

CASE NO. A08-2128

---

State of Minnesota  
In Court of Appeals

---

CYNTHIA JEAN MAIERS,

*Appellant/Petitioner,*

vs.

MARTIN JOHN MAIERS,

*Respondent.*

---

**RESPONDENT'S BRIEF AND APPENDIX**

---

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*

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

# TABLE OF CONTENTS

	Page
Table of Authorities .....	iii
Legal Issue .....	iv
Statement of the Case .....	1
Statement of Facts .....	2
Argument	
<b>I.    THE TRIAL COURT’S SPECIFIC FINDINGS           ON THE SPOUSAL MAINTENANCE FACTORS           ARE SUPPORTED BY THE RECORD.....</b>	4
Conclusion .....	12
Certificate of Compliance .....	13
Appendix .....	14

## TABLE OF AUTHORITIES

	Page
<b><u>Cases</u></b>	
<i>Aaker v. Aaker</i> , 447 N.W.2d 607 611 (Minn. App. 1989), review denied (Minn. Jan 12, 1990) . . . . .	8, 10
<i>Erlandson v. Erlandson</i> , 318 N.W.2d 36, 38 (Minn. 1982) . . . . .	4
<i>Flynn v. Flynn</i> , 402 N.W. 2d 111 (Minn. App. 1987) . . . . .	9
<i>Hall v. Hall</i> , 417 N.W.2d 300 (Minn. App. 1988) . . . . .	10
<i>Karg v. Karg</i> , 418 N.W.2d 198, 201 (Minn. App. 1988) . . . . .	7
<i>Marshall v. Marshall</i> , 350 N.W.2d 463 (Minn. App. 1984) . . . . .	9
<i>Nardini v Nardini</i> , 414 N.W 2d 184 (Minn. 1987) . . . . .	7, 8
<i>Rutten v. Rutten</i> , 347 N.W.2d 47, 50 (Minn. 1984) . . . . .	4
<i>Sand v. Sand</i> , 379 N.W.2d 119 (Minn. App. 1985) . . . . .	9
<i>Schallinger v. Schallinger</i> , 699 N.W.2d 15, 22 (Minn. App. 2005) . . . . .	10
<i>Zamora v. Zamora</i> , 435 N.W.2d 609, 612 (Minn. App. 1989) . . . . .	7
<b><u>Unpublished Cases</u></b>	
<i>Biocca v. Citera</i> , 2008 WL 5215941 (Minn. App. 2008) . . . . .	8
<i>Thielen v. Thielen</i> , 1999 WL 1138531 . . . . .	10
<b><u>Statutes</u></b>	
Minn. Stat. §518.552 . . . . .	4, 7

## STATEMENT OF LEGAL ISSUE

### I.

Did the trial court abuse its discretion in awarding Appellant five years of maintenance followed by a reservation.

The trial court awarded Appellant spousal maintenance in the amount of \$1,956 per month for a period of five (5) years followed by a reservation.

Minn Stat. §518.552

*Aaker v. Aaker*, 447 N.W.2d 607 (Minn. App. 1989)

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

## STATEMENT OF THE CASE

This is a dissolution proceeding heard in the 10<sup>th</sup> Judicial District, County of Washington, Minnesota, before The Honorable Gregory G. Galler.

Following a trial on April 14, 2008, a Judgment and Decree was entered on July 25, 2008. An Order Amending the Judgment and Decree was filed on October 7, 2008. The Order Amending the Judgment and Decree did not modify the terms of the spousal maintenance award.

## STATEMENT OF FACTS

The parties were married on June 2, 1990, and Appellant obtained a Bachelor's degree from the University of Wisconsin, River Falls, in Social Studies in 1991. During the marriage, she had some experience working as a substitute teacher in elementary schools (T. 28). She started substitute teaching in 1997-1998, and continued until 2003 (T. 92). She had also been employed during the marriage at a frame shop and was employed for about four years at that job (T. 21).

This dissolution proceeding was commenced in May of 2007. In October of 2007, Appellant was laid off from her frame shop job. She subsequently applied for only one job and that was with Mesaba Airlines as a flight attendant (T. 80). As a flight attendant with Mesaba Airlines, she is guaranteed only 75 hours per month at the hourly rate of \$15.08. If she has other hours, not in flight, she is paid \$1.58 per hour (T. 19-20).

A Minnesota Department of Education document showed she was currently licensed to teach at the student level of grade 7-12 with an expiration date of June 30, 2008 (T. 83) (A. 1). If the teaching license expires, she would need some additional course work and some student teaching for a semester (T. 84). She had never inquired about which courses she would need to take or the cost to make her license current (T. 84). Even working at the lowest tenth

percentile of teacher's salaries in the State of Minnesota, she could earn approximately \$34,000 per year (Respondent's Appendix 51, T 96-97).

