

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 2, 2004

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. 03-0937
STATE OF WISCONSIN**

Cir. Ct. No. 02FA000031

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

DANA J. STADLER,

PETITIONER-APPELLANT,

V.

LINDA M. STADLER,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Burnett County:
MICHAEL J. GABLEMAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Dana Stadler appeals a divorce judgment, arguing that the trial court erroneously exercised its discretion in dividing the parties'

property. Because the record supports the trial court's discretion, we affirm the judgment.

¶2 Dana and his former wife, Linda Stadler, were married in January 2000. Linda brought approximately \$5,000 personal property into the marriage. Dana claims to have brought more than \$56,000 in property to the marriage.¹

¶3 In October 2000, Dana and Linda entered into a land contract to purchase property for the sum of \$22,500. They made payments on the land contract, making a final balloon payment at a reduced sum of \$18,500. To pay off the land contract, Dana used money he received from the sale of real estate he owned before their marriage. They subsequently mortgaged the property for \$25,000 and deposited the sum in a joint checking account. Linda testified that Dana had control of the checking account.

¶4 The property was destroyed by fire.² Dana testified that before the fire the property was worth \$25,000 and after the fire it was worth \$10,000. The insurance claim was pending at the time of the divorce. Dana also testified that shortly before the divorce, Linda removed \$15,000 of personal property from their business. Linda denied doing so.

¹ Linda objects to certain documents Dana included in his appendix. We restrict our review to those items of evidence admitted in the record before us. *Eberhardy v. Circuit Court*, 102 Wis. 2d 539, 571, 307 N.W.2d 881 (1981).

² Because the parties' statements of fact are ambiguous, it is unclear whether the property they purchased was the property that was destroyed by fire. Because the parties make no mention of any other property, this opinion assumes that the properties are one and the same.

¶5 The court ordered an equal property division. The court ordered that the real property be held as a tenancy in common. The parties' remaining property consisted of personal property, cash, deposit accounts and the pending insurance claim. The trial court accepted Linda's contention that Dana retained the equity in the real estate by virtue of having control of the \$25,000 proceeds of the mortgage loan. The court also accepted Linda's contention that the parties purchased property together, operated a business together and combined their assets.

¶6 The court further concluded that the fire insurance proceeds should be applied to the mortgage debt. The court awarded each party the personal property in his or her possession at the time of the trial on the basis that the proof at trial was insufficient to assign values. The court specifically found that there was insufficient evidence to find mismanagement or deliberate destruction of property. The court essentially determined that there was no basis to deviate from the presumed equal property division.

¶7 Dana contends the court should have awarded him a greater share of the property because he brought more property into the marriage. Dividing property is committed to the trial court's discretion. *Jasper v. Jasper*, 107 Wis. 2d 59, 63, 318 N.W.2d 792 (1982). This court must affirm the trial court's discretionary decisions if they are reasonable. *Vier v. Vier*, 62 Wis. 2d 636, 639-40, 215 N.W.2d 432 (1974). Discretion is improperly exercised when it is based on a mistake of fact, an error in computation, or when the property division is inappropriate to the parties' circumstances. *Dean v. Dean*, 87 Wis. 2d 854, 877,

275 N.W.2d 902 (1979). The trial court's findings of fact will be sustained unless they are clearly erroneous. WIS. STAT. § 805.17(2).³

¶8 With the exception of items acquired by gift, bequest, devise or inheritance, WIS. STAT. § 767.255 requires the court to presume that all property is to be divided equally between the parties. *Mack v. Mack*, 108 Wis. 2d 604, 607-08, 323 N.W.2d 153 (Ct. App. 1982). The court may alter this distribution only after considering the relevant factors listed in § 767.255(1)-(12). *See Mack*, 108 Wis. 2d at 607-08. While the trial court must consider relevant factors, it is not necessary that each factor be discussed in making a division of property. *Dean*, 87 Wis. 2d at 879. If the court fails to address relevant factors, but there are facts in the record that would support its discretionary decision if discretion had been exercised on the basis of those factors, we are required to uphold the decision. *Conrad v. Conrad*, 92 Wis. 2d 407, 414-15, 284 N.W.2d 674 (1979).

¶9 Here the trial court found that the evidence was insufficient to deviate from the presumed equal division of property. The court concluded that while Dana brought more property to the marriage, he had the use of that property by virtue of retaining the proceeds of the mortgage loan. Dana fails to demonstrate that the court's determination is erroneous.

¶10 Dana challenges Linda's credibility. He also argues that the court's findings are against the weight of the testimony. Dana contends that an unequal property division is the only remedy to deal with squandered assets. This argument disregards the court's finding that the proof failed to show assets were

³ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

squandered. Also, weight and credibility assessment is a trial, not appellate, court function. WIS. STAT. § 805.17(2). Consequently, Dana's argument fails to support reversal.

¶11 Dana argues that marital property law, WIS. STAT. § 766.31, provides ground for reversal. We disagree. The Marital Property Act is designed to govern property ownership during the course of an on-going marriage and property division only upon the death of a spouse. "The Marital Property Act was not intended to alter divorce law." *Abitz v. Abitz*, 155 Wis.2d 161, 176, 455 N.W.2d 609 (1990). Consequently, his argument is rejected.

¶12 Dana also complains that the court's decision is confusing. He objects that the court did not fully and completely divide the property because it failed to set a value on the real estate. The trial court severed the parties' joint tenancy and ordered the property transferred into a tenancy in common. As a result, Dana fails to demonstrate that he was prejudiced by his claim of alleged error. Therefore, Dana's arguments do not support reversal. *See* WIS. STAT. § 805.18.

By the Court.—Judgment affirmed.

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

