

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 25, 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. 2008AP2297

Cir. Ct. No. 2007FA522

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

BECKY A. GAFFNEY,

PETITIONER-RESPONDENT,

V.

RICHARD A. GAFFNEY, II,

RESPONDENT-APPELLANT.

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

Before Higginbotham, P.J., Dykman and Bridge, JJ.

¶1 PER CURIAM. Richard Gaffney appeals the judgment divorcing him from Becky Gaffney. The issues are whether the court erred by denying his

claim for maintenance, and for a contribution to his attorney fees. We conclude that the trial court properly exercised its discretion in these matters, and therefore affirm.

¶2 Becky divorced Richard in 2008 after twelve years of marriage. At the time of the divorce, Becky, then forty-three, earned approximately \$4000 per month working as a legal assistant. Richard, then forty-two, is totally and permanently disabled as a result of a 2004 work-related accident. His income at divorce consisted of \$919 per month social security disability income. Becky has primary placement of the couple's child, who also receives social security payments on Richard's account. Richard receives Medicare and public assistance to meet his medical needs.

¶3 The parties litigated issues of maintenance, property division and attorney fees. The net marital estate was not substantial, and the court equally divided it, although finding that Becky's contributions to the marital partnership far exceeded Richard's and justified a "greatly unequal" division. Richard does not appeal that determination.

¶4 The court denied Richard's claim for maintenance, principally relying on determinations that (1) Richard was not socially or economically handicapped by the marriage; (2) the twelve-year marriage was not a long one, plus the fact that the couple were economic partners for only the first five, after which Richard ceased productive employment and Becky essentially supported the family alone; (3) Becky performed most of the homemaking and child care responsibilities while working full time, and sometimes working an extra part-time job as well; (4) neither party will have sufficient income to resume the standard of living enjoyed prior to Richard's injury, nor will either party have enough to meet

all present financial needs; and (5) maintenance to Richard would not reduce the public assistance benefits he received, because he could place any maintenance he received in an exempt trust and still receive its benefit. The court summarized its conclusion as follows:

The Court believes that it would be fundamentally unfair to require Petitioner to pay maintenance to the Respondent. The Petitioner is an extremely hard working woman whose economic contributions and responsibility contributions to the marriage have kept this marital partnership afloat for at least seven (7) years. The disparity in the parties' income situation has not been affected by the marriage. The Petitioner's economic situation, which greatly exceeds the Respondent's, is due to her natural abilities and hard work. The Respondent's economic situation, prior to his injury, was one of marginal almost non-existent earning capacity. Since his injury, the Respondent's earning capacity, affected by the receipt of Social Security and public assistance benefits exceeds the earning capacity he could have expected had he not been injured.

¶5 On the question of attorney fees, the court denied Richard's request for a contribution from Becky upon findings that Becky could not afford a contribution of fees; Richard received money from his family to pay his attorney; it was unfair to make Becky subsidize Richard's unsuccessful bid for maintenance; and it was sufficient that Becky paid for half the fee of Richard's vocational expert.

¶6 The trial court exercises its discretion in determining whether to award maintenance. *King v. King*, 224 Wis. 2d 235, 247, 590 N.W.2d 480 (1999). We reverse a discretionary determination only upon an erroneous exercise of that discretion. *Id.* at 248. "[A] discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and

reasonable determination.” *LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987) (citation omitted). To determine the amount of maintenance, the trial court must apply the facts to the relevant statutory factors. *See id.* at 31; *see* WIS. STAT. § 767.56 (2007-08).¹ Some of those factors relate to the support objective of maintenance, i.e., to support the recipient spouse in accordance with the needs and earning capacities of the parties, and others relate to the fairness objective, i.e., to ensure a fair and equitable financial arrangement between the parties in each individual case. *LaRocque*, 139 Wis. 2d at 32-33.

¶7 Richard contends that the trial court failed to adequately consider three of the statutory factors, physical and mental health, earning capacity, and the feasibility of becoming self-supporting at the standard of living enjoyed during the marriage. He contends that the court’s disregard of these factors led it to inadequately consider the support objective of maintenance. We disagree. The court, in fact, fully acknowledged in its decision that Richard would remain substantially handicapped, both physically and mentally, would never have an earning capacity exceeding his disability income, and could never become self-supporting. However, notwithstanding those considerations, the court concluded that other factors mitigated more heavily in favor of denying maintenance, including the relatively short length of the marriage, Becky’s substantial contributions to it compared with Richard’s minimal contributions, her poor financial situation, caused in substantial part by substantial debts the family incurred due to Richard’s injury, and the fact that neither party could return to the standard of living enjoyed during the early part of the marriage. In short, the court

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

did not disregard the support objective of maintenance, but concluded that it did not justify maintenance given the weighing of all relevant factors. In doing so, the court made a reasoned and reasonable decision on the matter.

¶8 A decision on attorney fee contributions is also discretionary. *Bisone v. Bisone*, 165 Wis. 2d 114, 123-24, 477 N.W.2d 59 (Ct. App. 1991). The proper exercise of that discretion requires the trial court to consider the need of the requesting party, the ability of the other party to pay, and the reasonableness of the fees. *See Greenwald v. Greenwald*, 154 Wis. 2d 767, 790-91, 454 N.W.2d 34 (Ct. App. 1990). Here, the court found that Richard's need was lessened by his family's help, and that Becky's debts and other financial obligations left her unable to substantially contribute. Richard fails to demonstrate that the court erred in these findings, and they reasonably support the decision to deny a contribution.

By the Court.—Judgment affirmed.

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

