

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0188

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

RHONDA K. DOLLAK,

Petitioner-Respondent,

v.

ANTHONY R. DOLLAK,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
ANGELA B. BARTELL, Judge. *Affirmed.*

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Anthony Dollak appeals from a judgment divorcing him from Rhonda Riedner. The appeal concerns the marital property division. We conclude that the trial court properly divided the property and therefore affirm.

The parties divorced after nearly fourteen years of marriage. The trial court valued their marital assets at \$234,000. Dollak received \$138,000 worth of those assets, including the family homestead. Riedner received \$96,000 in property and an equalization payment of \$21,000. Dollak asserts that the trial court erred by overvaluing the parties' four cars, by not setting his cars off against home furnishings and other personal property awarded to Riedner, by discounting Riedner's retirement accounts by twenty-five percent, and by discounting Riedner's award of stocks by a potential capital gains tax if they were sold. He also asserts that the trial court failed to properly credit him for homeowner's insurance paid after the divorce commenced, for property brought to the marriage, and for paying certain of Riedner's expenses during the proceeding.

The division of marital property is discretionary. *Haugan v. Haugan*, 117 Wis.2d 200, 215, 343 N.W.2d 796, 804 (1984). We affirm discretionary awards if the trial court articulates its reasoning, bases the award on facts of record and the correct legal standards, and the award is neither excessive nor inadequate. *Id.* at 215-16, 343 N.W.2d at 804.

The trial court properly valued the parties' four cars. Dollak received the two more valuable cars and therefore desired a lower value for them. He suggests that the court erred by using the standard book values for the make and model year without evidence that the cars were in standard condition. However, Dollak did not object when those values were introduced into evidence. Nor did he offer any evidence himself on the condition of the cars. The issue is therefore waived.

The trial court properly determined that Riedner should receive an equalization payment to compensate for the lesser value of her cars. Dollak contends that the result was unfair because Riedner's stipulated share of the household furnishings was worth substantially more than Dollak's share. However, the trial court found on the evidence that the furnishings were equally divided. Dollak's testimony to the contrary was rejected on credibility grounds. That credibility determination is not subject to review. *Leciejewski v. Sedlak*, 116 Wis.2d 629, 637, 342 N.W.2d 734, 738 (1984).

The trial court reasonably discounted Riedner's retirement accounts by twenty-five percent. Future taxes reduce the present value of retirement plans. *Corliss v. Corliss*, 107 Wis.2d 338, 344, 320 N.W.2d 219, 221 (Ct. App. 1982). In calculating that reduction, the trial court must assume that future tax rates will at least equal present rates. *Id.* The trial court reasonably concluded that Riedner's future state and local tax rates would amount to at least twenty-five percent. The trial court also reasonably factored in the possibility that Riedner might have to cash in the accounts before retirement and pay a withdrawal penalty.

The trial court reasonably discounted the value of stock awarded Riedner by the potential capital gains tax on that stock. Dollak contends that it was unfair to give Riedner a capital gains discount on her stock but refuse him one on the homestead. However, the evidence showed no contemplated sale of the homestead, while Riedner testified that she intended to sell the stock in order to purchase a home for herself. The trial court expressly found her testimony credible, and it reasonably explained the disparity in valuing the assets. See *Brandt v. Brandt*, 145 Wis.2d 394, 419, 427 N.W.2d 126, 135 (Ct. App. 1988) (the trial court must consider the tax consequences if a taxable sale of assets appears likely).

The trial court properly refused to credit Dollak for paying the pre-divorce homeowner's insurance premium, and for certain of Riedner's pre-divorce expenses. The trial court reasonably concluded that Dollak should not receive credit for the premium because he was the primary beneficiary of the insurance after Riedner removed herself and her share of the furnishings from the homestead. Dollak has not offered her a credit for the renter's insurance she subsequently purchased. In any event, the premium was a minimal factor in the property division. As for Riedner's pre-divorce expenses, those Dollak identifies were ordinary and anticipated expenses paid from a joint account. Dollak did not offer Riedner credit for pre-divorce payments made for his benefit out of that account.

The trial court properly refused Dollak credit for property he brought to the marriage. He claims that his premarital assets exceeded Riedner's by at least \$12,000. The trial court acknowledged a disparity but concluded that deviation from an equal property division was not warranted because those assets were not maintained as separate property and Riedner also

brought some assets to the marriage. The court also considered the length of the marriage, and Riedner's extraordinary efforts during the marriage in working, raising two children and obtaining a college degree. Those factors provide a reasonable basis for adhering to a presumptively equal property division.

After entry of the divorce judgment, Dollak failed to make full payment on Riedner's \$21,000 equalization award. As a result, the family court commissioner found Dollak in contempt and he seeks review of that contempt order. However, appeals from orders of a family court commissioner are heard in the trial court, not this court. Section 767.13(6), STATS. Additionally, we could not review the order anyway because Dollak failed to identify it in his notice of appeal as a subject of this appeal. RULE 809.10(1)(a), STATS.; *State v. Ascencio*, 92 Wis.2d 822, 825, 285 N.W.2d 910, 912 (Ct. App. 1979).

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.