due to its opportunity to observe witness demeanor and to gauge the persuasiveness of the testimony. ***Kleinstick v.***

Daleiden, 71 Wis. 2d 432, 442, 238 N.W.2d 714 (1976). Because Ahman's testimony is not inherently or patently incredible, we reject Shalynn's argument.

¶75 It was reasonable for the trial court to deviate from the percentage standards when the facts before the court bore little, if any, relationship to the statistical norm on which the standards were based, *see* ***Parrett***, 146 Wis. 2d at 842, and the record demonstrated their application would result in a windfall to Shalynn in the guise of child support, resulting in unfairness to Ahman. *See* WIS. STAT. § 767.25(1n); *see also* ***Ayres***, 230 Wis. 2d at 443-44. The record discloses no basis to find that maintaining the children's standard of living at a predivorce level requires sums even approaching the percentage standards, and excessive child support would be contrary to the children's best interests. The court's analysis was similar to that approved in ***Ayres***, 230 Wis. 2d at 443-44:

> Therefore, the court concluded that a strict application of the standards would be unfair and unreasonable because such a high amount of child support would far exceed any amount necessary to provide for the children in a lifestyle similar to what the parties would have enjoyed had they not divorced. Furthermore, the court found that excessive amounts of child support would be detrimental to the children and the values that their parents had instilled in them.

¶76 Here, the court's detailed findings of fact, correct conclusions of law and articulation of its reasoning amply demonstrate it properly exercised its discretion when it deviated from the percentage standards and entered the child support order based upon the factors in WIS. STAT. § 767.25(1m).

V. Maintenance

¶77 Shalynn mounts a multi-pronged attack to the trial court's maintenance decision. At trial, Shalynn requested maintenance for two years at

$20,000 per month.[22] On appeal, she argues that $1,000 per month is inadequate as a matter of law to meet fairness and support objectives, representing only .04% of the payor's income. She also contends that the court failed to consider the feasibility of her becoming self-supporting at a level she enjoyed during the marriage. She further claims that the court erroneously focused on her needs, and failed to give appropriate weight to her contributions to Ahman's education and earning capacity. We conclude, however, that the record fails to support her claims and discloses the trial court properly exercised its discretion. Therefore, we reject her arguments.

¶78 A maintenance decision must begin with consideration of the factors in WIS. STAT. § 767.26,[23] designed to further the dual objectives to support the

[22] Apparently in recognition of her concession at trial that "two years of maintenance is appropriate in this case," Shalynn does not challenge the duration of the maintenance, but only the amount. Therefore, we do not review the duration of the maintenance, but refer to it to put the court's comments in context.

[23] WISCONSIN STAT. § 767.26 provides:

> **Maintenance payments.** Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1)(g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:
>
> (1) The length of the marriage.
>
> (2) The age and physical and emotional health of the parties.
>
> (3) The division of property made under s. 767.255.
>
> (4) The educational level of each party at the time of marriage and at the time the action is commenced.

(continued)

recipient spouse and to facilitate a fair financial arrangement between the parties. *See* ***LaRocque v. LaRocque***, 139 Wis. 2d 23, 33-35, 406 N.W.2d 736 (1987). "The support objective of maintenance is fulfilled when the trial court considers the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage and the length of time necessary to achieve this goal, if the goal is feasible." ***Kennedy v. Kennedy***, 145 Wis. 2d 219, 223, 426 N.W.2d 85 (Ct. App. 1988).

¶79 The fairness objective of maintenance must be determined on a case-by-case basis, ***id.***, and requires the trial court to weigh such statutory factors as the

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> (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
>
> (6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
>
> (7) The tax consequences to each party.
>
> (8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
>
> (9) The contribution by one party to the education, training or increased earning power of the other.
>
> (10) Such other factors as the court may in each individual case determine to be relevant.

length of the marriage and the contribution by one party to the education, training or increased earning power of the other. ***LaRocque***, 139 Wis. 2d at 37. The fairness objective must be viewed in light of fairness to both the payor and the payee. ***Gerth v. Gerth***, 159 Wis. 2d 678, 683, 465 N.W.2d 507 (Ct. App. 1990). Fairness does not dictate maintenance where the recipient spouse has not sacrificed his or her earning capacity during the marriage. ***Id.***

