

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 12, 2008**

David R. Schanker  
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. 2007AP1883-FT**

**Cir. Ct. No. 2006FA366**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**LISA ANN VAN RYEN,**

**PETITIONER-RESPONDENT,**

**V.**

**RONALD EMIL VAN RYEN,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Chippewa County:  
RODERICK A. CAMERON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ronald Van Ryen appeals an amended judgment of divorce, arguing the circuit court erred with regard to property division.<sup>1</sup> Specifically, Ronald seeks a credit from the equalization payment to his ex-wife Lisa because of his alleged economic sacrifice when the couple moved to Eau Claire. Ronald also argues the court erred in awarding a contribution of attorney fees to Lisa. We disagree and affirm.

¶2 The circuit court entered its findings of fact, conclusions of law and judgment of divorce on April 26, 2007. Issues of property division, Ronald's request for maintenance and Lisa's request for contribution towards her attorney fees remained. In a memorandum decision, the court set forth the property division, and awarded an equalization payment to Lisa in the amount of \$50,034.50. The court reserved determination on maintenance for a period ending June 1, 2009, because of uncertainty with regard to Ronald's employment. The court also ordered Ronald to contribute \$1,500 towards Lisa's attorney fees. Amended findings of fact, conclusions of law and judgment were filed on August 21, 2007. Ronald now appeals.

¶3 Ronald argues the circuit court erroneously exercised its discretion with regard to property division by not compensating him for his economic contributions to the marriage. Ronald claims the court failed to base its decision on facts in the record and failed to consider statutory factors. Ronald contends that when the couple moved from Madison to Eau Claire in 1996, he sacrificed a stable job in a bowling alley paying \$15 hourly and took a job in Eau Claire that

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

initially paid \$10 hourly.<sup>2</sup> Ronald insists his financial sacrifices increased Lisa's earning power, and the court did not consider Lisa's undisputed testimony that the couple moved to the Eau Claire area in part for her career advancement. Had the circuit court considered his "economic sacrifice in leaving a well-paying position in Madison with an opportunity for advancement to a stagnant job market in Eau Claire so that his wife could pursue her career ambitions," Ronald insists the equalization payment to Lisa would have been \$28,784.50 rather than \$50,034.50.

¶4 The division of property rests within the sound discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We generally look for reasons to sustain the circuit court's discretionary decision. *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968). We will sustain a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and using a rational process reached a decision that a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2). When there is conflicting testimony, the trial court is the ultimate arbiter of the witnesses' credibility. *Cogswell v. Robertshaw Controls*, 87 Wis. 2d 243, 249, 274 N.W.2d 647 (1979).

¶5 An equal division of a marital estate is presumed under WIS. STAT. § 767.61(3). The court may alter this distribution after considering statutory factors. During his oral argument at the continued divorce hearing, the only statutory factor Ronald relied upon was the contribution of one party to the

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<sup>2</sup> Ronald eventually earned \$15 per hour at his Eau Claire employment.

education, training or increased earning power of the other, under § 767.61(3)(f). In its memorandum decision, the court specifically addressed this statutory factor in rejecting Ronald's argument. The court stated:

This is not a case where Ronald contributed significantly to the education, training or increased earning power of Lisa. The move to Eau Claire enabled her to work days instead of nights. Her income remained the same. Ronald and Lisa made a joint decision to move to Eau Claire. They did not know his income would be lower until after he sought work in Eau Claire. Couples often make joint decisions regarding relocating. This sometimes means that one will have a lower income. To allow that spouse to assert many years later that he or she should have a disproportionate share of the property division is not mandated by Wisconsin law. Ronald also argues that he missed his lifetime opportunity to own and operate a bowling alley. He presented few specifics on the terms of purchase. Furthermore, one can only speculate as to whether he would have been successful in such a venture.

