

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 6, 2015

Diane M. Fremgen
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. 2014AP2211

Cir. Ct. No. 2008FA63

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

KAREN L. RAVENSCROFT,

PETITIONER-APPELLANT,

V.

CHARLES L. RAVENSCROFT,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Juneau County:
JOHN P. ROEMER, JR., Judge. *Affirmed.*

Before Higginbotham, Sherman, and Blanchard, JJ.

¶1 PER CURIAM. Karen Ravenscroft appeals a circuit court order that reduced the monthly maintenance payments Charles Ravenscroft is obligated

to pay to Karen.¹ Karen contends that the court erred by modifying maintenance because, according to Karen: (1) Charles did not meet his burden to show a substantial change in circumstances; and (2) the circuit court failed to consider the dual objectives of support and fairness. We conclude that the circuit court properly exercised its discretion by modifying the maintenance award based on a substantial change in circumstances. We affirm.

¶2 Karen and Charles were divorced in January 2009 after thirty-five years of marriage. At the time of the divorce, Charles earned an annual income of \$78,875.25, consisting of \$50,128 in base pay and the remainder in overtime. Karen earned an annual income of \$25,284. The circuit court found that Karen had monthly expenses of approximately \$3,000, and Charles had monthly expenses of approximately \$2,800. The divorce judgment provided for an indefinite term of maintenance to Karen in the amount of \$1,315 per month.²

¹ Because the parties share a surname, we refer to them by their first names for ease of reading.

² The parties do not contest the appropriateness of the original maintenance award, but we briefly summarize the history for context. The circuit court noted that Charles' base pay, without overtime, was \$50,128. The court stated that it wanted to give Charles

incentive each day to get up, go to work and, during those long, tedious, hot summer months work overtime, not only to support Karen but also to purchase any goods or services that meet his needs, wants, or desires, whether taking trips in his motor home, or saving for his own retirement.

The court noted that Charles requested maintenance of “less than the amount of \$1,035,” which the court explained was the amount necessary to equalize the parties’ income exclusive of Charles’ overtime. The court also explained that an equal division of the parties’ total income would result in monthly maintenance payments to Karen of \$2,178, which the court found unfair. Karen requested maintenance payments of \$1,900. In awarding payments of \$1,315, the court used a monthly income for Charles of \$4,800, which would be an annual income of \$57,600. It is unclear how the court reached that precise figure.

¶3 In July 2013, Charles moved to terminate maintenance. Charles argued that a substantial change in circumstances warranted terminating maintenance because Karen was living in a marriage-like relationship with another person, improving Karen's financial circumstances, and Charles' financial situation had worsened while his new spouse was undergoing cancer treatments. Karen opposed the motion to terminate maintenance.

¶4 After an evidentiary hearing, the circuit court compared the parties' financial circumstances at the time of the divorce with the present. The court found that at the time of divorce Charles had an annual income of 78,875.52,³ and that he had a current annual income of \$87,189, of which \$61,360 was regular work pay and \$25,829 was overtime. The court found that Karen had an annual income at the time of divorce of \$25,284, and a current annual income of \$28,896.

¶5 The court found that Karen's financial circumstances had improved since the time of divorce, after she began cohabitating with her partner, Ben Weidling, in February 2013. The court found that Karen pays nothing in rent or mortgage payments, utilities, insurance, or taxes for her household with Weidling. The court also found that, based on living with Weidling, Karen now receives rental payments for her home in the amount of \$650 per month, and no longer pays utilities for that home in the amount of \$302.34. Thus, the court found that Karen received a direct monthly economic benefit from cohabitating with Weidling in the amount of approximately \$1,000. The court also found that Karen

³ The court stated that "[t]his income excluded overtime which was earned primarily during the summer months." This was a misstatement; Charles' total income of \$78,875.52 at the time of divorce *included* his overtime pay. Neither party attaches any significance to the court's error.

and Weidling fashioned their relationship in a manner intended to prevent the modification of maintenance.

