

**COURT OF APPEALS
DECISION
DATED AND FILED**

SEPTEMBER 22, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-3087-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

HOLLY E. REYNIERS,

PETITIONER-RESPONDENT,

v.

LANCE A. REYNIERS,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM J. HAESE, Judge. *Reversed and cause remanded with directions.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Lance A. Reyniers (Lance) appeals from a judgment of divorce, alleging that the trial court erroneously exercised its discretion by adopting Holly E. Reyniers's (Holly) proposed Findings of Fact,

Conclusions of Law and Judgment of Divorce without stating its reasons for doing so. We agree. Accordingly, we reverse the trial court's judgment and remand for further consideration by the trial court.¹

Lance and Holly were married on March 11, 1983. In the early years of their marriage, Lance was a truck driver. Starting around 1986, Lance was able to devote his time exclusively to running his business, Python Products, Inc., a closely-held corporation that designs, manufactures and markets a patented fish tank cleaning product called "No Spill Clean and Fill." Holly was employed at the Medical College of Wisconsin as an administrative assistant during the marriage. She owned a home prior to her marriage to Lance, a home the parties subsequently refinanced and put into both their names as joint tenants.

The parties stipulated to certain custody provisions regarding the parties' two minor children, child support, denial of maintenance to Holly, and the respective award of certain assets between the parties. The parties vigorously disputed the value of the family homestead² and Lance's business,³ of which he is the sole shareholder. After the trial court's hearing on these disputed issues, the trial court requested both attorneys to submit proposed findings of fact and conclusions of law along with written arguments outlining their respective positions. On September 24, 1997, the trial court entered the proposed findings of

¹ Pursuant to this court's order dated November 20, 1997, this case was submitted to the court on the expedited appeals calendar. *See* RULE 809.17, STATS.

² Values of the home ranging from \$79,000 to \$85,000 were submitted to the trial court.

³ Lance and certain experts testified during the divorce proceedings that the value of his company was zero or less than zero due to the cost of defending his patent in federal litigation and the loss of sales to a California competitor.

fact and conclusions of law prepared by Holly as its own disposition without further comment.

Lance argues on appeal that the trial court misused its discretion because it failed to provide an explanation for the decision it adopted to resolve this matter. Lance also contends that the trial court adopted findings of fact and conclusions of law that have no basis in the record.

In a divorce proceeding, the division of property is within the discretion of the trial court. See *Trieschmann v. Trieschmann*, 178 Wis.2d 538, 541, 504 N.W.2d 433, 434 (Ct. App. 1993). However, “the exercise of discretion is not the equivalent of unfettered decision-making.” *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981). The trial court’s decision “must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.” *Id.* “To comply with this requirement, a trial court must not only state its findings of fact and conclusion of law, but also state the factors upon which it relied in making its decision.” *Trieschmann*, 178 Wis.2d at 542, 504 N.W.2d at 434. The acceptance of one party’s proposed findings of fact and conclusions of law without providing sufficient reasons on the record for doing so is an erroneous exercise of discretion. See *id.* at 544, 504 N.W.2d at 435 (trial court’s acceptance of one party’s memorandum on all issues of fact and law in a divorce action without stating any reasons for doing so is an erroneous exercise of discretion).

Like the trial court in *Trieschmann*, the trial court here failed to articulate the factors upon which it based its decision. In the absence of an adequate statement of justification or rationale, this court cannot conclude that the

decision reached by the trial court in this case was a reasoned and reasonable one. Accordingly, we reverse the trial court's judgment, remand this case to the trial court, and direct the trial court to consider all of the facts and relevant law related to each issue in dispute, and to render a decision in accordance with this opinion.⁴ Like the court in *Trieschmann*, we do not hold that the trial court may not accept the rationale and conclusions proposed by one party. However, the trial court must state the factors upon which it relied in making its decision on the record. *See id.* at 544, 504 N.W.2d at 435. Because our decision on this point disposes of the appeal, we decline to address Lance's contention that the judgment contained errors of fact. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938).

By the Court.—Judgment reversed and cause remanded with directions.

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

⁴ Previously, this court held that the trial court's adoption without comment of a party's trial brief complied with § 805.17(2), STATS. *See CIT Group v. Village of Germantown*, 163 Wis.2d 426, 438, 471 N.W.2d 610, 614-15 (Ct. App. 1991). This court also held in an appeal from a postjudgment order that a trial court's nonfinal orders entered prior to the appealable order need not be reduced to writing before becoming reviewable on appeal. *See Jacquart v. Jacquart*, 183 Wis.2d 372, 380, 515 N.W.2d 539, 542 (Ct. App. 1994). Review of the record on appeal here indicates that the trial court ruled from the bench on a number of factual issues underlying its adoption of Holly's Findings of Fact and Conclusions of Law. Accordingly, we acknowledge that *Germantown* read together with *Jacquart* might suggest that the record of the trial court's exercise of discretion was adequate to permit appellate review. Nevertheless, we conclude that it is a preferable practice in matters involving the family that the record demonstrate the reasoning employed by the court to reach its decision to adopt one party's proposed disposition of the matter and, under *Trieschmann v. Trieschmann*, 178 Wis.2d 538, 541, 504 N.W.2d 433, 434 (Ct. App. 1993), reversal is required.