¶80 There are no mechanical formulas with respect to discretionary decisions such as maintenance. ***Kennedy***, 145 Wis. 2d at 223. Case law fails to support the view that disparate earning capacities necessarily entitle a spouse to maintenance. *See* ***King v. King***, 224 Wis. 2d 235, 251, 590 N.W.2d 480 (1999); ***Gerth***, 159 Wis. 2d at 682-84; ***Kennedy***, 145 Wis. 2d at 223. Another maintenance factor to be considered is whether the property division leaves the spouse in a far better position than when he or she entered the marriage. *See* WIS. STAT. § 767.26(3); *see also* ***King***, 224 Wis. 2d at 254 n.15.

¶81 A family court does "not discharge its decisionmaking responsibility with respect to maintenance simply by equalizing or attempting to equalize the post-divorce income between the parties." ***Kennedy***, 145 Wis. 2d at 223.

> It would seem reasonable for the trial court to begin the maintenance evaluation with the proposition that the dependent partner may be entitled to 50 percent of the total earnings of both parties. This percentage may, as in the case of property division, be adjusted following reasoned consideration of the statutorily enumerated maintenance factors. We would stress, however, that while this starting point is important, it is not the determinative factor which controls the ultimate award. For, "[i]t is the equitableness of the result reached that must stand the test of fairness on review," and such a result requires a reasoned starting point adjusted to reflect thoughtful consideration of other important factors.

Bahr v. Bahr, 107 Wis. 2d 72, 84-85, 318 N.W.2d 391 (1982) (citation omitted).

¶82 We reject Shalynn's argument that an award of four-tenths of a percent of the payor's income as maintenance must, as a matter of law, be reversed for failing to meet the support and fairness objectives. A discretionary decision such as maintenance does not lend itself to formulas. A "mechanistic approach does not satisfy either goal of maintenance." ***Kennedy***, 145 Wis. 2d at 223.

¶83 Our review of the trial court's decision satisfies us that the court properly discharged its decision-making responsibility when it considered at length the factors enumerated in WIS. STAT. § 767.26 and explained the facts of record that led to its decision. The court distinguished the Green marriage from those "cases where there are very long-term marriages where one of the parties sacrificed education, sacrificed employment outside the home, was a full-time caretaker." The court concluded, "in those situations, obviously, substantial maintenance and an equal property division are appropriate. But this case could not be farther from those facts." *See* WIS. STAT. § 767.26(6).

¶84 The court found that the marriage was short-term with the parties leading very separate lives since their March 2002 separation. *See* WIS. STAT. § 767.26(1). Due to the brevity of the marriage, Shalynn's absence from the job market was also brief, and she returned to college before the marriage ended. *See* WIS. STAT. § 767.26(5). Both parties had college educations before the marriage. *See* WIS. STAT. § 767.26(4). Ahman recently received his bachelor's degree.[24] Shalynn obtained her associate degree in nursing before the marriage, making her

[24] Ahman received his bachelor's degree in geography and plans to teach high school social studies when his football career ends.

very employable in the current job market. In addition, at the time of the divorce, Shalynn attended college part-time and expected to graduate in May of 2005 with her bachelor's degree in criminal justice with a $30,000 to $40,000 earning capacity. The court noted that the children were enrolled full time in school and day care to permit Shalynn to pursue her chosen career. *See* WIS. STAT. § 767.26(5).

¶85 At the time of the divorce, both parties were twenty-six years old and there were no current health issues. *See* WIS. STAT. § 767.26(2). The court found, however, that Ahman's career placed him at significant risk for long-term injury, observing, "everyone can fully expect he will suffer some physical disabilities or incapacities or discomfort because of what his is putting his body through much of the year." Unlike the earnings gained from a professional degree, which are expected to increase over time, the court noted a professional athlete's career is undeniably brief. *See* WIS. STAT. § 767.26(5). The undisputed testimony was that the average running back's career is 2.57 years and the court found there is no basis to expect that Ahman's elevated income will last indefinitely. In addition, the court found Ahman will have significant obligations and demands on his income.[25] *See* WIS. STAT. §§ 767.26(7) and (10).

