

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 8, 2009

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. 2008AP1569

Cir. Ct. No. 1996FA255

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

JOSEPH N. FRANCIS,

PETITIONER-RESPONDENT,

v.

MAUREEN M. FRANCIS,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County:
GARY LANGHOFF, Judge. *Affirmed.*

Before Anderson, P.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. This is the third appeal arising from the parties' 1997 divorce. Maureen M. Francis appeals an order reducing the amount and limiting the duration of post-divorce maintenance paid to her by her former husband, Joseph N. Francis. Sufficient evidence exists from which the circuit court reasonably could find a substantial change in the parties' circumstances to justify the modification. We affirm.

¶2 The basic facts are undisputed. The 1997 divorce ended the parties' nearly thirty-four-year marriage. At divorce, the court ordered Joseph to pay Maureen \$1,666.66 per month for spousal support. Two years later, so as to capture the overtime component of Joseph's income, the court modified the award to provide a floor of \$1,666.66 or twenty-nine percent of his gross monthly income, whichever was greater. Joseph appealed; Maureen cross-appealed; this court affirmed. In 2004, Joseph moved for termination or modification of the support order. The circuit court found that Joseph's retirement constituted a substantial change in circumstances. Although the court reduced his monthly support obligation to \$575.00, Joseph appealed and this court affirmed.

¶3 In 2007, in a motion leading to this appeal, Joseph again asked the court to terminate his maintenance payments to Maureen. He contended that Maureen's needs decreased because the mortgage on the home awarded to her in the divorce was satisfied and, having reached retirement age, she was eligible for full Social Security benefits although she continued to work. The circuit court found that each parties' monthly income was higher than anticipated, constituting a substantial change in their financial circumstances. The court found that the area of "significant differential" was the \$520 gap between their respective Social Security benefits: Joseph received approximately \$1500 monthly Social Security benefits compared to Maureen's \$980. Accordingly, it reduced Joseph's monthly

maintenance obligation to Maureen to \$260, which would equalize the parties' Social Security income. The court also ordered that all maintenance payments terminate in fifteen months, at which time it felt Maureen would be in a position to be fully self-sufficient. Maureen appeals.

¶4 Maureen argues that the circuit court erroneously exercised its discretion both in reducing the amount of maintenance and in limiting its term. The decision to modify maintenance rests within the sound discretion of the circuit court. *Seidlitz v. Seidlitz*, 217 Wis. 2d 82, 86, 578 N.W.2d 638 (Ct. App. 1998). This court will not disturb the circuit court's decision unless it erroneously exercised its discretion. *Id.* A circuit court engages in an erroneous exercise of discretion when it fails to consider relevant factors, bases its award on factual errors, makes an error of law, or grants an excessive or inadequate award. *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶18, 269 Wis. 2d 598, 676 N.W.2d 452. We affirm the circuit court's decision if it examined the relevant facts, applied the correct standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

¶5 To modify a maintenance award, the party seeking modification must demonstrate a substantial change in circumstances. *Rohde-Giovanni*, 269 Wis. 2d 598, ¶30; *see also* WIS. STAT. § 767.59(1f) (2007-08).¹ The change in circumstances must relate to a change in the parties' financial circumstances since the time of the most recent maintenance order. *Kenyon v. Kenyon*, 2004 WI 147, ¶¶13, 38, 277 Wis. 2d 47, 690 N.W.2d 251. When determining whether

¹ All references to the Wisconsin Statutes are to the 2007-08 version.

