

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 28, 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. 03-2165
STATE OF WISCONSIN**

Cir. Ct. No. 02FA000300

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

PAUL H. RAASOCH,

PETITIONER-APPELLANT,

V.

SANDRA SUE RAASOCH,

RESPONDENT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Jefferson County: JACQUELINE R. ERWIN, Judge. *Affirmed.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Paul Raasoch appeals the judgment of divorce from Sandra Sue Raasoch and an order denying reconsideration of the judgment. Paul contends that the trial court's division of the marital estate was an erroneous

exercise of discretion. We conclude that the trial court properly exercised its discretion and we affirm.

¶2 The parties were married for thirty-six years. At the time of divorce Paul was retired and received a net monthly income of \$1,600 per month. Sandra grossed approximately \$1,300 per month. The primary assets in the marital estate were Paul's retirement pension, valued at approximately \$346,000, and the homestead, valued at \$235,000. The total net estate was worth approximately \$774,000.

¶3 The parties failed to agree on a property division, primarily because both wanted to keep the family home as a residence. At trial, Paul proposed that he keep the home, various personal items, cars and boats and one half his pension. Under his proposal Sandra would receive her retirement pension, various personal items and a \$25,000 balancing payment. The proposed result gave Paul sixty percent of the property, which he justified because of his personal efforts in building the homestead and because Sandra had some inherited property. Paul also expressed a willingness to pay maintenance if the court approved his proposal.

¶4 Sandra proposed that she receive the homestead, her pension, personal property and a \$29,000 investment account. Because Paul would still receive the greater share of the assets, she proposed to equalize the division by giving her either a \$75,814.10 lump sum payment from Paul or a twenty-two percent share of Paul's pension.

¶5 The trial court rejected Paul's proposal for an unequal division of property, primarily because Sandra's separate property was not immediately available for her use but also because Paul's contributions to the marriage did not

substantially exceed hers and Sandra's proposal freed both parties from any maintenance obligation. The court chose to divide Paul's pension rather than order a lump sum payment to equalize the division. Paul appealed after the trial court denied reconsideration.

¶6 The trial court has discretion in dividing the marital estate and we will affirm that exercise of discretion if the court has examined the relevant facts, applied the proper standard of law and followed a rational process to reach a reasonable conclusion. *Garceau v. Garceau*, 2000 WI App 7, ¶3, 232 Wis. 2d 1, 606 N.W.2d 268. WISCONSIN STAT. § 767.255(3) (2001-02)¹ directs the trial court to presume an equal division of property. Only by considering all of the enumerated factors in that section may the trial court deviate from an equal division. *LeMere v. LeMere*, 2003 WI 67, ¶25, 262 Wis. 2d 426, 663 N.W.2d 789.

¶7 Paul first contends the trial court erred by "double counting" his pension in the property division. In Paul's view, the impermissible double counting consisted of (1) awarding Sandra twenty-two percent of the present value for purposes of obtaining an equal property division and (2) giving her twenty-two percent of the future income flow by means of a qualified domestic relations order. We conclude there was no double counting. Twenty-two percent of the present pension value and twenty-two percent of its future income flow are merely two ways of describing that single asset. In any event, it is curious that Paul complains about awarding Sandra this income stream because he proposed dividing his

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

pension in exactly this manner, albeit with different percentages. If there had been error in this approach, Paul invited it. See *Atkinson v. Mentzel*, 211 Wis. 2d 628, 642-43, 566 N.W.2d 158 (Ct. App. 1997) (This court generally does not review an invited error.).

¶8 Paul next contends that the property awards, although equal in value, were so unfair to him as to be an erroneous exercise of discretion. He distinguishes between the dollar value of the awards and what he describes as the “presently realizable” and “intrinsic” value of the awards, which he contends strongly favor Sandra. As noted, WIS. STAT. § 767.255(3) directs the presumption of an equal division. We are not aware of any authority for the proposition that some value other than monetary value must be used to calculate that equal division. Additionally, although the record makes clear that Paul’s real concern is the fact that he did not receive the homestead, Paul never proposed a workable, equal division under which he would receive the homestead.

¶9 Finally, Paul contends that the trial court failed to adequately explain its decision. We disagree. The trial court explained on the record that the division provided each party with an actual or potential income source, avoided a maintenance obligation for either party, relieved Paul from the burden of making a large balancing payment and recognized the contributions of both parties to the marriage. The trial court reasonably relied on those factors and the explanation of its reliance on them was clear and satisfactory.

By the Court.—Judgment and order affirmed.

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