¶86 Based on its credibility assessment, the court did not accept Shalynn's portrayal of the standard of living she would have enjoyed had the marriage not ended. The court rejected Shalynn's testimony, stating, "I don't believe that in fact she requires $20,000 per month [maintenance] to support the

[25] The trial court found that Ahman's obligations were substantial and that he will receive approximately 55% of his gross income due to taxes and agent fees.

kind of lifestyle the parties had or would have enjoyed." *See* WIS. STAT. § 767.26(10). The court found that the parties "did not lead an extravagant lifestyle, with the exception of the year in which he received his bonuses." The court stated that the parties lived "not frugally, but a fairly modest lifestyle considering his potential earnings."

¶87 The court addressed Shalynn's homemaking and child care contributions and found they entitled her to a "very comfortable" lifestyle upon divorce. *See* WIS. STAT. § 767.26(9) and (10). The court found that Shalynn performed child care and housekeeping duties during the marriage. The court accepted the testimony that Ahman's athletic success resulted from innate talent, coaching, and training, starting at age six. Ahman's significant success as a football player did not, as the court indicated, diminish Shalynn's contributions. Both parents "contributed significantly" to raising the children. During the football season, much of the child care fell to Shalynn during the workday. However, during evenings, weekends and the off-season,[26] Ahman was a "very involved" father. The court stated, "I certainly recognize the value of the homemaking and childcare [Shalynn] provided. [Ahman] also apparently was a very active parent when the three were living together." The court also explained: "I am taking into account the contributions that Shalynn made."

¶88 Nonetheless, the court determined that the Green Bay Packers were not paying Ahman the salary he made because of Shalynn's contributions. "I cannot conclude that she contributed in any significant way to [Ahman's] success

[26] Ahman testified that the off-season was typically from January or February through June.

as a professional football player." The court determined that Ahman's high income was the result of his natural abilities and his hard work.[27] *See* WIS. STAT. § 767.26(9) and (10).

¶89 The court indicated that the substantial property division Shalynn would receive permits her to "be residing in a very nice house that is paid for." *See* WIS. STAT. § 767.26(3). It concluded that "child support and maintenance and her own earnings two years from now will allow her to I believe live more than a comfortable lifestyle, but a very comfortable lifestyle" and "she is clearly going to enjoy the standard of living the parties enjoyed during the marriage." *See* WIS. STAT. § 767.26(6).

¶90 The court considered that maintenance is intertwined with child support, and the child support ordered would provide "a substantial amount of monthly income" to pay for many of Shalynn's daily needs as well as those of the children. The child support ordered was based on a budget for a three person household, that "includes the car payment,[28] the gas, all the household expenses, the food, basically all of the expenses for the whole household and the children," with the exception of some of Shalynn's personal needs. Shalynn listed personal expenses for such items as hair care, clothing, gifts, entertainment, along with $20 for books and magazines and $50 for medications. The court found that $200 for

[27] The court made some of these comments when it discussed its reasons for deviating from an equal property division. However, our standard of review requires that we look to the record for reasons supporting the trial court's discretion. ***Schneller v. St. Mary's Hosp. Med. Ctr.***, 155 Wis. 2d 365, 374, 455 N.W.2d 250 (Ct. App. 1990), *aff'd*, 162 Wis. 2d 296, 470 N.W.2d 873 (1991). Because the court's findings apply to both issues, we note them here on the issue of maintenance as well as later on property division.

[28] Although Ahman was ordered to pay Shalynn's $1,000 per month Lexus payment, Shalynn had also leased a Ford Expedition for which she paid $850 per month.

hair care, $100 for cosmetics, $100 per month for gifts, and $500 per month for clothing and entertainment achieved the maintenance objectives.

¶91 Although the court concluded that the "majority of the factors" in WIS. STAT. § 767.26 suggested that maintenance would not be appropriate, it considered Ahman's ability to pay and ordered limited maintenance to allow Shalynn to finish her education and maintain a suitable household at a standard of living comparable to that which the parties enjoyed during the marriage. *See* WIS. STAT. § 767.26(5) and (6). The court determined that with $1,000 per month maintenance for two years, together with the ample child support ordered and substantial property division, it was feasible that Shalynn would achieve the standard of living reasonably comparable to that enjoyed during the marriage. *See* WIS. STAT. § 767.26(6). Therefore, the court fashioned a financial arrangement that allowed Shalynn to increase her education and included child support, property division and limited term maintenance, permitting her to live in a manner reasonably comparable to what it found to be the parties' pre-divorce living standard.