¶6 The court found that Charles' current spouse, Melanie Ravenscroft, had an annual income of \$40,000 prior to her diagnosis with a cancerous brain tumor in 2013. The court found that Charles' financial situation had worsened due to Melanie's inability to continue to work full-time, Charles' absences from work to care for Melanie, and because Charles and Melanie had incurred the unforeseen debt of \$14,000 in uninsured medical expenses for Melanie. The court determined that there was a substantial change in circumstances that warranted modifying maintenance, and that the dual goals of support and fairness were met by modifying Charles' monthly payment to Karen to \$315. Karen appeals.

¶7 “In order to modify a maintenance award, the party seeking modification must demonstrate that there has been a substantial change in circumstances warranting the proposed modification.” *Brin v. Brin*, 2014 WI App 68, ¶7, 354 Wis. 2d 510, 849 N.W.2d 900 (quoted source omitted). We review a circuit court's decision to modify maintenance under a mixed standard of review; the circuit court's factual findings are reviewed under the clearly erroneous standard, while the question of whether those facts establish a substantial change in circumstances is a question of law that we review de novo. *Id.*, ¶8. Generally, “the focus of the substantial change inquiry will ‘be on any financial changes the parties have experienced.’” *Id.*, ¶9 (quoted source omitted).

¶8 Karen argues that there was no substantial change in circumstances to support a modification to the prior maintenance award. She contends that the circuit court's factual findings that Karen received a benefit of \$675 in rent for her home was clearly erroneous because: (1) Karen testified that she began renting

her property in August 2013, but had not yet received any rent as of the hearing on October 10, 2013; and (2) Karen had refinanced her home so that her mortgage changed from \$558 to \$798. Karen contends that, because she was not receiving any rent for her property, and because she was responsible for a \$798 mortgage payment whether or not the tenants made their rent payments, the circuit court's finding that Karen received a \$675 benefit from renting her home was clearly erroneous. She contends that Charles' financial circumstances have not worsened at all, pointing out that Charles earns more now than he did at the time of divorce, that Melanie's medical bills are in her own name, and that there was no evidence that Charles had made any payments toward Melanie's medical bills. Karen asserts that the circuit court in effect relied exclusively on her cohabitation as a basis to find a substantial change in circumstances, contrary to *Van Gorder v. Van Gorder*, 110 Wis. 2d 188, 197, 327 N.W.2d 674 (1983) ("Cohabitation is only a factor to consider to the extent it may change a recipient former spouse's economic status."). She contends that the court was required to undertake a comprehensive analysis of the parties' financial circumstances to determine whether there had been a substantial change in circumstances, rather than the dollar-for-dollar approach used by the court. We disagree.

¶9 First, we conclude that the circuit court's factual findings are supported by the record and thus are not clearly erroneous. See WIS. STAT. § 805.17(2) (2013-14).⁴ Our review of the hearing transcript reveals that Karen testified that she rented her property under a lease beginning August 1, 2013, for \$675 per month, and that, as of October 10, the tenants were late with their

⁴ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

October rent. Nothing on the transcript pages Karen has cited indicates that Karen had not received any rent under the lease; rather, it indicated that the tenants were ten days late in paying the rent for October. Moreover, Karen testified that, when she refinanced her mortgage, she included her car payments in her new mortgage payments. In 2009, Karen reported a mortgage payment of \$558.47 and a car payment of \$308; in 2013, Karen testified that her total payment for her mortgage and her car was \$798. Thus, Karen fails to show that the court's finding that Karen had a change in financial circumstance of an additional \$675 per month based on cohabitating with Weidling was clearly erroneous. Karen does not dispute the circuit court's finding that Karen's cohabitation also results in an economic benefit of an additional \$302.34, by relieving Karen of her utility expenses. Thus, we have no basis to disturb the circuit court's factual finding that Karen's cohabitation results in a monthly economic benefit of approximately \$1,000 per month.

