

CASE NO. A08-2128

State of Minnesota
In Court of Appeals

CYNTHIA JEAN MAIERS,

Appellant/Petitioner,

vs.

MARTIN JOHN MAIERS,

Respondent.

APPELLANT'S REPLY BRIEF

WRIGHT FAMILY LAW
& MEDIATION, P.L.L.C.
Dianne Wright (#118965)
342 Fifth Avenue North
Bayport, Minnesota 55003-1201
(651) 275-4460

Attorney for Appellant

OJALA LAW OFFICE
Linda M. Ojala (#81243)
3300 Edinborough Way
Suite 550
Edina, Minnesota 55435-5923
(952) 405-2040

Attorney for Respondent

TABLE OF CONTENTS

Table of Authorities.....	iv
Argument.....	1
I. The parties' standard of living is not in issue; the issue is whether Ms. Maiers is entitled to the standard of living.....	1
II. Uncertainty as "how long it will take" a dependent spouse to be self- sufficient, considering the standard of living during the marriage, should be met by an award of permanent maintenance.....	2
III. A reservation of maintenance is not an acceptable alternative when there is uncertainty as to duration.....	5
Conclusion.....	6
Certification of Brief Length.....	7

TABLE OF AUTHORITIES

Statutes

Minn.Stat. § 518.552.2,3,5

Cases

Aaker v. Aaker, 447 N.W.2d 607 611 (Minn. App. 1989), review
denied (Minn. Jan 12, 1990)..... 4

Hall v. Hall, 417 N.W.2d 300 (Minn. App. 1988)..... 5

Nardini v. Nardini, 414 N.W.2d 184 (Minn. 1987)..... 3,5

Unpublished Cases

Biocca v. Citera, 2008 WL 5215941 (Minn. App. 2008)..... 3

Thielen v. Thielen, 1999 WL 1138531..... 4

ARGUMENT

I. The parties' standard of living is not in issue; the issue is whether Ms. Maiers is entitled to the standard of living.

Respondent argues that the parties lived beyond their means the last few years of marriage and had substantial debt. (Respondent's Brief, p. 5, ¶3). Implicit in the argument is that the standard of living at the time of the divorce is not relevant.

In response, the trial court made no sort of finding of fact that the parties lived beyond their means. Also, there is no evidence to support the conjecture of Respondent that the parties lived beyond their means the last few years of marriage. Respondent offers that the parties had a home equity loan of \$50,000. However, there is no evidence that the home equity loan was used for monthly living expense or when it was incurred.

Secondly, the parties' standard of living as found by the trial court is not in issue. The trial court found that the parties enjoyed a "comfortable lifestyle" and "comfortable standard of living," *supra*. Neither party contested the reasonableness of the monthly expenses. The standard of living is not an issue.

The issue is that the trial court found that Ms. Maiers was not deserving of the standard of living acquired by the parties. The trial court found:

*"*** Petitioner is not entitled to, in the long term, maintain the comfortable standard of living she acquired only in recent years." Finding of Fact XIV (a) (A-53)*

"From late 1997 to the parties' separation in 2007, the Respondent's income progressively increased along with the parties' standard of living. Consequently, it is only during the last 10 years that the parties began to experience a more comfortable type of lifestyle. The Petitioner should not reasonably expect to maintain indefinitely into the future a

standard of living that lasted for such a short duration during the marriage.” (Finding of Fact XIV (c), A-55)

“The Petitioner’s living expenses will decline as the children emancipate and the Petitioner adjusts to a more appropriate standard of living.” (emphasis supplied) (“Conclusion” portion of Finding of Fact XIV, A-57)

The error of the trial court’s award of five years of maintenance is based on the erroneous conclusion that the wife is entitled to enjoy the parties’ standard of living only five years into the future.

II. Uncertainty as to “how long it will take” a dependent spouse to be self-sufficient, considering the standard of living during the marriage, should be met by an award of permanent maintenance.

Respondent argues that the word “uncertainty” as to the necessity of a permanent award in Minn. Stat. §518.552, subd. 3 applies only to “if” a dependent spouse can become self-sufficient, not “how long” it will take the spouse to become self-sufficient.

Again, “if” and “when” Ms. Maiers can meet her needs independently is dependent upon whether Ms. Maiers is to enjoy the “standard of living established during the marriage” for only five years, or for a longer period. If her standard of living is to be reduced to something “more appropriate” after a five year period, then, maybe she can become self-supporting.

If, however, she should be able to enjoy the “standard of living established during the marriage” for an indefinite period of time, her ability to earn enough to ever meet that standard of living is uncertain.

In discussing Minn. Stat. §518.552, subd. 3, the *Nardini* court stated: “***doubts with respect to duration are to be resolved in favor of permanency.” *Nardini v. Nardini*, 414 N.W.2d 184, 196 (Minn. 1987). There was no distinction about if or how long.

Respondent cites both unpublished and published opinions in support of the argument that temporary maintenance is appropriate. Unlike the present case where there is uncertainty as to the length of time that a spouse needs to be self-supporting, in each of the following cases, the facts support a specific time period.

