

On May 5, 2009, the District 1 Court of Appeals issued their opinion in Heppner v. Heppner, No. 2008AP2020 (Wis. Ct. App. May 5, 2009) 319 Wis. 2d 237, 768 N.W.2d 261 (Ct. App. 2009), which modified in part, reversed in part and cause remanded with directions the order remanded by the Honorable Mary M. Kuhnmuensch (Milwaukee County Cir. Ct.).

In the May 5, 2009, opinion issued by the Court of Appeals, the wife contended, among other things, that the trial court erred in deciding that maintenance payable by the husband should end when he turns sixty on May 30, 2012. The Court of Appeals found that under *Hefty*, the recipient spouse is entitled, assuming that the payor spouse's income permits it, to enjoy his or her life at the standard that he or she could anticipate enjoying, but for the divorce. The court held that by ending maintenance on May 30, 2012, the trial court ignored the *Hefty* principles and accordingly erroneously exercised its discretion. If the wife is to be able to enjoy the life she would have enjoyed if the parties had not divorced, as *Hefty* teaches is the rule, she is entitled to maintenance even though the husband is retired. The appellate court further held that if circumstances change so that the 50/50 split of the husband's income is no longer fair or warranted, the parties may return to court for a modification. Accordingly, the Court of Appeals, under Wis. Stat. §808.09 modified the trial court's maintenance order to extend beyond May 30, 2012, for an indefinite term.

On June 4, 2009, the District 1 Court of Appeals made corrections to paragraph 15 of the Heppner v. Heppner opinion. In its corrected opinion, the Court of Appeals stated that in light of the trial court's setting the fifty-fifty split based on its imposition of the limited term maintenance, the matter is remanded to the trial court for an evaluation whether, consistent with this opinion, the fifty-fifty split should be modified. The Court of Appeals further stated that the parties may, of course, return to court for a modification of whatever maintenance division it ultimately sets.

The other aspect of the Heppner decision focused on the treatment of stock options. On appeal, the wife argued that: a) the trial court erred that the husband's stock options exercised by him after the divorce were not to be considered in determining the amount of the husband's maintenance obligation; and b) those of the husband's stock options whose grant price exceeded the value of the stock as of the date of divorce would be solely awarded to the husband because they allegedly had "no value."

The wife was successful on this aspect of her appeal as well. Specifically, the court of appeals overturned the trial court and ruled that the court must consider all sources of income when determining maintenance, including the income generated by the grant and exercise of stock options. Further, the appellate court reversed the judgment of the trial court insofar as it did not make a property division of the underwater stock options. The court of appeals reaffirmed existing case law noting that underwater stock options does not mandate the exclusion of such options from a marital estate property division.

As of February 2010 the Heppner case is back before the trial court on remand with a final hearing and decision date pending.