¶92 We are satisfied the court's decision meet the dual objectives of support and fairness. With respect to Shalynn's needs, the financial arrangement the court ordered went well beyond bare subsistence. *See* ***Fowler v. Fowler***, 158 Wis. 2d 508, 520, 463 N.W.2d 370 (Ct. App. 1990) (support is not to be calculated at subsistence levels). The court based the amount of maintenance on WIS. STAT. § 767.26 factors, applied to the parties' financial disclosures and testimony, which the court found indicated a pre-divorce standard of living could be maintained with $5,000 to $7,000 per month. Together, the child support and maintenance awards exceed that amount. Therefore, the record supports the court's finding that together with the property division and child support, an additional $1,000

monthly maintenance for Shalynn's personal expenses made it feasible for her to achieve the "very comfortable" lifestyle the parties would have enjoyed had the marriage not ended.

¶93 Shalynn maintains, nonetheless, that the fairness standard is unmet, because the court failed to give appropriate weight to her non-economic contributions to Ahman's education, training and increased earning power. She submits that although the parties had a regular baby-sitter for their daughter and used a cleaning service once a week, she continued to do laundry, shopping and everyday cleaning. She argues that it was her homemaking and child care efforts that enabled Ahman to work long hours and to focus his attention on developing skills that led to his success. She discusses her responsibility for supervising the building of their new home and, when the home was complete, she shopped for furnishings. She points to hiring contractors to install a movie theater in the basement at Ahman's request. She also arranged for the purchase of a new car, ran errands, and brought things to the stadium for Ahman when he was at work.

¶94 Shalynn relies on ***Hefty v. Hefty***, 172 Wis. 2d 124, 136, 493 N.W.2d 33 (1992), that the circuit court may "in the interest of fairness, set maintenance at a level which exceeds the recipient's budget." She also argues that the court must measure its maintenance award not only by the lifestyle that the parties enjoyed immediately before the divorce, but could also anticipate enjoying if they were to stay married. She cites ***Hubert***, 159 Wis. 2d at 821, arguing that by basing maintenance solely on needs, "the court failed to fashion a fair and equitable arrangement and exceeded the limits of its discretion."

¶95 The cases Shalynn cites do not support her argument that the court failed to consider the fairness objective. ***Hefty*** explained that "when a couple has

been married many years and achieves increased earnings," the dependent partner may be entitled to fifty percent of the total earnings to achieve fairness. ***Id.*** at 136. ***Hefty*** involved a twenty-year marriage where the wife had not worked outside the home for nine years. In ***Hubert*****,** the parties were married in 1974 and the wife left her employment during the first years of the marriage, assuming full-time responsibility for the home and the children until the divorce, which the opinion indicates was granted fifteen years later. ***Hubert***, 159 Wis. 2d at 809-10.[29]

¶96 Here, the court found that the facts of the Green marriage contrasted significantly with those in case such as ***Hefty*** and ***Hubert***, explaining that in "very long-term marriages where one of the parties sacrificed education, sacrificed employment outside the home, was a full-time caretaker … obviously, substantial maintenance and an equal property division are appropriate. But this case could not be farther from those facts."

¶97 An equal division of the income stream is not required in a short-term marriage. As we observed in ***Parrett***, 146 Wis. 2d at 839, involving an eight-year marriage:

> The ***LaRocque*** facts are hardly comparable to those before us. Here the marriage is much shorter, the accumulations of the parties are much greater, and Judith shares in a substantial marital estate, the value of which is largely attributable to her husband's efforts.

¶98 Here, the court found that Shalynn was not handicapped by her brief marriage to Ahman, leaving the marriage in a far better financial position than

[29] ***Steinke v. Steinke***, 126 Wis. 2d 372, 379, 376 N.W.2d 839 (1985), another case Shalynn cites, held that it was error to fail to include the husband's pension in the property division when the parties had been married twenty-four years and were age fifty-six at the time of divorce.

when she entered it. *See* WIS. STAT. § 767.26(3). Based on the brevity of the marriage, Shalynn's age of twenty-six, her college education, brief absence from the job market and college, as well as the substantial property she will receive, the court reasonably rejected Shalynn's demand that it employ the ***LaRocque*** standards to her short-term marriage and require Ahman to fund 100% of what she characterizes as a lavish lifestyle. Instead, the court reasonably concluded that the equities weighed in favor of a more limited award.

