

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 29, 2001

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.

No. 01-1947-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

LAURIE LYNN MUCHOW,

PETITIONER-APPELLANT,

V.

MICHEL CARL MUCHOW,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Rock County:
JOHN W. ROETHE, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Laurie Muchow appeals the judgment divorcing her from Michel Muchow. The issue is whether the trial court properly valued

Michel's pension for purposes of dividing the marital property.¹ We affirm the trial court's valuation as a proper exercise of its discretion.

¶2 Both parties were forty years old when they divorced after twelve years of marriage. Michel had worked fifteen years for General Motors, and participated in its pension plan. Pursuant to a stipulation, an independent appraiser established the present value of Michel's pension at \$14,905, assuming that Michel started collecting his pension at age sixty-five, and factoring in taxes and mortality rates.

¶3 Michel's General Motors contract allowed those retiring before age sixty-two, with at least thirty years of GM employment, to receive a substantial monthly "early retirement supplement" until the retiree reached the age of sixty-two years and one month. It is undisputed that if Michel continued working for General Motors he would be eligible to retire and receive the supplement at age fifty-five. Consequently, at trial Laurie asked the court to treat Michel's pension as if the early retirement supplement enhanced its value, and issue a qualified domestic relations order to allow Laurie to share in that benefit if and when Michel received it. The trial court denied that request, however, because: (1) the parties stipulated to an independent appraisal that gave Michel's pension a definite and certain value; (2) there was no testimony that Michel intended to retire early and take the supplemental benefit; (3) the present value of Laurie's and Michel's pensions were roughly equal; and (4) giving Laurie a proportionate share of future benefits would create unnecessary complexity. Instead, the court credited Laurie

¹ On August 16, 2001, this case was placed on the expedited appeals calendar. *See* WIS. STAT. RULE 809.17 (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

with half the \$14,905 present value. On appeal, Laurie contends that this determination was an erroneous exercise of the trial court's discretion.

¶4 Our supreme court has recognized three methods for valuing pensions. See *Bloomer v. Bloomer*, 84 Wis. 2d 124, 134-36, 267 N.W.2d 235 (1978). First, the trial court may calculate one party's contributions to a pension fund, plus interest, and award the other party an appropriate share. Second, the trial court may calculate the present value of the future benefits a party expects to receive, and divide that amount. Third, the court may award one party a fixed percentage of the other party's future payments from a pension plan. *Id.* Applying these methods of valuation to the particular case is discretionary. *Steinke v. Steinke*, 126 Wis. 2d 372, 384-85, 376 N.W.2d 839 (1985). We will uphold a trial court's discretionary decision if the court makes a rational and reasoned decision and applies the correct legal standard to the facts of record. *Sellers v. Sellers*, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996).

¶5 The trial court reasonably and fairly valued Michel's pension, using its calculated present value. Laurie contends that under the circumstances of this case, granting her a proportionate share of Michel's future benefits was the only reasonable method of dividing the pension. The sole reason Laurie gives is the fact that a division using present value, and assuming an age sixty-five retirement, prevents her from sharing in the early retirement benefit. However, Laurie can only speculate that Michel might ever receive that benefit. She cites no authority for the proposition that a trial court must divide property based on an uncertain future event, especially where, as here, the court has accepted one party's testimony that the event would not happen. Additionally, Laurie offered no proof that the court's use of the \$14,905 pension valuation aggrieved her. According to the General Motors benefits handbook offered into evidence, early retirement

provides workers a benefit up-front, but also results in lower benefits after age sixty-two. Without proof, the trial court could only speculate that early retirement would provide a better return to Michel than that calculated for an age sixty-five retirement.

By the Court.—Judgment affirmed.

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

