

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 6, 2016

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. 2015AP2284

Cir. Ct. No. 2014FA70

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JEREMY CHELL,

PETITIONER-APPELLANT,

V.

LAURIE ANN CHELL,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Burnett County:
J. MICHAEL BITNEY, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Jeremy Chell appeals the spousal maintenance portion of a judgment dissolving his marriage to Laurie Chell. Jeremy argues the circuit court erroneously exercised its discretion when determining the duration

and amount of maintenance payments. We reject Jeremy's arguments and affirm the judgment.

BACKGROUND

¶2 Jeremy and Laurie were married in June 2004, and Jeremy filed for divorce in July 2014. The couple, who resided in Burnett County, had no children together. At the time of the divorce hearing, the only contested issue was that of spousal maintenance. Laurie requested a monthly amount of \$3,000 for six years. The circuit court ultimately awarded Laurie monthly maintenance of \$3,000 for three years followed by \$2,000 for three years. This appeal follows.

DISCUSSION

¶3 The determination of maintenance is a matter entrusted to the circuit court's sound discretion. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). Upon a judgment of divorce, "the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering" those factors listed under WIS. STAT. § 767.56(1c) (2013-14).¹

¹ WISCONSIN STAT. § 767.56(1c) provides:

Upon a judgment of annulment, divorce, or legal separation, or in rendering a judgment in an action under s. 767.001(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 all of the following:

- (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. 767.61.
- (4) The educational level of each party at the time of marriage and at the time the action is commenced.

(continued)

On review, the question is whether the circuit court’s application of the factors achieves both the support and fairness objectives of maintenance. *Forester v. Forester*, 174 Wis. 2d 78, 84-85, 496 N.W.2d 771 (Ct. App. 1993). The first objective is to support the recipient spouse in accordance with the needs and earning capacities of the parties. “The goal of the support objective of maintenance is to provide the recipient spouse with support at pre-divorce standards.” *Fowler v. Fowler*, 158 Wis. 2d 508, 520, 463 N.W.2d 370 (Ct. App. 1990). The fairness objective is “to ensure a fair and equitable financial

(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, if the 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.

All references to the Wisconsin Statutes are to the 2013-14 version.

arrangement between the parties in each individual case.” *King v. King*, 224 Wis. 2d 235, 249, 590 N.W.2d 480 (1999) (citation omitted).

¶4 Here, Jeremy argues the circuit court erroneously exercised its discretion by “misapplying and failing to apply” the factors of WIS. STAT. § 767.56(1c) in determining the duration and amount of maintenance. We disagree. The circuit court considered the statutory factors, noting this was a “medium length” marriage; Jeremy is in good health, while Laurie testified she suffers from physical limitations as a result of a neck injury and frostbite to her hands; the parties equitably divided their marital estate; both have high school educations; and neither contributed substantially to the education, training or increased earning capacity of the other during their marriage. The court acknowledged the tax consequences that maintenance would have on each party and further noted there was no evidence of a mutual agreement by the parties concerning the financial support of each other.

¶5 The court recognized that Laurie, who was forty-two years old at the time of the final divorce hearing, earned \$12,500 annually for 2014, working two jobs. Based on the testimony of a vocational rehabilitation counselor, the court determined Laurie had a potential earning capacity of “closer to \$35,000,” if she could secure employment in “a more urban area in southern Wisconsin.” In turn, the court stated that Jeremy, who was thirty-seven years old, had an annual salary “closer to \$83,000,” working in North Dakota approximately twenty-two days per month as a superintendent for a construction company. Before awarding staggered limited term maintenance to Laurie, the court stated:

While it is likely that [Laurie] will become more self-supporting in the near future, it is undisputed, given her educational background and work experience, that she will

be unable to make anything close to the \$83,000 annual salary currently enjoyed by [Jeremy].

Therefore, to ensure that [Laurie] can become self-supporting at a standard of living reasonably comparable to that which she enjoyed during the course of the parties' marriage, the court finds and concludes that an award of maintenance is necessary.

The circuit court added that substantial monthly maintenance during the first three years would be a sufficient period of time for Laurie to realize her full earning potential, while a lesser maintenance amount during the final three years would “enable her to enjoy a standard of living reasonably comparable to that which the parties enjoyed during the course of their marriage.” According to the court, the staggered limited-term maintenance provided Laurie “sufficient support for a sufficient duration to obtain additional education or training to become completely financially independent by the time this maintenance award expires.”

¶6 Jeremy nevertheless contends the circuit court made no explicit determination as to the couple's standard of living during marriage. Jeremy testified, however, that the couple “went to Alaska, went to the races in Las Vegas a couple years, the races in Bristol, Tennessee” and ate at restaurants “quite a bit” when Jeremy was home. Although the circuit court did not specifically mention these facts within its decision, we will search the record for facts that support the circuit court's exercise of discretion. *See State v. Goyette*, 2006 WI App 178, ¶22 n.11, 296 Wis. 2d 359, 722 N.W.2d 731.

¶7 Jeremy alternatively claims the maintenance award is unfair because it increases Laurie's income above his own by 34%. We are not persuaded, as Jeremy utilizes Laurie's future potential earning capacity of \$35,000, rather than her present income, to arrive at his conclusion. One purpose of limited-term maintenance is to provide an opportunity for the recipient spouse to become self-

supporting within that period of time, as well as an incentive to seek employment. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 40-41, 406 N.W.2d 736 (1987). We reject Jeremy's attempt to utilize Laurie's future earning capacity as if that is her present income. Moreover, Jeremy's calculations exclude \$2,600 per month he receives in addition to his base salary to cover his out-of-town food and travel expenses.

¶8 Based on the record before it, the circuit court properly utilized the income information and testimony provided by the parties at the divorce hearing. The court also carefully considered the statutory factors, as well as the support and fairness objectives, and crafted a limited-term step-down maintenance plan to support Laurie as she worked over time to achieve her full earning capacity. We discern no erroneous exercise of discretion in either the analysis or the award of maintenance.

By the Court.—Judgment affirmed.

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

