

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 30, 2003

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. 03-2013-FT
STATE OF WISCONSIN**

Cir. Ct. No. 02FA000159

**IN COURT OF APPEALS
DISTRICT III**

**IN RE THE MARRIAGE OF:
TERRY K. MCKAY,**

PETITIONER-APPELLANT,

V.

RONALD D. MCKAY,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

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

¶1 PER CURIAM. Terry McKay appeals that part of a divorce judgment dividing the marital property and assigning the debts.¹ She argues that the trial court improperly exercised its discretion when it unequally divided the marital property, returning to Ronald 150% of the down payment he made on the parties' home and assigning Terry sole responsibility for a \$6,500 debt the parties incurred when they lent money to Terry's son from a previous marriage. Because we conclude that the trial court properly exercised its discretion, we affirm the judgment.

¶2 WISCONSIN STAT. § 767.255 establishes a rebuttable presumption that the marital property will be equally divided. The court may unequally divide the property upon consideration of the relevant factors set out in that statute. *See Jasper v. Jasper*, 107 Wis. 2d 59, 68, 318 N.W.2d 792 (1982). Relevant factors in this case include the length of the marriage, property brought to the marriage, the contribution of each party to the marriage and their total economic circumstances. *Id.*

¶3 The parties were married for seven years. This was Ronald's second marriage and Terry's third. Terry came to the marriage with virtually no assets, having filed bankruptcy shortly before marrying Ronald. One month before the marriage, Ronald made a \$70,000 down payment on the parties' marital home, using the proceeds from the sale of another house. At the time of the divorce, the parties stipulated that the residence was valued at \$235,500, 50% more than its value at the time Ronald purchased it.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶4 The trial court's award of \$105,000 to Ronald appropriately returns his investment in the home after this relatively short marriage. Because the house appreciated by 50% during the marriage, the court reasonably returned Ronald 150% of his down payment. The parties were equally credited with any other payments made on the house during the marriage. The trial court properly exercised its discretion when it awarded Ronald the appreciated value of the property he brought to the marriage.

¶5 The court also properly assigned Terry responsibility for the \$6,500 debt the parties incurred to send Terry's son abroad. The loan was taken out less than one month before Terry filed for divorce, at a time she was contemplating divorce. Terry represented to Ronald that she would take responsibility for repaying the loan on that portion of the line of credit. Under these circumstances, the court appropriately assigned Terry the debt.

¶6 Terry argues that the court double counted the debt. The record does not support that argument. Ronald was assigned the entire line of credit that included the \$6,500 debt. Since he paid the entire debt that was ultimately assigned to Terry, he was entitled to be repaid the entire amount.

By the Court.—Judgment affirmed.

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

