

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 13, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP2397-FT

Cir. Ct. No. 2007FA411

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

DAWN M. SAUCEMAN,

PETITIONER-RESPONDENT,

V.

MARK D. SAUCEMAN,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for St. Croix County: EDWARD F. VLACK III, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Mark Sauceman appeals his judgment of divorce and the denial of reconsideration.¹ He argues the circuit court’s maintenance determination was the product of an erroneous exercise of discretion in three respects: (1) ordering an indefinite equalization of gross income; (2) failing to consider tax consequences; and (3) failing to include Dawn Sauceman’s actual income of \$5,760 during the period of October 1, 2008, to July 1, 2009, in its equalization calculation. We affirm.

¶2 Mark and Dawn were married twenty-three years. At the time of the marriage, both worked in California for Chevron. In 1989, the parties moved to Wisconsin and Dawn left full-time employment when they decided to start a family. At the time of the divorce, Mark was employed as a senior vice president at U.S. Bank with a base salary of approximately \$240,000,² exclusive of bonuses, dividends and stock options. He received a bonus of \$55,000 in 2007, and \$120,000 in 2008. Dawn has an annual earning capacity of \$40,000. Two children were born of the marriage, but only one was a minor, age seventeen, at the time of the divorce.

¶3 The parties stipulated to joint custody and shared placement. The circuit court ordered an equal property division and further found, “this is one of those rare cases in which it would be unfair to order child support.” The court also ordered maintenance. During the period October 1, 2008, until July 1, 2009, Mark

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are the 2007-08 version.

² Mark’s income in 2005 was \$346,090; 2006 income was \$187,896; and 2007 income was \$245,650.

was ordered to pay “one half of his gross salary”³ and “one half of the first \$120,000 of his gross bonus, whenever received.” Commencing on July 1, 2009, Mark was ordered to pay \$8,334 monthly for an indefinite period. Mark was also ordered to pay, during either period, half of all dividends and any other income received from stock options.

¶4 The awarding of maintenance rests within the sound discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will sustain a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). When reviewing findings of fact, we search the record for reasons to sustain the circuit court’s discretionary decision, not for evidence to support findings the court could have made but did not. See *Steiner v. Steiner*, 2004 WI App 169, ¶18, 276 Wis. 2d 290, 687 N.W.2d 740. Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2). Where there is conflicting testimony, the circuit court is the ultimate arbiter of the credibility of witnesses. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶5 Mark first argues the circuit court erroneously ordered an equal division of gross income. Mark asserts the court applied an improper

³ The judgment required Mark to pay \$10,000 monthly, offset by one-half the mortgage payment on the marital residence until sold.

“mechanistic” legal standard, failed to apply WIS. STAT. § 767.56 statutory factors, and failed to articulate how its decision was reached.⁴ We are not persuaded.

¶6 We conclude the circuit court did not erroneously apply a mechanistic approach in dividing the incomes equally. While the court referenced “the general rule that with a long term marriage the incomes be divided equally,” the record is clear the court recognized an equal division of income was not required. Further, it is apparent from the court’s decision that fairness was the court’s primary objective. The court also considered the related goal of preventing unjust enrichment of one spouse. The court afforded Dawn a standard of living reasonably comparable to that enjoyed during the marriage, which she was not likely to attain on her own.⁵

¶7 We are also satisfied the circuit court considered relevant statutory factors under WIS. STAT. § 767.56. The court characterized the marriage as long-term. It also recognized the age and physical and emotional health of the parties. The court considered the property division made under WIS. STAT. § 767.61, the parties’ educational levels, and the contribution by one party to the education, training or increased earning power of the other. The court considered Dawn’s earning capacity as well as her capacity to become self-supporting at a standard of

⁴ Our October 22, 2009 order limited this expedited appeal to three issues. Although Mark posits three issues, we note these issues contain sub-issues, which we deem violate the three-issue limit in our order. Future violations of this court’s orders will result in appropriate sanctions.

⁵ Mark contends that his “extensive ongoing support for both children outside of any child support obligation” should “mitigate against such a drastic order.” However, this factual contention was disputed at best.

living reasonably comparable to that enjoyed during the marriage. The court also considered the tax consequences to each party and the parties' expenses.

¶8 The circuit court may not have as exhaustively articulated the reasons for its determination on maintenance as Mark suggests is required, but it applied appropriate factors and its analysis went beyond a mechanistic review. Our review of the maintenance award leads us to conclude that it was a proper exercise of discretion.

¶9 Mark insists the circuit court erroneously exercised its discretion by failing to consider tax consequences. He contends that despite specifically requesting consideration of tax consequences, the court nonetheless ordered gross income equalized without considering the effect of taxes and mandatory withholding on available income. Mark asserts he illustrated in his motion for reconsideration "the disparate treatment of earned, unearned, and imputed income, which, of course, would not be subject to any tax or withholding at all."

¶10 However, our review of the record discloses the circuit court considered the tax consequences to each party, albeit not in the context that Mark desired. The court specifically indicated during a February 11, 2009 conference that it considered the tax consequences. In addition, after considering the testimony of Mark's expert witness at the hearing on the reconsideration motion,⁶ the court stated:

⁶ Mark attempted to retry, after judgment, the alleged failure to consider tax consequences with evidence he could have offered at the final divorce hearing but did not. In his briefs to this court, Mark insists that at the final hearing he "specifically asked the trial court to consider tax consequences. This was not opposed. In fact, both parties submitted [tax] calculations." Regardless, we are unconvinced Mark therefore had "no reason to present expert testimony or devote resources to litigating this point."

This is a case in which minds clearly differed, but this Court considered all the necessary factors and gave its reasoning for its decision. While there is a difference of opinion, and while the Respondent sets forth rational arguments in favor of the request for reconsideration, this Court is not convinced that its original Decision should be changed.

Although Mark asserts, “The bottom line is that all the scenarios demonstrate a consistent and significant benefit to Dawn at Mark’s expense,” he fails to adequately indicate in his briefs to this court what the circuit court should have considered and specifically how the result would have been different. We will not abandon our neutrality to develop arguments. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶11 Finally, Mark argues the circuit court erroneously exercised its discretion by failing to consider Dawn’s actual yearly income of \$5,760 during the period predating the court’s imputation of income. Mark emphasizes that Dawn’s imputed income was not commenced by the court until July 1, 2009. From October 11, 2008, until July 1, 2009, Mark was ordered to pay half of his gross income. According to Mark, the court should have included Dawn’s actual income in the period predating her imputed income. At a minimum, Mark claims he is therefore entitled to a recalculation of his maintenance payment from October 1, 2008, until July 1, 2009.

¶12 We need not determine the net effect of the alleged failure to include Dawn’s actual income of \$5,760 per year in the maintenance order for the period October 1, 2008, to July 1, 2009. We conclude this issue is de minimus, given the

significant marital income at the time of divorce.⁷ We will not reverse a circuit court decision if the difference would be de minimus. *See Rodak v. Rodak*, 150 Wis. 2d 624, 635 n.8, 442 N.W.2d 489 (Ct. App. 1989).

By the Court.—Judgment and order affirmed.

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

⁷ We note the circuit court ordered Mark to pay Dawn one-half of the first \$120,000 of his annual bonus per calendar year. Accordingly, to the extent bonuses exceed \$120,000, Dawn could receive less than 50% of the bonus income, and net spendable income could exceed equalization to Mark's benefit. Also, Mark's expert witness conceded at the hearing on the reconsideration motion that he did not consider many variables that could have affected his analysis.