The parties had substantial debt. During the last two years in which they resided together in a single residence, they incurred \$50,000 on the home equity line of credit. The parties were living beyond their means and were having a difficult time paying the bills even before they separated (T. 149).

## ARGUMENT

### I. THE TRIAL COURT'S SPECIFIC FINDINGS ON THE SPOUSAL MAINTENANCE FACTORS ARE SUPPORTED BY THE RECORD.

In dissolution cases, the trial court has broad discretion in deciding whether to award maintenance and in determining the duration and amount of maintenance. The trial court's determination must be affirmed unless the court abused its discretion. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). Before the Appellate Court can find that the trial court abused its discretion, there must be a clearly erroneous conclusion that is against logic and the facts on the record. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

The Court made detailed findings on each of the factors required to be examined under Minn. Stat. §518.552, Subd. 2. As to her ability to meet needs independently in the future, the Court found that she will become progressively more able to independently meet her needs due to decreased living expenses and the ability to earn additional income. The parties' children, ages 17, 14, and 11, at the time of trial, will be older and emancipated except for one who will be 16 years of age. She will have more time available as she was only working part-time hours at the airline at the time of trial.

The Court was clear in finding that she will become self-sufficient and the only uncertainty was whether five years would be a sufficient period of time to attain self-sufficiency. In these circumstances, it was appropriate for the Court to reserve the issue of maintenance after the period of five years (Respondent's A-53-54)

On the issue of education or training and ability to acquire additional training, the Court found that she had a college education and had been licensed as a teacher. She had experience as a substitute teacher and had received additional training as a flight attendant. The Court's finding that she is capable of becoming self-sufficient in light of these facts is reasonable.

On the issue of the standard of living established during the marriage, the Court reviewed the parties' standard of living throughout the marriage, not just the last few years of the marriage. Appellant asserts, without authority, that the relevant standard of living is that at the time of the divorce. The standard of living "established during the marriage" includes the years of the marriage, not just the year of the divorce. In any event, the parties had been living beyond their means during the last few years of their marriage resulting in substantial debt including a large encumbrance on their home.

Regarding the length of absence from employment and the extent to which education or skills had become outmoded, the Court found her skills not to be outmoded because of her substitute teaching experience and current

teaching license. The finding that her skills had not been permanently diminished is supported by the record.

On the issue of employment opportunities foregone during the marriage, the Court found that she had been more responsible for care of the children during the marriage and had likely lost some employment opportunities

The Court found that Appellant was only 39 years old and had many potential employment years ahead of her and was in good physical and emotional condition. There was no evidence that her ability to work fulltime was impaired by clinical depression for which she took medication. Again, these findings are supported by the record.

The factors which the Court found of particular importance regarding her ability to earn more income included her relatively young age and possession of a college degree. It was also noted that her expenses would likely decline with the emancipation of the children and she would have additional time for employment.

The Appellant erroneously asserts in her brief that, “In five years, however, the spousal support for Ms. Maiers terminates because the trial court found that the parties’ standard of living should no longer continue for Ms. Maiers . . .” (Appellant’s brief at Page 9). This is a misstatement of both the Court’s Findings and its Order. Ms. Maiers’ maintenance will not terminate in five years; the maintenance will be reserved. Although the trial court found

that Appellant would become self-sufficient, the Court acknowledged that it was uncertain when self-sufficiency would be attained. By reserving the issue of spousal maintenance, the trial court acknowledged the need for an opportunity to review whether or not Appellant was able to become self-sufficient in five years. The standard of review at that time will not be that for modifying an existing decree, but rather the standard applied to the original determination on the issue of maintenance. When the original award of temporary maintenance ends and the trial court specifically reserved jurisdiction on the issue of spousal maintenance for future determination, the issue is determined de novo and not as a modification proceeding. *Zamora v. Zamora*, 435 N.W.2d 609, 612 (Minn. App. 1989); *Karg v. Karg*, 418 N.W.2d 198, 201 (Minn. App. 1988).

Appellant's argument assumes that there are only two choices when considering maintenance, a temporary award or a permanent award, and that if there is any "uncertainty," the award must be permanent. That is not the law in Minnesota; a reservation is also allowed. The trial court in this case carefully crafted an award that included both findings on her ability to become self-supporting, and a review after a set period.

This case is distinguishable from *Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987). In that case, the marriage lasted 31 years, Ms Nardini had only a high school education, and had been out of the labor market for 29 years.

