

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 3, 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. 98-1670-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

SUZANNE MARIE JOHNSON,

PETITIONER-RESPONDENT,

v.

NORMAN T. JOHNSON,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Rock County:
JAMES E. WELKER, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

PER CURIAM. Norman Johnson appeals from an order amending a judgment of divorce to increase his property equalization payment to his former wife, Suzanne, from \$14,236.04 to \$41,323.00. He claims that the trial court erroneously exercised its discretion by including in the property division the

increased value of several substantial assets which he had brought with him to the marriage. Because we conclude that the trial court properly subjected the increased value of those assets to division, we affirm.

BACKGROUND

The parties married on August 1, 1994 and separated in December of 1996. Among the assets which Norman brought into the marriage were a residential property, a rental property, a 401K-equivalent plan, a pension plan, and a gun collection. Suzanne brought into the marriage a modest amount of jewelry and some other items of personal property. She sold the rest of her personal property when she moved in with Norman, and turned the proceeds over to him.

Norman and Suzanne both worked full time throughout the marriage, and maintained separate savings and checking accounts and separate credit cards. Norman made all of the mortgage payments, and paid the real estate taxes and utilities on the real estate. Suzanne did the laundry, grocery shopping and cooking, cleaning and yard work.

The parties agreed that by the time of the divorce, the value of their combined assets was \$223,260.30 and the value of their combined debts was \$105,836.92.

The parties further stipulated that, during the course of the marriage, the residential property had increased in value by \$26,100, while the mortgage on it had decreased by \$4,500; the rental property had increased in value by \$7,000 while the mortgage on it had decreased by \$2,877.70; the 401K plan had increased in value by \$25,494.10, and the pension plan had increased in value by \$16,636. In addition, the trial court found that Norman had acquired an additional \$5,550

worth of guns during the marriage, while Suzanne had acquired an additional \$750 worth of jewelry. These figures show a total increase of \$88,907.80 in the value of the assets brought into the marriage by the parties.

The judgment of divorce was filed January 28, 1998. Due to the short length of the marriage and the substantial imbalance in the assets brought to the marriage, the trial court awarded Norman the full value, as of the date of marriage, of those assets which he had brought to the marriage, limiting the property division to that which “was enhanced, increased in value, or was acquired during the course of the marriage.” The judgment included an “equalization” payment to Suzanne of \$14,236.04. On February 13, 1998, Suzanne filed a motion for reconsideration on the grounds that, while the trial court had excluded premarital assets from division, it had failed to exclude the premarital debt. After a hearing, the trial court agreed, and issued an order amending the amount of the equalization payment to \$41,323.

SCOPE OF APPEAL

As a threshold matter, Suzanne argues that, because Norman appealed from the order amending the judgment, and not the judgment itself, our review should be limited to considering the correction of the trial court’s computational error rather than the entire property division. However, because the order appealed from reiterated the court’s property-dividing methodology, we conclude that the entire property division is before us.

STANDARD OF REVIEW

The valuation and division of the marital estate lie within the sound discretion of the trial court. *Long v. Long*, 196 Wis.2d 691, 695, 531 N.W.2d 462, 464 (1995). We will sustain discretionary acts by the trial court so long as the court “examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Modica v. Verhulst*, 195 Wis.2d 633, 650, 536 N.W.2d 466, 474 (Ct. App. 1995).

ANALYSIS

There is a rebuttable presumption that all of the property in the marital estate will be divided equally between the parties. *Sellers v. Sellers*, 201 Wis.2d 578, 591, 549 N.W.2d 481, 486 (Ct. App. 1996). Property owned by one party prior to the marriage is included in the marital estate, and thus subject to division, unless it was acquired by gift or inheritance or the proceeds therefrom. Section 767.255(3), STATS.; *Lang v. Lang*, 161 Wis.2d 210, 229, 467 N.W.2d 772, 779-80 (1991). However, § 767.255(3)(b) allows the trial court to depart from the presumptive fifty-fifty division of the marital property based upon its consideration of various equitable factors, including the property brought into the marriage by each of the parties.

The record does not show that the real estate or other property which Norman brought into the marriage had been gifted or inherited. Therefore, the marital estate subject to division included the parties’ combined assets of \$223,260.30, minus their combined liabilities of \$105,836.92, for a net amount of \$117,423.46. Applying the rebuttable presumption of equal division, Suzanne would have been entitled to a property award of \$58,711.73. Taking into account

the jewelry already in Suzanne's possession, Norman's equalization payment would have been \$57,961.73.

The trial court deviated from the presumed property award by \$16,638.73 in Norman's favor. The record shows that the trial court based its deviation decision upon a rational application of the statutory factors in § 767.255(3), STATS., to the facts of record. It awarded the parties the net value of the assets which they had brought into the marriage. The trial court was in no way obligated to exclude from its division of the marital property the increased value of items which Norman had brought into the marriage, regardless of the reason for the increase in value. We note that, while Norman may have brought a significant amount of property into the marriage, he did not have a great deal of equity in his real estate at that time. The fact that the increased value of assets brought into the marriage accounted for \$88,907.80 of the \$117,423.46 net marital estate may be unusual for a three-year marriage, but it certainly supports the trial court's award. In short, we see no misuse of discretion.

By the Court.—Order affirmed.

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