¶99 Based on the record, the court was entitled to conclude that Shalynn has not been "handicapped socially or economically by [her] contribution to [the] marriage." *See* ***LaRocque***, 139 Wis. 2d at 37-38. In fact, the court found that Shalynn "has already benefited substantially from her short marriage to [Ahman]." Shalynn points to no facts of record, and our review uncovers none, that indicate Shalynn's brief departure from the job market or from furthering her education impaired her earning capacity as a nurse or in a career in the criminal justice field. The court could reasonably conclude that the financial arrangement awarded upon divorce compensated her for her contributions and the time during which she subordinated her education or career. Because the court properly applied the factors set out in WIS. STAT. § 767.26, taking into account the twin objectives of support and fairness, and articulated a rationale that finds support in the record, the record fails to disclose an erroneous exercise of discretion.

VI. Property Division

¶100 Shalynn argues that because her $645,109 property division represents a small fraction of the marital estate, the court erroneously exercised its discretion. She claims the court (1) erroneously applied cohabitation law, treating her like a girlfriend rather than a wife; (2) devalued her non-economic

contributions to the marital estate; and (3) gave excessive weight to Ahman's financial contributions to the marriage. She claims the trial court's failure to consider all relevant factors is a misuse of discretion. Because the court's fifty-six-page decision from the bench demonstrates that its consideration of all the factors provided a rational basis to deviate from a fifty-fifty property division, we reject Shalynn's arguments.

¶101 Under WIS. STAT. § 767.255, a trial court must presume that property other than that acquired by gift, bequest, devise or inheritance is to be equally divided.[30] The same statute provides that the court may alter the

[30] WISCONSIN STAT. § 767.255(3) provides in part:

> **(3)** The court shall presume that all property not described in sub. (2) (a) is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering all of the following:
>
> (a) The length of the marriage.
>
> (b) The property brought to the marriage by each party.
>
> (c) Whether one of the parties has substantial assets not subject to division by the court.
>
> (d) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
>
> (e) The age and physical and emotional health of the parties.
>
> (f) The contribution by one party to the education, training or increased earning power of the other.
>
> (g) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

(continued)

distribution after considering enumerated factors. ***Parrett***, 146 Wis. 2d at 843. Among factors the court is to consider are the length of the marriage, the contributions of each party, including homemaking and child care services, the parties' ages and health and educations, their earning capacities, one's contribution to the education and earning capacity of the other, maintenance and family support obligations, tax consequences, and other relevant factors. WIS. STAT. § 767.255.

¶102 WISCONSIN STAT. § 767.255, therefore, does not permit a circuit court "to deviate from the presumption of equal property division after considering one factor alone." ***LeMere***, 262 Wis. 2d 426, ¶22. "This is not to say that the circuit court is precluded from giving one statutory factor greater weight than

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> (h) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.
>
> (i) The amount and duration of an order under s. 767.26 granting maintenance payments to either party, any order for periodic family support payments under s. 767.261 and whether the property division is in lieu of such payments.
>
> (j) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.
>
> (k) The tax consequences to each party.
>
> (L) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.
>
> (m) Such other factors as the court may in each individual case determine to be relevant.

another, or from concluding that some factors may not be applicable at all." ***Id.***, ¶25.

> Property division in divorce remains a discretionary decision of the circuit court, but the record must at least reflect the court's consideration of all applicable statutory factors before a reviewing court can conclude that the proper legal standard has been applied to overcome the presumptive equal property division under Wis. Stat. § 767.255(3). Circuit courts must subject requests for unequal division of property to the proper statutory rigor. The failure to do so is an erroneous exercise of discretion.

Id., ¶25.

