

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 30, 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. 03-2102-FT
STATE OF WISCONSIN**

Cir. Ct. No. 02FA000024

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JENNIFER LYNN SCHAEFER,

PETITIONER-RESPONDENT,

V.

ANTHONY WADE SCHAEFER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Chippewa County:
THOMAS J. SAZAMA, Judge. *Reversed in part and cause remanded with
directions.*

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

¶1 PER CURIAM. Anthony Schaefer appeals a judgment of divorce.¹ He argues that the trial court erred when it modified the property division based upon events subsequent to the partial divorce judgment. We conclude there was no legal basis for the court to modify its finding of fact following judgment. We reverse the property division and remand with directions to enter a property division consistent with its initial finding that the house was worth \$78,000 on the date the partial judgment was entered.

¶2 Anthony and Jennifer Schaefer were married on May 27, 2000. Jennifer filed for divorce in January 2002. At the December 13, 2002, final hearing, the only issue was property division. The record indicates the court heard only part of the case on that date due to time constraints. However, in order to help the parties reach an agreement with other items of property, the court made a finding with respect to the value of the parties' residence. The court found that, based upon the more credible appraisal, the house was worth \$78,000.² The court stated that if Jennifer would testify as to value, "my estimate of value here today is subject to change if she convinces me it should." The court directed the parties to schedule another hearing.

¶3 On March 24, the parties appeared at the continuation of the prior divorce hearing. Jennifer testified with respect to the parties' assets and debts. Due to time constraints, the court indicated the need for an additional hearing. The court stated:

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.

² Jennifer had offered an appraisal indicating the house was worth \$95,000.

I am going to expect that you both come back here, both parties will come back here a third time with detailed proposals on how they think the Court should do this. This is next to impossible, as far as I can tell, to do it on the fly.

... You are keeping me in the dark, is what I am objecting to. So anyway, when you come back here the last time, I am going to expect you will both have detailed proposals
....

¶4 Jennifer’s attorney requested the court to reconsider its previous finding of the residence’s value in light of her testimony. The court denied her request, stating that it heard nothing that would cause it to change its ruling, and that it was going to “stand by my finding of fact back in December that the house was worth \$78,000” based upon the more credible appraisal. The parties agreed that Anthony should be awarded the house and that he should obtain refinancing as quickly as possible in order to take advantage of low mortgage interest rates. The parties agreed that the only remaining issues were debt allocation and the equalization payment.

¶5 On May 7, 2003, the circuit court entered a “Partial Findings of Fact, Conclusions of Law, and Judgment of Divorce,” granting them a divorce.³ The judgment awarded Anthony the parties’ residence, stating:

The value of the marital residence shall be established at \$78,000. The marital residence is subject to combined mortgages in the total amount of \$80,938.45. [Anthony] is awarded the marital residence and title shall be transferred to [Anthony] by quit claim deed from [Jennifer]. Pursuant to the agreement of the parties, this award is subject to and contingent upon [Anthony] obtaining financing at the soonest time possible.

³ Anthony Schaefer’s statement of facts lacks record citation. *See* WIS. STAT. RULE 809.19(1)(d).

¶6 On May 19, 2003, Anthony's counsel received a "Notice of Telephonic Testimony." On May 21, a third hearing was held. Jennifer requested to put into evidence that Anthony obtained a \$95,000 loan against the house. The loan was co-signed by his father, who also gave his own property as collateral.

¶7 At the May 21 hearing, the court stated: "There is no doubt that I have made a finding of fact with respect to the value of the home. I don't think it's appropriate now for us to relitigate that issue except under extreme circumstances. ... We have done everything but property division as far as I can tell. We granted the divorce." The court added: "I suppose it's a good reason why one should not ever, if possible, bifurcate or trifurcate any hearings, because circumstances change on a daily basis. Things are never the same when we reconvene."

¶8 The court nevertheless allowed the branch manager of the credit union to testify that it would never loan more than 100% of the value of the residence. The manager stated that along with a co-signer who offered his homestead as collateral, Anthony obtained two loans amounting to approximately \$95,000. She stated that the co-signer's property was not assigned any value. She further explained that included in the loan was \$1,477.50 for closing costs and \$8,593.25 for Anthony's credit, life and disability insurance.

¶9 Anthony testified that he took out the insurance in case something would happen to him so his father would not be liable for the loan. He further testified that his father had paid for new flooring, paint, remodeling and carpeting since the previous summer. Jennifer also testified, stating she helped with all the improvements and that her appraisal showed that the house was worth \$95,000.

¶10 The trial court issued a memorandum decision on July 7, 2003. The court noted that Anthony was able to obtain refinancing quickly with the help of his father and, as a result, paid off the previous mortgage freeing Jennifer of debt. This resulted in allowing Jennifer to borrow money in her own right to provide herself a home. The court found that the disbursement of loan funds was the most accurate evidence of fair market value and that it would be “fiction” for the court “to stick to my earlier ruling in light of these actual facts.” The court established a present value of the residence at \$93,240. The court gave Anthony \$5,000 credit for improvements and valued the residence for property division at \$88,000. The court ordered that Anthony owed Jennifer a \$10,004.97 equalization payment. The court recognized that Anthony would be unable to borrow any more money on the house and provided the alternative of making monthly payments to Jennifer of \$150 per month with 8% interest, secured by a mortgage on the residence. Anthony appeals.

¶11 Anthony argues that the trial court was without authority to modify its fact findings based on events that took place subsequent to entry of judgment. We agree. Marital assets are to be valued and divided as of the date of the divorce. *Schinner v. Schinner*, 143 Wis. 2d 81, 98, 420 N.W.2d 381 (Ct. App. 1988). Although special circumstances can warrant deviation from this rule, *id.*, here the court had reduced its finding of fact and conclusions of law to judgment. Following the second hearing, the court stated that its finding as to the value of the house was final and, upon the parties’ agreement, held the matter open only with respect to debt allocation and the equalization payment.

¶12 Under WIS. STAT. § 805.17(3), “Upon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may amend its findings or conclusions or make additional findings or conclusions and

may amend the judgment accordingly.” Here, Jennifer did not move for reconsideration. Further, Jennifer did not move to reopen the judgment pursuant to WIS. STAT. § 806.07.⁴ The record reflects no legal basis for the court to modify its findings of fact and conclusions of law that were reduced to judgment. Therefore, we reverse the court’s modification of its fact finding and remand with directions to enter a property division consistent with its initial finding that the house was worth \$78,000 on the date the divorce was entered.

¶13 Jennifer argues that a final division of the marital estate is not required on the date of the divorce. She contends that the trial court was entitled

⁴ WISCONSIN STAT. § 806.07 provides in part:

(1) On motion and upon such terms as are just, the court may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly-discovered evidence which entitles a party to a new trial under sec. 805.15(3);
- (c) Fraud, misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released or discharged;
- (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
- (g) It is no longer equitable that the judgment should have prospective application; or
- (h) Any other reasons justifying relief from the operation of the judgment.

to hold open property division, as it did here. We conclude that Jennifer's argument is premised on a misconception of the record. Here, without objection, the court made a finding of fact as to value. It entered a judgment of divorce and held the record open for evidence concerning allocation of the debts and the equalization payment. The court did not say that it would hold the record open to relitigate the value of the house; in fact, the court indicated just the opposite. Accordingly, the court erroneously modified its fact finding based upon events subsequent to its findings and judgment of divorce.

By the Court.—Judgment reversed in part and cause remanded with directions. Costs to appellant.

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

