

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 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. 04-0024-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00FA002352

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

**KRISTINE M. DOWNER-BEUTHIN N/K/A KRISTINE
WARREN,**

PETITIONER-APPELLANT,

V.

JOHN J. BEUTHIN,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County:
JOHN C. ALBERT, Judge. *Reversed and cause remanded with directions.*

Before Deininger, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Kristine Warren appeals from a judgment of divorce from John Beuthin.¹ She contends the trial court incorrectly applied WIS. STAT. § 767.255² when dividing the marital property. She also contends the trial court erroneously exercised its discretion by denying her motion to reconsider, in which she asked the court to address rebuttal evidence she had previously presented regarding Beuthin's financial status at the time of the marriage. We conclude the trial court erred by misapplying § 767.255 when dividing the marital property. We therefore reverse and remand. On remand, the trial court should also revisit the rebuttal evidence issue.

¶2 Warren and Beuthin were married in June 1995. They operated the Beuthin dairy farm in partnership with Beuthin's brother, Fred, and his wife, Virginia, until April 2000, when Warren and Beuthin purchased Fred and Virginia's interest in the farm. Warren filed for divorce in November 2000.

¶3 Warren contends the trial court did not follow WIS. STAT. § 767.255 when dividing the property. The trial court first determined the farm's equity at the time of marriage. It then determined the equity in the farm at the time of trial. To determine the value of the divisible estate, the trial court subtracted the equity in the farm at the date of marriage from the equity at the date of the divorce. The trial court found the value of divisible estate to be \$420,401. It then considered the length of the marriage, the property each party brought to the marriage, the

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

² WISCONSIN STAT. § 767.255(2)(a) provides that gifted and inherited property remains the property of the donee or legatee. All other property is presumed to be divided equally.

contributions of each party during the marriage, each party's earning capacity, and other factors applicable to property division under § 767.255(3). Ultimately, the court determined that Beuthin should pay Warren \$150,000 or give her a Quit-Claim Deed to a ranch house and 2.4 acres of land located on the farm in lieu of the cash payment.

¶4 Valuation and division of a marital estate are within the discretion of the trial court and will be upheld as long as the court 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. A trial court values a couple's total assets at the end of the marriage. *Preuss v. Preuss*, 195 Wis. 2d 95, 102, 536 N.W.2d 101 (Wis. App. 1995). After valuing marital assets, a trial court may consider various factors when dividing the property. WIS. STAT. § 767.255(3); *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶13, 296 Wis. 2d 598, 676 N.W.2d 452. One factor a trial court may consider is property brought to the marriage by each party. Section 767.255(3)b. The trial court properly analyzed the parties' assets and the § 767.255 factors when making the property division. And it properly concluded that to value the marital estate, it was required to subtract the parties' debts from their assets to arrive at a net marital estate subject to division.

¶5 Though the trial court subtracted the parties' debts from their assets to arrive at a net marital estate, it also subtracted from the assets the value of the property that Beuthin brought to the marriage. This does not follow the analysis required by WIS. STAT. § 767.255(2) and (3). Section 767.255(2) provides only two exceptions to the presumptive equal property division required by § 767.255(3). Property acquired by gift or inheritance is not included in the gross marital estate, unless to exclude those items would result in a hardship on a party

or the children. Therefore, property brought to the marriage by either party is included in the gross marital estate. The trial court must then subtract the parties' debts from the gross marital estate to determine the net marital estate subject to division. Finally, the trial court considers the several factors found in § 767.255(3) to determine if those should alter the presumptive equal property division. One of these factors, found in § 767.255(3)(b) is "property brought to the marriage by each party."

¶6 By subtracting the value of property Beuthin brought to the marriage from the parties' gross marital estate, the court treated this property as if it were a gift or inheritance. The result was to undervalue the gross marital estate by \$304,335, the amount the court found to be the value of the farm when the parties married. This misinterpretation of § 767.255(2) and (3), is an error of law. We review errors of law de novo. *M&I Marshall & Ilsley Bank v. Kazim Investment, Inc.*, 2004 WI App 13, ¶6, 269 Wis. 2d 479, 678 N.W.2d 322. On remand, the trial court should begin its analysis by using the gross marital estate it had found to be \$1,175,000.

¶7 We cannot tell whether this error would affect the trial court's ultimate division of the marital estate. The trial court considered many factors in addition to the property brought to the marriage. Its error might or might not have affected its ultimate property division. We therefore must remand this issue to the trial court with directions to reconsider its property division in light of this opinion.

¶8 Warren also contends the trial court erroneously exercised its discretion by denying her motion to reconsider. The motion asked the court to reconsider its property determination based on a financial disclosure statement

from November 1994, placing Beuthin's interest in the farm at \$11,105.50. Warren had submitted the exhibit at trial to rebut Beuthin's April 1995 financial disclosure statement listing his net worth at \$152,168.00.

¶9 In the trial court's decision, it footnoted the following:

However, it is the obligation of counsel for the parties to present evidence to the court, to the requisite [] evidentiary standard, that permits the court to make findings of valuation. Petitioner's counsel, in his balance sheet submission, offers nothing to the court by way of value at time of marriage. The respondent has offered Exhibit 53 and a proposal that, at the time of marriage, the farm was worth \$304,335. Under the circumstances, the court finds the farm worth \$304,335 at the time of the marriage.

¶10 In a motion for reconsideration, Warren's attorney noted that his trial brief described evidence discovered when the trial court permitted counsel to examine the sealed record of Beuthin's previous divorce. This evidence consisted of Exhibit 2 in case number 93-FA18, dated November 14, 1994, seven months before Beuthin's marriage to Warren. That exhibit became Exhibit 61 in this case. In that exhibit, John Beuthin's financial disclosure statement, the net value of Beuthin Dairy was shown as \$22,211, and Beuthin's share was \$11,105.50.

¶11 On February 21, 2003, the trial court issued a decision and order in which it noted that it had reviewed both parties' motions for reconsideration, and determined that "[b]ased on these submissions, the court concludes that no change should be made in the findings or decision of December 5, 2002."

¶12 We review whether the trial court examined all relevant facts when reviewing exercises of discretion. *Sharon v. Sharon*, 178 Wis. 2d 481, 488, 504 N.W.2d 415 (Ct. App. 1993). The disclosure statement was relevant but it appears the court did not consider it. This would constitute an erroneous exercise of

discretion. The weight the trial court will place on Exhibit 61 is, of course, within its discretion.

¶13 We conclude that the trial court erroneously exercised its discretion when dividing the marital assets. It also may have failed to consider relevant evidence. We reverse and remand this case to permit the court to reconsider its property division in light of this opinion, and to determine whether Exhibit 61 would affect that division.

By the Court.—Judgment reversed and cause remanded with directions.

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

