

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 15, 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. 03-1557  
STATE OF WISCONSIN**

**Cir. Ct. No. 96FA001549**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE MARRIAGE OF:**

**ROBERT LOUIS HALBLEIB,**

**PETITIONER-RESPONDENT,**

**V.**

**EILEEN MARY HALBLEIB,**

**RESPONDENT-APPELLANT.**

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

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

¶1 PER CURIAM. Eileen Halbleib appeals a post-divorce order distributing the proceeds from stock options that were not divided at the time of the divorce. For the reasons discussed below, we affirm the order.

## BACKGROUND

¶2 Robert and Eileen Halbleib were divorced on August 11, 1997, under a judgment that incorporated a marital settlement agreement. The divorce judgment equally divided specified shares granted to Robert by his employer, Anchor Bank, and awarded Robert all remaining Anchor Bank shares and stock options that had been granted prior to the date of the settlement agreement (July 30, 1997) that were listed on a stock schedule. The judgment further provided that Eileen would be awarded 35% of any stock options granted to Robert between August 1, 1997 and August 31, 2010. The judgment also contained an equalization payment from Robert to Eileen based on a formula for valuing the stock options that had been awarded solely to Robert.

¶3 The financial disclosure statement Robert submitted to the trial court failed to list stock options for 3,000 shares that he was granted on July 15, 1997, and the divorce judgment therefore made no provision for their disposition. After Robert exercised the options and sold the shares for \$89,400, Eileen moved to clarify the judgment or create a constructive trust pursuant to WIS. STAT. § 767.27(5) (2001-02).<sup>1</sup> The trial court eventually agreed to create a constructive trust, but only awarded Eileen \$2,681.25 of the trust's value, plus 12% interest since the date of the divorce. The court's division of the trust assets was based on Robert's testimony as to the additional amount he would have paid Eileen in the equalization payment according to the formula in the marital property agreement if

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

the options had been properly disclosed and awarded solely to him at the time of the divorce.

### DISCUSSION

¶4 The parties agree that the trial court properly created a constructive trust for the additional stock options pursuant to WIS. STAT. § 767.27(5), which applies to any asset worth more than \$500 that is omitted from the property division of a divorce as the result of a party's failure to list the asset on a financial disclosure statement. They disagree on how the trial court should have divided the trust assets.

¶5 Eileen asserts that the stock options were marital property in which she had a one-half interest, and that she should therefore receive 50% of the appreciation of the options under *Sulzer v. Diedrich*, 2003 WI 90, 263 Wis. 2d 496, 664 N.W.2d 641. Eileen's reliance on *Sulzer* is misplaced. *Sulzer* did not hold that the appreciation of all nondisclosed assets held in constructive trust must be divided equally. It held that it was proper for the trial court to equally divide the appreciation of an asset that the court in that instance had determined would have been divided equally if it had been disclosed at the time of the divorce. *Id.*, ¶22. The mere fact that a certain asset is marital property is not determinative of how it will be divided in the divorce.

¶6 Here, the trial court did not find that the additional stock options would have been divided equally if they had been disclosed at the time of the divorce. Rather, the court implicitly found that they would have been awarded solely to Robert with a corresponding increase in the amount of the equalization payment to Eileen, with the increase determined by the formula for valuing stock options retained by Robert.

¶7 Eileen vigorously disputes that finding, claiming that the amount of stock options awarded solely to Robert was limited to the amount needed to offset awarding her the house, and that she would not have agreed to give up her interest in additional options for the same formula amount. The trial court's finding was not clearly erroneous, however. *See* WIS. STAT. § 805.17(2). It was supported by Robert's testimony.

¶8 After accepting Robert's premise that the stock options at issue here would not have been divided equally if they had been disclosed at the time of the divorce, the trial court was not obligated to divide the appreciation of the options equally. It properly used its equitable powers to put Eileen in the place she would have been if the equalization payment had been adjusted for the additional options.

*By the Court.*—Order affirmed.

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