¶103 Shalynn argues that the trial court erroneously applied "co-habitation law," treating her like a girlfriend rather than a wife. She claims, "In support of its refusal to allow Shalynn to testify about her premarital contributions to Ahman's earning capacity, the circuit court erroneously relied upon the Court of Appeals' decision in [***Ulrich v. Zemke***, 2002 WI App 246, 258 Wis. 2d 180, 654 N.W.2d 458.]."[31]

¶104 The record does not, however, bear out her claims. Shalynn does not identify with any specificity what evidence of premarital contributions the trial court refused to admit. "When a claim of error is based on the erroneous exclusion of evidence, 'an offer of proof must be made in the trial court as a

[31] Shalynn does not follow this statement with a record citation. *See* WIS. STAT. RULE 809.19(1)(e).

condition precedent to the review of any alleged error.'" ***State v. Hoffman***, 106 Wis. 2d 185, 217-18, 316 N.W.2d 143 (Ct. App. 1982); *see also* ***State v. Friedrich***, 135 Wis. 2d 1, 12, 15, 398 N.W.2d 763 (1987). Shalynn points to no offer of proof, and our review uncovers none.

¶105 "Two purposes are served by an offer of proof: first, provide the circuit court a more adequate basis for an evidentiary ruling and second, establish a meaningful record for appellate review." ***State v. Dodson***, 219 Wis. 2d 65, 73, 580 N.W.2d 181 (1998). Error may not be predicated upon a ruling that excludes evidence unless the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked. WIS. STAT. § 901.03.[32]

¶106 Also, "[t]he mechanics of an offer of proof in our system of evidence places responsibility for stating the purpose of proffered evidence upon the party seeking to introduce the evidence." ***Friedrich***, 135 Wis. 2d at 12. Our supreme court has stated:

> The reason for the requirement is that the judge must be fairly informed of the basis for the proponent's claim of admissibility and the appellate court may understand the scope and effect of his ruling. To this end the statement must be reasonably specific, must state the purpose of proof

[32] WISCONSIN STAT. § 901.03(1), provides in pertinent part:

> EFFECT OF ERRONEOUS RULING. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and
>
> ….
>
> (b) *Offer of Proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

> offered unless that is apparent, and where the offered facts suggest a question as to their materiality or competency the offer, must show the facts on which relevancy of admissibility depends.

Friedrich, 135 Wis. 2d at 14-15 (citation omitted).

¶107 Shalynn met none of these requirements. Not only did she neglect an offer of proof, she provided no basis for admissibility consistent with her appellate claim of error. Despite the court's repeated requests, she offered no legal authority.[33] Shalynn accepted the court's rationale that the only purpose of the premarital evidence was to prove the parties' standard of living. Shalynn "had the burden of articulating the correct rationale for admitting the evidence," ***id.***, but failed to meet her burden. Thus, her argument is not preserved for appellate review.

¶108 In any event, our review of the trial transcripts refutes her contentions. The court indicated that ***Ulrich*** did not apply to divorce. The court held that even if it were to apply, its facts could be distinguished. The record fails to indicate that the court's reference to ***Ulrich***, made at the time of closing arguments, had any relation to its evidentiary rulings at trial. The record demonstrates that it considered Shalynn's contributions to be spousal contributions.

¶109 Next, Shalynn argues that the trial court devalued her non-economic marital and premarital child care and homemaking contributions. "The spouse

[33] The court first requested legal authority at the trial on May 14, 2003. Closing arguments were not held until May 22 at a separate hearing where the trial court questioned the relevancy of premarital contributions. The court held a third hearing on May 29, where it issued its oral decision on the record.

who raises the children and cares for the family home contributes, albeit indirectly, to the development and expansion of a family business, by carrying the child-rearing and homemaking responsibilities of the marriage partnership, enabling the other spouse to focus more intensively on the business." ***LeMere***, 262 Wis. 2d 426, ¶28. "Part of the rationale in creating the presumption of equal property division is that the homemaking partner has contributed services which have enabled the financially supporting partner to achieve his or her station in life, and in so doing the homemaking partner has lost ground in the job market." ***Jasper v. Jasper***, 107 Wis. 2d 59, 68, 318 N.W.2d 792 (1982).

¶110 Here, the circuit court valued Shalynn's contributions as a stay-at-home mother, recognizing that during Ahman's workdays, she had primary responsibility for child care. Nonetheless, as it was required to do, the court also considered other factors. ***LeMere***, 262 Wis. 2d 426, ¶30. Due to the short length of the marriage, Shalynn's absence from the job market was brief. She returned to college before the marriage ended. The children were enrolled full time in school and day care to permit her to pursue her chosen career. There is no evidence that her brief departure from the job market and college impaired her earning capacity as a nurse or in a career in the criminal justice field.

