

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 21, 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. 2010AP10

Cir. Ct. No. 2000FA122

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

MICHAEL AARON BALDOCCHI,

PETITIONER-APPELLANT,

v.

CINDIE ELLEN BISCHOFFER, P/K/A CINDIE ELLEN BALDOCCHI,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Washburn County:
EUGENE D. HARRINGTON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Michael Baldocchi appeals from an order denying his motion to modify limited-term maintenance. Baldocchi argues the court erred

by concluding that he failed to satisfy his burden to show a substantial change in circumstances. We disagree and affirm.

¶2 Baldocchi and Cindie Bischoffer married in 1976 and divorced in 2001. Baldocchi was a postmaster earning \$5,050 monthly.¹ Bischoffer earned \$1,138.67 monthly as a teacher's aide. At the final divorce hearing and with the aid of counsel, the parties stipulated on the record that maintenance would begin July 6, 2001 at \$600 monthly until it would increase to \$1,750 monthly commencing July 1, 2004. Maintenance would terminate on June 30, 2016, or earlier upon the death of either party or Bischoffer's remarriage.

¶3 On July 14, 2009, Baldocchi filed a motion to modify maintenance.² Baldocchi alleged a change of incomes, severe stress related to financial debt, and health issues as justifications for the maintenance modification. Baldocchi retired from the postal service at age fifty-two. He testified he receives monthly retirement income of \$4,176, for an indefinite period. The property division at divorce specified Bischoffer was to receive \$35,893.30 from his retirement benefits. However, the postal service determined this amount would be payable at \$2,088 monthly, ending in approximately August 2010.

¶4 In its written decision, the circuit court stated the facts "do not warrant termination of maintenance because none of the circumstances were a

¹ Baldocchi testified his 2006 tax returns indicate that he and his current wife, who is also a postmaster, earned \$147,740. Baldocchi also stated 2007 and 2008 income was "[s]imilar probably."

² On September 26, 2007, Baldocchi filed a previous motion to modify maintenance. He failed to pursue this motion. At the hearing on the 2009 motion, Baldocchi's attorney stated, "The crux of the motion is a maintenance modification. Actually, his request is going to be, I assume, a termination of maintenance to Ms. Bischoffer."

product of unforeseen events.” The court found Baldocchi “retired, remarried and took on the debt voluntarily. The deterioration in his health did not force him to retire. He retired because he could.” The court concluded Baldocchi failed to meet his burden of showing the purposes of limited maintenance had been satisfied and denied the motion. Baldocchi now appeals.

¶5 Absent a “substantial change” in circumstances, a provision in a divorce judgment for limited-term maintenance payments based upon a stipulation may not be modified. See *Rosplock v. Rosplock*, 217 Wis. 2d 22, 32, 577 N.W.2d 32 (Ct. App. 1998). The question of whether there has been a substantial change of circumstances presents a mixed question of fact and law. *Id.* at 32-33. The circuit court’s findings of fact are upheld unless clearly erroneous. WIS. STAT. § 805.17(2).³ Whether the change is substantial is a question of law that we review independently. *Rosplock*, 217 Wis. 2d at 33. Where there is conflicting testimony, the circuit court is the ultimate arbiter of witness credibility. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶6 In *Rosplock*, we stated:

The purposes of limited maintenance include “providing the recipient spouse with funds for training that might lead to employment, creating an incentive for that spouse to seek employment, and limiting the responsibility of the payor-spouse to a time certain and avoiding future litigation.”

Id. at 33 (quoting *Bentz v. Bentz*, 148 Wis. 2d 400, 406, 435 N.W.2d 293 (Ct. App. 1988)). We noted a further goal of limited-term maintenance is to render the

³ All references to the Wisconsin Statutes are the 2007-08 version unless otherwise stated.

recipient spouse self-supporting. *Id.* at 34. The party moving for reduction or termination of limited-term maintenance has the burden to show that the purposes of the limited maintenance have been satisfied. *Id.*

¶7 Here, the court emphasized its deference to the parties' original stipulation at the time of the divorce, where the parties agreed Baldocchi's maintenance obligation was limited to a term of 180 months. The court noted the transcript of the final divorce hearing "reflects that limited term maintenance of 180 months was important to [Bischoffer] and her lawyer."

¶8 The court further stated:

The purpose was to provide [Bischoffer] enough time to become re-educated and self[-]sufficient after the two youngest daughters graduated from High School. In July 2001 [Bischoffer] was a special education aid at the Shell Lake School. She worked full time. Her career goals were to return to school and become a dental hygienist. After the divorce however, she changed her occupational goals because she determined being a nurse might provide more employment opportunities. Although pursuing a different occupational goal, [Bischoffer] did precisely what she represented that she was going to do. She enrolled at WITC-Rice Lake in June 2001 studying general education credits. In May 2005 she obtained her associates degree in nursing. Two months later she became employed part time. In September 2005 she enrolled in a bachelor's degree nursing program at Viterbo College in LaCrosse and has since achieved her registered nurse's degree. Since then, she has been employed at the Cumberland Hospital as an R.N., but primarily works a flex shift. Her work schedule allows her to pursue further education in a Masters degree – Nursing Program at UW-Eau Claire.⁴

⁴ By entering into the stipulation, Baldocchi acknowledged that some or all of the purposes for limited-term maintenance existed in this case. See *Rosplock v. Rosplock*, 217 Wis. 2d 22, 34, 577 N.W.2d 32 (Ct. App. 1998).

¶9 Bischoffer's efforts and progress following the divorce do not represent a substantial change of circumstances under the facts of this case. As the circuit court correctly observed, Bischoffer's actions following the divorce are in keeping with the purposes of the limited-term maintenance and do not provide a basis upon which maintenance may be modified. *See Rosplock*, 217 Wis. 2d at 38. Indeed, as we noted in *Rosplock*, limited-term maintenance may be extended in an appropriate case. Bischoffer's efforts to improve her financial status offer Baldocchi some assurance that his maintenance obligations will be limited to the stipulated time period. *See id.* Her actions hopefully will ensure that she is self-supporting at the end of the limited-term maintenance period.

¶10 Moreover, Baldocchi's circumstances were not the product of unforeseen events. The limited-term maintenance was to continue until Baldocchi was approximately sixty years old. Baldocchi retired earlier than anticipated at the time of divorce, and the circuit court found he did so voluntarily. The court also found he took on debt voluntarily and health issues did not force him to retire. The court's findings are not clearly erroneous. *See WIS. STAT. § 805.17(2)*.

¶11 Therefore, we agree with the circuit court that Baldocchi failed to meet his burden to show the purposes of the limited-term maintenance had been satisfied. It was not unjust or inequitable to hold Baldocchi to the limited-term maintenance provisions of the divorce judgment and the court properly refused to modify the maintenance payments. *See Rosplock*, 217 Wis. 2d at 33.

¶12 We need not reach an additional issue raised by Baldocchi concerning whether the court's decision was flawed because it referenced retirement income of \$89,000. This incorrect reference had no bearing on the

court's ultimate conclusion that none of the changes in Baldocchi's circumstances were due to unforeseen events or that his decision to retire was voluntary.

By the Court.—Order affirmed.

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

