

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 25, 2005

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. 2004AP1457

Cir. Ct. No. 2000FA1711

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

BRIGITTE A. BUCHMEIER,

PETITIONER-RESPONDENT,

V.

LLOYD BUCHMEIER, JR.,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Modified and, as modified, affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Lloyd Buchmeier appeals a judgment divorcing him from Brigitte Buchmeier. He challenges a number of the circuit court's

discretionary determinations. We modify the judgment with regard to a mathematical error conceded by Brigitte, but affirm in all other respects.

¶2 Lloyd argues that the circuit court made a mathematical error in calculating the value of his personal property. Brigitte concedes that there was a double-counting error in the judgment with regard to the personal property. Based on Brigitte's concession, we modify this portion of the judgment and direct the circuit court clerk to reduce the property equalization payment that Lloyd must make to Brigitte by \$8,433.

¶3 Lloyd next contends that the circuit court misused its discretion when it awarded them each fifty percent of the marital property, rather than giving him sixty percent and giving Brigitte forty percent. The circuit court must begin with a presumption that marital property should be divided equally. WIS. STAT. § 767.255(3) (2003-04);¹ *LeMere v. LeMere*, 2003 WI 67, ¶16, 262 Wis. 2d 426, 663 N.W.2d 789. "A circuit court may deviate from the presumption of equal property division, but only after considering a lengthy and detailed list of statutory factors." *Id.* We will uphold the circuit court's decision regarding a property division as long as it "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Garceau v. Garceau*, 2000 WI App 7, ¶3, 232 Wis. 2d 1, 606 N.W.2d 268.

¶4 Lloyd contends that the circuit court should have deviated from an equal property division because he brought \$101,987 to the marriage. In

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

determining whether to deviate from an equal division of the marital property, the circuit court should consider the property brought to the marriage by each party. WIS. STAT. § 767.255(3)(b). Brigitte contends that we should not address this argument because Lloyd did not raise it at trial and, in any event, his assertion that he brought over \$101,000 to the marriage is wrong. Because Lloyd did not specifically argue that he should be given credit for \$101,987 in premarital contributions in the circuit court, we will not now address this claim. See *State v. Gilles*, 173 Wis. 2d 101, 115, 496 N.W.2d 133 (Ct. App. 1992) (“We properly decline to review an issue on appeal when the appellant has failed to give the trial court fair notice that it is raising a particular issue and seeks a particular ruling.”)

¶5 Lloyd also contends that the circuit court erred in dividing the property equally because it mistakenly believed his earning capacity is higher than it actually is. Earning capacity is one of the factors the circuit court should consider in deciding whether to deviate from an equal property division. WIS. STAT. § 767.255(3)(g). We will affirm the circuit court’s finding as to earning capacity unless it is clearly erroneous. *Sellers v. Sellers*, 201 Wis. 2d 578, 589, 549 N.W.2d 481 (Ct. App. 1996). The circuit court found Lloyd’s testimony about his earning capacity “to be incredible and not worthy of belief” because he received cash payments from his business that he did not report as income. Lloyd presents no cogent argument about why this credibility determination was clearly erroneous. Therefore, we reject this claim.

¶6 Lloyd finally argues that the circuit court should have deviated from an equal property division because Brigitte squandered \$18,000 during their separation. The circuit court may consider other factors, including a party’s squandering of assets, when deciding whether to deviate from an equal division of the marital property. WIS. STAT. § 767.255(3)(m); *Gardner v. Gardner*, 175 Wis.

2d 420, 431-32, 499 N.W.2d 266 (Ct. App. 1993). Again, however, Lloyd did not argue at trial that Brigitte's share of the marital property should be reduced because she squandered assets, so we will not consider this argument on appeal. *Gilles*, 173 Wis. 2d at 115.

¶7 Lloyd next asserts that the circuit court erred in valuing several specific assets. We will not set aside a factual finding by the circuit court unless it is clearly erroneous. WIS. STAT. § 805.17(2). Even though the evidence would allow a contrary finding, we will affirm a factual finding if the evidence would permit a reasonable person to make the finding. *Sellers*, 201 Wis. 2d at 586. "To command reversal, the evidence supporting a contrary finding must constitute the great weight and clear preponderance of the evidence." *Id.*

¶8 Lloyd argues that the circuit court undervalued the property awarded to Brigitte at 1158 East Washington Avenue and overvalued the property awarded to him at 1200 East Washington Avenue because it did not consider the full cost of tank removal, soil contamination and building defects.² A real estate appraiser testified that the property at 1158 East Washington Avenue was worth \$109,000, which was the value placed on the property by the circuit court. A real estate appraiser valued the 1200 East Washington Avenue property at \$119,000, after taking into account the costs of decontamination and tank removal.³ The circuit court assigned the property a value of \$117,700. The circuit court's valuations are not clearly erroneous because they are supported by the record. Although Lloyd

² The 1200 East Washington Avenue property includes an adjacent property at 9 North Few Street.

³ The appraiser took into account these costs based on Lloyd's assertion that there were tanks on the property, even though the appraiser could find no records that the tanks existed.

points to reasons he believes the properties should receive different valuations, such as the city's tax assessment value, he has not shown that the evidence supporting contrary findings constitutes the great weight and clear preponderance of the evidence, as would be required for us to set aside the findings. *See id.* Moreover, the circuit court, in its order deciding Lloyd's motion for reconsideration, gave Lloyd relief on this issue by amending the judgment to provide that "[t]he parties will split one-half of the actual costs to remove, repair or clean-up the contamination existing on or around the property awarded to [Lloyd]." Because the court adjusted the valuation to take Lloyd's concerns into consideration, we agree with Brigitte that no further relief is warranted.

¶9 Lloyd next contends that the circuit court overvalued the Rio property, which was awarded to him. The circuit court based its decision on the appraisal of Paul Schmidt, explaining that it believed that the sales comparison approach used by Schmitz was more credible than Lloyd's theory that a percentage should be added to the purchase price. Because this decision is supported by the record, we will not overturn it. Lloyd is not entitled to relief.

¶10 Lloyd next argues that the circuit court improperly concluded that the Rio property was mortgaged for \$160,000 because the mortgage balance is \$165,839. Lloyd's counsel told the court that the property was mortgaged for \$160,000. We agree with Brigitte that Lloyd cannot complain on appeal that the circuit court accepted as accurate the mortgage balance he provided the court.

¶11 Finally, Lloyd argues that the circuit court erred in ordering him to pay the taxes on the real property at 1158 East Washington Avenue, which was awarded to Brigitte, because Brigitte was ordered to pay the property taxes while the divorce was pending, but she did not do so. The record does not support

Lloyd's assertion that Brigitte was ordered to pay the property taxes. Therefore, we reject this argument.⁴

By the Court.—Judgment modified and, as modified, affirmed.

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

⁴ We direct that no costs be awarded either party in this appeal. Lloyd has partially prevailed in that we direct the appealed judgment to be modified in his favor. Brigitte conceded the need for modification and prevailed on all other issues Lloyd raised. *See* WIS. STAT. RULE 809.25(1)(a).