maintenance should continue indefinitely or for a limited amount of time or be reduced or terminated, a court also must consider the recipient's need for support and fairness to both parties. *Rohde-Giovanni*, 269 Wis. 2d 598, ¶31. Because circuit courts have broad discretion to determine the amount and duration of maintenance, our review is limited to whether there was sufficient evidence from which the court reasonably could find a substantial change in the parties' circumstances to justify the modification. *Id.*, ¶17. We independently determine any issue of law arising during the court's exercise of discretion. *Id.*, ¶19. If the exercise of discretion relies on findings of fact, we affirm those findings if they are not clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶6 Maureen asserts that the \$260 monthly maintenance award reflects an erroneous exercise of discretion because the court failed to consider the statutory factors it considered when making the initial maintenance award. *See Kenyon*, 277 Wis. 2d 47, ¶13 (“When considering a request for maintenance modification under [WIS. STAT. § 767.59(1)(f)], the circuit court must reconsider the factors used to arrive at the initial maintenance award under [WIS. STAT. § 767.56].”). Maureen acknowledges that the court need not consider all the statutory factors, but asserts it must consider those relevant to the case. *See Hacker v. Hacker*, 2005 WI App 211, ¶9, 287 Wis. 2d 180, 704 N.W.2d 371. Maureen stops there. She does not tell us which of the factors the court should have addressed but did not. We need not address undeveloped arguments. *See Truttschel v. Martin*, 208 Wis. 2d 361, 369, 560 N.W.2d 315 (Ct. App. 1997).

¶7 Maureen asserts that the court also failed to consider the fairness and support objectives. *See LaRocque v. LaRocque*, 139 Wis. 2d 23, 32-35, 406 N.W.2d 736 (1987). Maureen contends the court ignored the disparity between their retirement accounts (her approximately \$84,000 compared to Joseph's

\$440,000) and the fact that Joseph retired at age 62 while she feels financially compelled to continue working at age 66. She claims the court essentially limited itself to the parties' monthly Social Security benefits and thus did not consider Joseph's total ability to pay. She also posits that the court overlooked her health problems, including arthritis, possible future thumb surgery, a hip replacement in 2002 and residual balance problems from having polio and a stroke as a child.

¶8 Maureen's arguments do not persuade us. Taking the last first, the relevant considerations in a maintenance modification proceeding are changes since the most recent order, which here was in 2004. *See Kenyon*, 277 Wis. 2d 47, ¶38. We presume the court was aware at that time of Maureen's earlier health concerns, making them irrelevant to this modification proceeding. To the extent the court did not expressly address Maureen's health, we recognize that the proper exercise of discretion contemplates that the circuit court explain its reasoning. *Randall*, 235 Wis. 2d 1, ¶7. When the court does not do so, we may search the record to determine if it supports the court's discretionary decision. *Id.* We also may assume any missing findings were determined in support of the decision. *See Michael A.P. v. Solsrud*, 178 Wis. 2d 137, 151, 502 N.W.2d 918 (Ct. App. 1993).

¶9 As to its other findings regarding fairness and support, the circuit court found that the parties were awarded comparable "nest eggs" at divorce: Maureen was awarded the marital home, her two modest retirement accounts, half of Joseph's pension and monthly maintenance. It also found that Joseph, now retired, lives off his retirement account and Social Security income; that the parties' post-retirement situations never will be "roughly comparable" because Maureen used a "significant portion" of her share to repair and refurbish the homestead she was awarded; that she has satisfied her mortgage; that her expenses

have diminished; and that she chooses to work to avoid drawing down her retirement savings. These findings are not clearly erroneous.

¶10 It is important to note that the same judge has presided over this matter from the beginning. His decision was informed by full knowledge of prior proceedings and the underlying rationale of “minimiz[ing] [Maureen’s] dependence upon [Joseph] in the long run.” Over the eleven years since their divorce, Joseph’s payments to Maureen gradually have been pared back. The court explained that equalizing the “significant differential” between the parties’ Social Security benefits and setting an endpoint to them would “afford[] [Maureen] a modest stipend to assist her as the weaning process is completed.”

¶11 The payment of maintenance is not to be viewed as a permanent annuity. *Vander Perren v. Vander Perren*, 105 Wis. 2d 219, 230, 313 N.W.2d 813 (1982). Rather, such payment is designed to maintain a party at an appropriate standard of living, under the facts and circumstances of the individual case, until the party exercising reasonable diligence has reached a level of income where maintenance is no longer necessary. *Id.* We conclude the court here demonstrated a rational process to reach a conclusion that a reasonable judge could reach. That is what a proper exercise of discretion is.

By the Court.—Order affirmed.

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