¶111 The court also considered the child support Ahman was ordered to pay, along with maintenance, amounting to a total financial obligation of $1,548,620. The court considered that while neither party brought substantial property to the marriage, Ahman "brought with him primarily his ability to play a sport that has proven to be very lucrative for him while he is healthy" and that the marital estate has been accumulated because of Ahman's employment as a professional football player. *See* WIS. STAT. § 767.255(3)(b). His lucrative career will be brief. In addition, the court considered Ahman will have substantial

obligations for income taxes and payment to his agent, netting 55% of his gross income. On the other hand, the tax consequences to Shalynn on the payments she receives from Ahman will be minimal. *See* WIS. STAT. § 767.255(3)(k).

¶112 On the basis of all these factors, the court concluded:

> If I were to order an equal division in this case, I see no reason that anyone would ever deviate from an equal division when there is a substantial marital estate. The rule would simply be because you are married, regardless of for how long, regardless of contributions to education or training, regardless of your particular skill or talent being responsible for the accumulation of the marital estate, it will always be divided equally. I can't believe our legislature and our appellate courts have given us this list of factors to support an unequal division if they don't mean that we should apply them in circumstances such as this.

¶113 It is permissible to arrive at an unequal property division, in part, because one party served as "the genius and driving force behind the commencement of the business and its development and prosperity." ***Parrett***, 146 Wis. 2d at 843. Like ***Parrett***, here the court's unequal property division was based on the short duration of the marriage, the fact that neither party brought substantial property to the marriage, the age, health, and earning capacity of the wife, the minor contribution by the wife to the education, training, or earning capacity of the husband, and the husband's substantial child support and maintenance obligations. *See* ***id.*** at 834-35. As in ***Parrett***, the trial court did not confine its analysis merely to the relative economic contributions of each spouse but, rather, considered other relevant statutory factors. *See* ***id.***

¶114 The record convinces us that the court did not devalue Shalynn's contributions, but considered them along with the variety of factors it was required to take into account in fashioning a reasonable property division under WIS. STAT.

§ 767.255. In contrast to ***Hokin v. Hokin***, 231 Wis. 2d 184, 199-200, 605 N.W.2d 219 (Ct. App. 1999), a case upon which Shalynn relies that overturned an unequal property division, Shalynn is not leaving a twenty-year marriage at age fifty-three without any maintenance. As the ***Hokin*** court recognized, "In a shorter marriage, such an emphasis on which party generated the assets that make up the martial estate might well be appropriate." ***Id.*** at 200.

¶115 We reject Shalynn's complaint that the court unreasonably overemphasized Ahman's economic contributions. "[I]t is not per se impermissible to assign greater or lesser weight to spousal contributions depending upon the facts in the case." ***LeMere***, 262 Wis. 2d 426, ¶29. It was within the court's discretion to assign the weight and effect to be given each factor. ***Fuerst v. Fuerst,*** 93 Wis. 2d 121, 131, 286 N.W.2d 861 (Ct. App. 1979). Because the court considered other applicable statutory factors in a way that carried out the legislative purpose, its decision was within the bounds of its discretion.

VII. Conclusion

¶116 In the conclusion to her brief, Shalynn hypothesizes that Ahman is free to invest or, to her and the children's detriment, waste millions of dollars he negotiated during the marriage. Shalynn's alarm relative to waste notwithstanding, the court believed Ahman's evidence that he manages money competently. The court's order that over 1.5 million dollars for child support must be invested in trusts demonstrates that the sums ordered will be protected.

¶117 Shalynn does not directly challenge the court's fact-finding or credibility assessment. The record reveals no mistake of fact or error of law. The

issue of the parties' premarital contributions for purposes of maintenance and divorce was not raised at trial, and is not preserved for appellate review.

¶118 Despite Shalynn's attempts to characterize the issues as questions of law, the essence of her arguments is a disagreement with the manner in which the trial court exercised its discretion and the evidence the trial court chose to credit. The record convinces us that the trial court carefully examined the facts and reasonably applied the relevant factors to reach the objectives of fairness and equity underlying the statutes. Because its decision reflects a reasonable exercise of discretion, we do not reverse it on appeal.

By the Court.—Judgment affirmed.

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