

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 17, 2004**

Cornelia G. Clark  
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. 03-2544  
STATE OF WISCONSIN**

**Cir. Ct. No. 02FA000359**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE MARRIAGE OF:**

**JODINE Y. TAYLOR,**

**PETITIONER-RESPONDENT,**

**v.**

**TERRY L. TAYLOR,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Rock County:  
JOHN H. LUSSOW, Judge. *Affirmed.*

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Terry Taylor appeals his divorce judgment from Jodine Taylor, claiming the trial court erroneously exercised its discretion when it

ordered him to pay \$700 per month in maintenance. We disagree and affirm for the reasons discussed below.

### BACKGROUND

¶2 The Taylors were married for twenty-seven years. At the time of the divorce, Terry was forty-seven years old with some post-secondary education and was earning about \$38,000 per year as an engineer, while Jodine was forty-four years old with a tenth-grade education and was earning about \$14,500 per year as a clerical worker. She also received varying amounts of rent from a son who was living with her. Both parties were in good health. They had two children who had reached the age of majority. Although both parties worked during the marriage, finances were always tight and they eventually filed for bankruptcy during their separation prior to the divorce. Terry kept the house and reaffirmed the debt on it following the bankruptcy, even though the debt exceeded the equity. Terry submitted a monthly budget of \$2499, and Jodine submitted a monthly budget of \$1857.

¶3 The trial court awarded Terry the house and awarded each party the vehicle and personal property in their possession, divided the pensions equally, and ordered Terry to pay Jodine \$700 a month in permanent maintenance.

### DISCUSSION

¶4 Maintenance determinations lie within the sound discretion of the circuit court. *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996). Therefore, we will affirm maintenance awards when they represent a rational decision based on the application of the correct legal standards to the facts of record. *Id.*

¶5 A typical starting point for a maintenance evaluation following a long-term marriage is to award the dependent spouse half of the total combined earnings of both parties. *Bahr v. Bahr*, 107 Wis. 2d 72, 84-85, 318 N.W.2d 391 (1982). This amount may then be “adjusted following reasoned consideration of the statutorily enumerated maintenance factors.” *Id.* at 85. The factors listed in WIS. STAT. § 767.26 (2001-02)<sup>1</sup> include the length of the marriage, the age and health of the parties, the property division, the parties’ respective educational levels and earning capacities, the contributions of one party to the education or earning power of the other, tax consequences, and the feasibility of the party seeking maintenance to become self-supporting at the standard of living enjoyed during the marriage. These factors should be applied to “further two distinct but related objectives in the award of maintenance: to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective).” *LaRocque v. LaRocque*, 139 Wis. 2d 23, 32-33, 406 N.W.2d 736 (1987). Even if “[t]he increased expenses of separate households may prevent the parties from continuing at their pre-divorce standard of living, ... [a] court must not reduce the recipient spouse to subsistence level while the payor spouse preserves the pre-divorce standard of living.” *Id.* at 35. Furthermore, where one party developed a stream of income as the principal wage earner during a marriage while the other contributed to the marriage as a homemaker, the court cannot rely solely on the property division to

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

compensate the homemaker for his or her loss of income following the divorce. *Id.* at 38.

¶6 Terry asserts that the trial court here attempted to equalize the parties' income without addressing the statutory factors. We do not consider that an accurate characterization of the trial court's decision. The trial court explicitly stated that it had considered the various statutory factors. It explained that it considered the most significant factors with regard to maintenance to be the length of the marriage and the disparity of the parties' income, emphasizing that Jodine was unlikely to ever raise her income to anywhere near Terry's given her age and educational level. It also noted that Terry's disproportionate assumption of debt resulted from his own financial decisions. It then chose a maintenance amount of \$700, which was \$300 lower than its calculation of the amount that would be needed to equalize the parties' incomes.

¶7 The trial court could have more thoroughly discussed the statutory factors. However, it was within the court's discretion to give more weight to some factors than others, and the factors the court chose to rely on were appropriate based on the record before it. The court was faced with a situation in which both parties had submitted monthly budgets that exceeded their income, and Jodine testified that she had been struggling to make ends meet during the pendency of the divorce. The record appears to be silent as to who had performed the primary child-rearing functions during the marriage, and whether either party lost time in the job market as a result. It can be reasonably inferred, however, from the fact that both children apparently lived with Jodine during the parties' separation prior to the divorce, that Jodine had at least made significant contributions in that area. Therefore, we are satisfied that the trial court's decision accords with both the support and fairness objectives.

*By the Court.*—Judgment affirmed.

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

