

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2011

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. 2010AP2855

Cir. Ct. No. 2008FA5

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

MARGARET JOAN GEEGAN,

PETITIONER-APPELLANT,

V.

DAVID MICHAEL WOLFF,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Marathon County:
GREGORY B. HUBER, Judge. *Reversed and cause remanded for further proceedings.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Margaret Geegan appeals from her judgment of divorce, arguing the circuit court erroneously exercised its discretion with regard to child support and maintenance. We reverse and remand for further proceedings.

¶2 Margaret and David Wolff were married in 1980, and the couple had two minor children at the time of their divorce on December 1, 2009. Margaret is a school principal and David is a laborer. Margaret received primary placement and the circuit court ordered David to pay her \$314.16 monthly child support. The court required Margaret to pay David maintenance in the amount of \$34,000 yearly until age sixty-five, “which is roughly 13 years.” Margaret now appeals.

¶3 Child support and maintenance decisions are committed to the sound discretion of the circuit court. See *Bohms v. Bohms*, 144 Wis. 2d 490, 496, 424 N.W.2d 408 (1988). We will affirm a discretionary decision as long as it represents a rational decision based on the application of the correct legal standards to the facts. See *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶4 Margaret argues the circuit court erred by not considering her request to deviate from the percentage standard for child support by including David’s maintenance in the child support calculation. Margaret contends:

In the unique situation where the person with greater income has primary placement of the minor children, the statutory factors should be applied in a manner consistent with the direction of Chapter DCF-150.02(13)[a]10. to include all income including maintenance to be received by David Wolff in the calculation of child support.

¶5 Margaret also asserts that the use of the percentage standard is unfair to the children and provides no incentive for David to find better work, because if

David finds a better job or more hours he will have to pay more child support and may receive less maintenance.

¶6 WISCONSIN STAT. § 767.511(1m)¹ provides that a circuit court may deviate from the percentage standard for child support 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 any of the parties” One of the factors the court may consider is “[m]aintenance received by either party.” WIS. STAT. § 767.511(1m)(bj). Moreover, “gross income” for determining child support includes “[a]ll other income, whether taxable or not.” *See* WIS. ADMIN. CODE § DCF 150.02(13)(a)10. (Nov. 2009).

¶7 Here, the circuit court determined the child support obligation before determining maintenance. The court stated, “Okay. As to child support, the primary placement is with the mother. The 25 percent formula is the correct one to use.”² However, we cannot discern from the record whether the court considered Margaret’s request to deviate from the percentage standard and, if so, to what extent it considered the statutory factors under WIS. STAT. § 767.511(1m) and, specifically, David’s maintenance award as income.

¶8 Margaret further asserts that the maintenance methodology utilized by the circuit court unfairly provides David with 40% of the net cash flow for the

¹ References to the Wisconsin Statutes are to the 2009-10 version unless noted.

² WISCONSIN ADMIN. CODE § DCF 150.03(6) (Nov. 2009), provides that “[i]f a payer will have obligations for both child support and maintenance to the same payee, the court shall determine the payer’s child support obligation under this chapter before determining the payer’s maintenance obligation under s. 767.56, Stats.” However, in the present case, the payer for maintenance is the payee for child support. The court was therefore not required to determine child support before determining maintenance.

support of one person, while Margaret has only 60% to support a household of three. In its maintenance determination, the circuit court reasoned that David was losing health insurance and “it’s going to be expensive for him to get coverage” The court also indicated David was capable of obtaining better employment, “and I kind of want to give him an incentive to do so” The court stated:

[I]n some regards, the \$15,080 [minimum wage imputed income] that we’re using, you are capable of earning more than that, and I think you’re going to find out that if you want to have a good standard of living, you’re going to have to assert yourself and get some full-time employment and I think you would be able to make above minimum wage and hopefully with some benefits.

¶9 However, the court’s decision on child support and maintenance provides a disincentive for David to find better paying employment with benefits, because a better job would require him to pay more child support under the percentage standard, and may also result in reduced maintenance.

¶10 Accordingly, we conclude the circuit court erroneously exercised its discretion, and we reverse and remand for further proceedings with regard to child support and maintenance. Upon remand, the court may, in its discretion, deviate from the percentage standard for child support after considering the statutory factors in WIS. STAT. § 767.511(1m). The court must, however, set forth the factors on which it relied and illuminate its reasoning.

By the Court.—Judgment reversed and cause remanded for further proceedings.

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