¶10 We next determine that the facts as found by the circuit court amount to a substantial change in the parties' financial circumstances. As we have noted, cohabitation is a relevant factor to consider in this analysis, to the extent that there is a change to a recipient spouse's economic status. *Van Gorder*, 110 Wis. 2d at 197-98. There are two underlying concerns that arise when a former spouse cohabits with a new partner: (1) "where the cohabitation does enhance the recipient's financial condition, payments that are no longer needed for support should not have to be made"; and (2) "cohabitators should not be able to fashion their relationship and finances in a manner that is intended solely to prevent the modification of maintenance payments." *Id.* at 197. Here, the circuit court found that both concerns were implicated. The circuit court found that Karen's financial situation had improved based on her cohabitation, with a monthly benefit of about

\$1,000. We are not persuaded by Karen’s argument that the circuit court erred by considering the dollar-for-dollar amount of the financial benefit to Karen based on her cohabitation, nor do we agree with Karen that the \$1,000 monthly benefit is unsubstantial. Even accepting Karen’s argument that Charles’ financial situation has not worsened since the divorce, Karen’s improved financial situation was sufficient to establish a substantial change warranting a modification to maintenance.

¶11 Next, Karen contends that the circuit court erroneously exercised its discretion by reducing her maintenance payments to \$315. *See Gerth v. Gerth*, 159 Wis. 2d 678, 681, 465 N.W.2d 507 (Ct. App. 1990) (maintenance determinations are committed to the sound discretion of the circuit court). Again, we disagree.

¶12 WISCONSIN STAT. § 767.56(1c) requires circuit courts to consider specified factors in determining maintenance, including the length of the marriage, the earning capacity of the party seeking maintenance, and whether it is feasible that the party seeking maintenance can become self-supporting at the standard of living enjoyed during the marriage. The statute is “designed to further two objectives: support and fairness.” *Finley v. Finley*, 2002 WI App 144, ¶10, 256 Wis. 2d 508, 648 N.W.2d 536. The support objective “ensures the spouse is supported in accordance with the needs and earning capacities of the parties.” *Id.* The fairness objective “ensures a fair and equitable arrangement between the parties in each individual case.” *Id.*

¶13 Karen contends that the circuit court erroneously exercised its discretion by failing to consider the support and fairness objectives of maintenance. She argues that the court set forth the proper standard, but failed to

apply it to the facts of this case. She contends that, had the circuit court properly considered the support and fairness objectives, the court would have recognized how much greater Charles' current standard of living is than Karen's. Karen argues that even with his increased debt, and given his property and monthly budget, Charles still has the ability to pay the original maintenance payments of \$1,315. Karen contends that amount is necessary to meet the support and fairness objectives of maintenance.

¶14 We conclude that the circuit court properly exercised its discretion by modifying maintenance to \$315 per month. After making factual findings as to the parties' financial situations both at the time of the divorce and at the time of the motion to modify maintenance, the court explained that it considered the factors set forth in WIS. STAT. § 767.56 and the fairness and support objectives of maintenance. The circuit court explained that it considered that Karen and Charles were married for thirty-five years and that Karen had cohabitated with Weidling for only eight months. The court noted that "[t]he huge earning capacity disparity between Karen and Charles continues to exist" and that "[i]t is not feasible for Karen to become self-supporting at a level she enjoyed during the marriage." The court determined that maintenance was still necessary and therefore declined to terminate maintenance. The court explained that, based on the de facto marriage relationship between Karen and Weidling, Karen received a direct financial benefit each month in the amount of approximately \$1,000, and accordingly reduced Karen's monthly maintenance by that amount. We discern no error in the court's exercise of its discretion. *See Metz v. Keener*, 215 Wis. 2d 626, 640, 573 N.W.2d 865 (Ct. App. 1997) ("[T]he weight to be given to the relevant factors under the maintenance statute is committed to the trial court's discretion.").

By the Court.—Order affirmed.

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

