

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 12, 2006

Cornelia G. Clark
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. 2005AP3075

Cir. Ct. No. 2003FA257

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

PAULA JEAN OLSON,

PETITIONER-APPELLANT,

V.

NICHOLAS BRUCE OLSON,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dunn County:
WILLIAM C. STEWART, JR., Judge. *Affirmed in part; reversed in part and
cause remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Paula Olson appeals her judgment of divorce from Nicholas Olson. Paula argues that the trial court erred by excluding a prior residence from the marital estate and that the property should have been divided equally. She further argues the trial court erred in its factual finding regarding the amount of improvements to the prior residence. We conclude the trial court did not exclude the residence from the marital estate, considered the proper factors when dividing the property and based its determination of the improvements on the only available evidence.

¶2 Paula also argues the court erred by overlooking evidence she provided regarding the current fair market value of the property. We conclude the court erred by overlooking an exhibit Paula provided regarding the current fair market value of the property. We remand this issue for the court to consider Paula's evidence and make a determination of the current fair market value of the prior residence and any necessary adjustments to Paula's award.

BACKGROUND

¶3 Paula and Nicholas Olson were married on October 6, 1990, and divorced on July 11, 2005. Nicholas had owned a residence for nineteen years prior to the marriage, and title remained in his name during the marriage. The parties resided at the residence for a time and then used it as collateral for a loan to build a new marital residence. The new residence was sold during the pendency of the divorce and the proceeds were divided equally.

¶4 The court awarded Nicholas the old residence and he continued to reside there. At the final divorce hearing, the court determined this property was not divisible. Paula subsequently asked for reconsideration and clarification on the issue of Nicholas's residence, and the court held a hearing on August 17, 2005.

The court determined that while the residence was divisible, it would not be equitable to equally divide the residence's value. Neither party submitted evidence as to the value of the residence at the time of the marriage.

¶5 The court attempted to split the appreciation of the residence based on facts in evidence. The court used a 2002 property tax statement submitted by Nicholas valuing the residence at \$127,800 as the starting value. The court used Nicholas's financial disclosure statement listing the value of the residence at \$139,300 to determine the current value of the property. Based on the record, the court then valued the total appreciation at \$11,500 and ordered that amount split equally between the parties. The court failed to consider trial exhibit 5, a property tax statement Paula submitted from 2004 stating a fair market value of \$154,300 for the residence. Paula now appeals the division of the marital estate.

DISCUSSION

¶6 Paula argues that the trial court erred by excluding the prior residence from the marital estate and that it should have been split equally. We conclude the trial court did not exclude the property from the marital estate and considered the proper factors in determining not to split the value equally.

¶7 Property division is committed to the trial court's discretion. *Peerenboom v. Peerenboom*, 147 Wis. 2d 547, 551, 433 N.W.2d 282 (Ct. App. 1988). Although equal division is presumed, the court may deviate from an equal

division after considering factors enumerated in WIS. STAT. § 767.255(3).¹ In deciding to deviate from an equal property division, the court may give “one

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted. WISCONSIN STAT. § 767.255(3), property division, provides in relevant part:

(3) The court shall presume that all property not described in sub. (2)(a) is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering all of the following:

- (a) The length of the marriage.
- (b) The property brought to the marriage by each party.
- (c) Whether one of the parties has substantial assets not subject to division by the court.
- (d) The contribution of each party to the marriage, giving appropriate economic value to each party’s contribution in homemaking and child care services.
- (e) The age and physical and emotional health of the parties.
- (f) The contribution by one party to the education, training, or increased earning power of the other.
- (g) The earning capacity of each party
- (h) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.
- (i) The amount and duration of an order under s. 767.26 granting maintenance
- (j) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.
- (k) The tax consequences to each party.
- (l) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution
- (m) Such other factors as the court may in each individual case determine to be relevant.

statutory factor greater weight than another” and conclude that certain factors are irrelevant. *LaMere v. LaMere*, 2003 WI 67, ¶25, 262 Wis. 2d 426, 663 N.W.2d 789. One factor the court may consider is the property each spouse brought to the marriage. WIS. STAT. § 767.255(3)(b). We will uphold a property division if the court gave rational reasons for its decision and based its decision on facts in the record. *Peerenboom*, 147 Wis. 2d at 551.

¶8 The valuation of a given asset, however, is a factual determination. *See Siker v. Siker*, 225 Wis. 2d 522, 527-29, 593 N.W.2d 830 (Ct. App. 1999). As a result, appellate review of a trial court’s valuation is under the clearly erroneous standard. *See id.* at 531-32. When reviewing issues of fact, appellate courts search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court did not but could have reached. *In re Dejmal*, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980).

¶9 Here, the court did not exclude the residence from the marital estate; the court simply chose not to divide it equally. The court concluded, after viewing the evidence, that “a fair and equitable division of the overall marital estate will not be achieved by equally dividing the residence at N4102 STH 25.” In making its decision the court considered that Nicholas owned the home debt free prior to the marriage and the parties used the home as collateral for a loan to build a new home. The court also considered that both parties benefited from rental income brought in by the home. Further, the court considered the length of the marriage, finding that the fifteen-year marriage of “moderate duration, however not long term.” The court based its decision to not divide the residence equally based on relevant factors, rational reasons and the facts in the record. *See Peerenboom*, 147 Wis. 2d at 551.

¶10 Paula also argues the trial court erred in its factual finding of the value of improvements to the property. She contends the court's finding that there were only \$5,472 in improvements made was clear error. At the August 17, 2005 hearing the court allowed each party an opportunity to submit additional evidence relating to the disputed property. Both parties declined to offer additional evidence. The court stated that Nicolas provided testimony and evidence that repairs and improvements were made to the house, during the course of the marriage, in the amount of \$5,472. There is no other evidence in the record as to repairs and improvements. The court's valuation was based on the only facts in the record. *See id.* at 551. The court's determination is not clearly erroneous. *See Siker*, 225 Wis. 2d at 532.

¶11 Finally, Paula argues the court erred by overlooking evidence she provided regarding the property's fair market value. In determining the more recent value of the property, the court used Nicholas's financial disclosure statement listing the value of the property at \$139,300. The court stated that this number was "[t]he only evidence with regard to the value of the ... real estate." The court failed to consider trial exhibit 5, a 2004 property tax statement Paula submitted stating a fair market value of \$154,300 for the property.

¶12 The court gave no reason for not considering Paula's evidence. *See Peerenboom*, 147 Wis. 2d at 551-52. There is no indication in the record that the court considered Paula's evidence. We conclude that the court erred in overlooking an exhibit Paula provided regarding the current fair market value of the property. We remand this issue for the court to consider Paula's evidence and make a determination of the current fair market value of the house and any necessary adjustments to Paula's award.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions. No costs on appeal.

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