¶6 An adequate basis exists in the record to support the court's determination and its findings are not clearly erroneous. WIS. STAT. § 805.17(2). Moreover, Ronald received the benefit of Lisa's improved earnings during the marriage and upon divorce in terms of an equal property division. *See Jasper v. Jasper*, 107 Wis. 2d 59, 68, 318 N.W.2d 792 (1982). We are satisfied the court properly rejected Ronald's request to deviate from the presumption of equal property division based upon the single factor urged by Ronald at the hearing. *See LeMere*, 262 Wis. 2d 426, ¶21. In reviewing discretionary decisions, our task is to determine whether a court could reasonably come to the conclusion it reached. The court's decision, as a whole, incorporates appropriate considerations and is not an erroneous exercise of discretion.

¶7 Ronald also argues the refusal to award maintenance denied him a mechanism to "bridge to a better job." We are not persuaded. "A court is not

precluded from holding open a determination [of] maintenance.” *Preiss v. Preiss*, 2000 WI App 185, ¶22, 238 Wis. 2d 368, 617 N.W.2d 514. In doing so, however, it must consider the relevant maintenance factors in WIS. STAT. § 767.56, and provide “appropriate and legally sound reasons, based on the facts of record, for holding open a final maintenance decision until a future date.” *Grace v. Grace*, 195 Wis. 2d 153, 158, 536 N.W.2d 109 (Ct. App. 1995).

¶8 Here, it is apparent from the court’s memorandum decision that its primary purpose in holding maintenance open was to assess Ronald’s ability to maintain his income level. As the court noted, at the time of trial Ronald faced an impending layoff from his current employment at the 3M plant in Eau Claire. Ronald had job applications pending, including one with the 3M plant in Menomonie, just twenty-five miles west of Eau Claire. If he did not obtain employment with similar earnings, Ronald intended to enroll at the technical college with government funding and seek retraining.

¶9 After considering the statutory factors concerning maintenance, the court indicated that if Ronald could maintain his income level, he did not require spousal maintenance. However, at the conclusion of the trial, Ronald did not have complete information regarding a severance package, how long before he would get a job, or what kind of retraining he might choose. The court also noted that Ronald could receive about \$300 weekly in unemployment benefits. Ronald stated he could live with maintenance payments of \$300 a month if he cut some discretionary spending. However, given the uncertainty regarding Ronald’s economic status, the court reserved a determination of maintenance for a period ending June 1, 2009. The court stated that if Ronald made a claim for maintenance, a relatively quick decision could be expected given the information

the court already had on this case. The court's decision to hold maintenance open did not constitute an erroneous exercise of discretion.

¶10 Finally, Ronald argues the circuit court erroneously exercised its discretion by awarding Lisa \$1,500 in attorney fees. An award of attorney fees is discretionary. *Van Offeren v. Van Offeren*, 173 Wis. 2d 482, 499, 496 N.W.2d 660 (Ct. App. 1992). The circuit court in a divorce action may award attorney fees to one party based on his or her financial resources, because the other party has caused additional fees by overtrial, or because the other party refuses to provide information which would speed the process along. *Randall v. Randall*, 2000 WI App 98, ¶22, 235 Wis. 2d 1, 612 N.W.2d 737. When attorney fees are sought in an overtrial situation, there is no need to make findings of need and ability to pay. *Johnson v. Johnson*, 199 Wis. 2d 367, 377, 545 N.W.2d 239 (Ct. App. 1996). The policy underpinning an overtrial attorney fees award is to compensate the overtrial victim for fees unnecessarily incurred because of the other party's litigious actions.

¶11 The circuit court was in the best position to determine if the facts warranted contribution. Lisa requested Ronald pay one-half her attorney fees. The court agreed with Lisa's assessment of the case as a simple divorce where the parties stipulated to custody and placement issues except for one minor issue decided from the bench. The court concluded the matter could have been concluded with much less work. The court found that Lisa's attorneys would easily have expended at least one-quarter less time on the case but for the overtrial. The court considered the fee statements of \$5,700 submitted by Lisa's attorneys and found it reasonable. The court did not erroneously exercise its discretion in requiring Ronald to contribute \$1,500 to Lisa's attorney fees.

*By the Court.*— Judgment affirmed.

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