Both the *Nardini* decision and Minn. Stat. §518.552, Subd. 3 state that when there is some uncertainty as to “the necessity of a permanent award,” the court shall order a permanent award. The trial court in this case made it clear that there was no uncertainty about her ability to become self-supporting and the only uncertainty was about the amount of time needed to become self-sufficient. An award of temporary maintenance is based on the assumption that the party receiving the award not only should strive to obtain suitable employment and become self-supporting, but also that he or she will attain that goal. *Nardini* at 198. The trial court found that Appellant should strive to obtain suitable employment and become self-supporting. The Court also found that “. . . there is little question at some point she will become self-sufficient.” (Respondent’s A-53)

Minnesota law does not require permanent maintenance in this situation. The statute “requires that a court order permanent maintenance if the court is uncertain that the spouse seeking maintenance can ever become self-supporting.” (emphasis added) *Aaker v. Aaker*, 447 N.W.2d 607 611 (Minn. App. 1989), review denied (Minn. Jan. 12, 1990).

Appellant’s argument that the record does not support the trial court’s finding that her ability to teach was not outmoded is without merit. She received her college degree in 1991 and did substitute teaching for a number of years during the marriage. In *Biocca v. Cistera*, 2008 WL 5215941 (Minn. App.

2008), the parties had been married for 24 years and the wife's college bachelor degree was 26 years old. She had been out of the work force for 13 years and was 50 years old at the time of the divorce earning net income of \$556 per month (A-2). On appeal, the wife argued that her 26-year old bachelor's degree was obsolete and that she should have been awarded permanent spousal maintenance. The Court of Appeals disagreed and affirmed the trial court, noting that nothing in the record controverted the district court's conclusion that the wife's ability to become self-supporting was not uncertain.

The trial court did not require Appellant to change vocations. The decision was based upon her past educational training, her work as a teacher, her additional training, and ability to become self-supporting based on that history. The Court even noted in its opinion that she might be able to obtain higher paying hours as a flight attendant (Respondent's A-54). *Marshall v. Marshall*, 350 N.W.2d 463 (Minn. App. 1984) is distinguishable. In that case, the wife was pursuing a law degree in order to eventually become self-supporting while she received maintenance. In the instant case, Appellant has shown no inclination to obtain an additional degree in order to become self-supporting. In *Sand v. Sand*, 379 N.W.2d 119 (Minn. App. 1985), the issue was whether a wife who had been awarded permanent maintenance in the dissolution degree had a duty to rehabilitate and train herself. That is not the issue in this case. The facts in *Flynn v. Flynn*, 402 N.W.2d 111 (Minn. App.

1987), are also distinguishable. In that case, the wife did have plans for rehabilitation, to enter into a chemical dependency training program and subsequently obtain a master's degree. Her previous type of employment did not give her earning potential sufficient to make her self-supporting.

The Petitioner is only 39 years of age and in good health. With her college degree and teaching experience, she has the ability to meet her necessary monthly expenses in the future. Her choice not to seek full-time employment as a teacher does not mean that she lacks the ability to be self-supporting. See *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005).

In *Aaker v. Aaker*, 447 N.W.2d 607 (Minn. App. 1989) a temporary maintenance award was held to be appropriate under circumstances involving a 17-year marriage, three children, and a 39-year-old recipient with a salary of about \$20,000. In *Hall v. Hall*, 417 N.W.2d 300 (Minn. App. 1988), a temporary maintenance award was upheld in circumstances involving an 18-year marriage, a 39-year-old recipient spouse with a high school education and who was working full-time. In *Thielen v. Thielen*, 1999 WL 1138531 (A-3), the parties had been married for 21 years and the recipient spouse was 41 years of age with three children. She had a high school education and no additional training and had been employed part-time outside the home. The Appellate Court found that because she was in good health, had worked during the

marriage and provided no reason why she could not either re-train or seek full time work, the award of temporary maintenance was appropriate.

## CONCLUSION

For all of the above reasons, the Respondent respectfully requests that the Court affirm the trial court's decision.

Respectfully submitted,

OJALA LAW OFFICE

Dated: Aug. 20, 2009



---

Linda M. Ojala, #81243  
Attorney for Respondent  
3300 Edinborough Way, #550  
Edina, MN 55435-5923  
(952) 405-2040

NO. A08-2128  
State of Minnesota  
In Court of Appeals

---

**Cynthia Jean Maiers,**

*Appellant/Petitioner,*

vs.

**Martin John Maiers,**

*Respondent.*

---

**RESPONDENT'S CERTIFICATE OR  
COMPLIANCE WITH  
RULE 132.01, SUBD. 3, MINN.R.CIV.APP.P**

---

I hereby certify that this Brief conforms to the length requirements of *Mnn. R. Civ. App. Pro.* 132.01, Subd. 3, for a brief produced with a proportional font. The length of the Brief is 2,258 words. The Brief and word count were produced using Word, Garamond, font size 14.

OJALA LAW OFFICE

Dated: Aug. 20, 2009



---

Linda M. Ojala, #81243  
Attorney for Respondent  
3300 Edinborough Way, #550  
Edina, MN 55435-5923  
(952) 405-2040