The first case attached to Respondent’s Brief is *Biocca v. Cistera*, 2008 WL 5215941 (*Respondent’s Appendix-2*). In that case, there was **no** uncertainty about the length of time that the wife, an accountant, would be self-supporting. “*The district court did not find uncertainty about Biocca’s ability to become self-supporting within the time in which she would receive temporary maintenance ****” *Id.* at 2. In *Biocca*, the wife has practiced as an accountant full-time, and later returned to work as an accountant, part-time. A vocational evaluator found the wife to be above-average. The *Maiers* case is significantly different in two respects. First, Cindy *Maiers* never worked full-time or part-time in the field in which she obtained a degree, social studies education. She worked only occasionally as a substitute teacher in unrelated fields, for which a teaching degree is not even necessary. In contrast, Ms. *Biocca* continued to work and planned to work in her chosen profession of accounting. Secondly, the trial court in *Maiers* did find that there, “***is some uncertainty if 5 years is sufficient period of time to attain self sufficiency. (Finding of Fact XIV, A-54).

Thielen v. Thielen, 1999 WL 1138531 is the second case attached to Respondent's brief. This was the second appeal. In the first appeal, the award of temporary maintenance was remanded for more specific findings. The trial court's award of six years of maintenance was affirmed in the second appeal because the wife had been employed at the same job for 13 years and her wages had increased from \$5.85 to \$11.90 per hour. The court determined that her wages would continue to increase over time, without further training. Also, the wife could increase her earnings by working full time "given the very low unemployment rate in Minnesota from the time of separation forward." In contrast, Ms. Maiers had no long-term history of successful employment. She was fortunate to find fulltime employment after the divorce started, at a job that she enjoys, but the trial court acknowledged she is not self-supporting. Finally, the job market today is significantly different than it was it was in 1999 when the *Thielen* case was decided.

In *Aacker v. Aacker*, 447 N.W.2d 607 (Minn. App. 1989) cited by Respondent, the wife was 39 years of age, the same age as Ms. Maiers, but Ms. Aacker received a "substantial award of liquid assets" and the evidence showed that she would complete her business degree within the next three years and would thereafter, be able to find employment. The award of temporary maintenance was affirmed. Ms. Aacker also had an education degree many years before, but the education degree was not a factor in the court's award. In contrast, Ms. Maiers is being awarded no liquid assets, and she is not returning to school to complete a business degree within three years.

The case of *Hall v. Hall*, 417 N.W.2d 300 (Minn. App. 1988), cited by Appellant involved parties with high school educations, both age 39 at the time of trial. The husband earned net income of \$2,000-\$2,500 per month. The wife wanted to complete her college degree in four years to become self-supporting. Temporary maintenance was affirmed.

III. A reservation of maintenance is not an acceptable alternative when there is uncertainty as to duration.

Respondent argues that the court's "reservation" of maintenance offers a third alternative. However, Minn. Stat. §518.552 does not state that "uncertainty" as to duration should be met with a "reservation."

Also, as explained in Ms. Maiers' first brief, the *Nardini* court has already held that a temporary award of maintenance, with a reservation is not an acceptable alternative. This is particularly true for women like Ms. Maiers. Although the court retains jurisdiction, the burden is unfairly shifted to Ms. Maiers to bring a motion, to show that she has made attempts to be self-supporting. If she remains at the same full-time job, which she stated she loves, the court will find that she has made no attempts toward improvement and thus, deny her request.

Note that there are cases when a reservation of spousal maintenance is appropriate. These are cases where maintenance is not needed currently, but because of certain circumstances, a reservation is appropriate, such as a spouse with cancer in remission, who may be a need of maintenance in the future.

CONCLUSION

In conclusion, the standard of living the parties enjoyed is not in issue. The issue is whether Ms. Maiers is entitled to that standard of living for more than five years, or whether she should “adjust” to a lower standard of living.

Doubts with respect to the duration of maintenance are to be resolved in favor of permanency. Neither statute nor case law approves of a reservation of maintenance as an appropriate alternative.

Dated: September 9, 2009

Wright Family Law & Mediation, P.L.L.C.

By *Dianne Wright*
Dianne Wright, Attorney Reg. #118965
Attorney for Appellant
White Pine Building
342 Fifth Avenue North
Bayport, MN 55003
(651) 275-4460

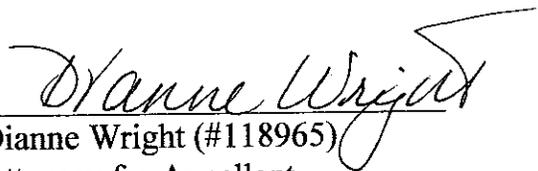
FORM 132.01 CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of
Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a proportional
font. The length of this brief is 1,444 words. This brief was prepared using Microsoft
Office Word 2003 software, Times New Roman, font size 13.

WRIGHT FAMILY LAW & MEDIATION, P.L.L.C.

Dated September 9, 2009

BY:


Dianne Wright (#118965)
Attorney for Appellant
White Pine Building
342 Fifth Avenue North
Bayport, MN 55003-1201
Telephone: 651-275-4460