

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 4, 2010

David R. Schanker
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. 2009AP1839-FT

Cir. Ct. No. 2008FA244

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

RONALD R. COPPERNOLL,

PETITIONER-RESPONDENT,

V.

ROSEMARY COPPERNOLL,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County:
ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Dykman, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM.¹ Rosemary Coppernoll appeals the judgment divorcing her from Ronald Coppernoll. At issue are the circuit court's rulings regarding property division and maintenance. We affirm.

¶2 Rosemary was 58 and Ronald was 63 when they divorced in 2009 after 17 years of marriage. Rosemary's income in 2008 was approximately \$46,000 from wages, and Ronald's was approximately \$76,000 from a combination of wages, pension, and social security. Ronald's income was expected to decrease substantially, but still exceed Rosemary's, after he retired in 2011. The parties' most valuable asset was Ronald's Wisconsin Retirement System pension, valued at \$548,596. The total value of the marital property was just under \$1,000,000.

¶3 Rosemary sought an equal marital property division, including 16% of Ronald's pension. The court awarded Ronald's entire pension to him, as well as other assets worth approximately \$100,000, less a \$25,000 credit to Rosemary against a property division cash settlement, representing the present value of two years of maintenance at \$16,000 per year. The end result was a division that gave Ronald \$625,339, and Rosemary \$367,625. On appeal, Rosemary contends that the court erroneously exercised its discretion by deviating from an equal property division and by awarding only two years worth of maintenance.

¶4 The circuit court shall presume that marital property is to be equally divided. WIS. STAT. § 767.61(3). However, the court may alter the division upon considering factors that include the length of the marriage, property brought to the

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (2007-08). All further references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

marriage, the age of the parties, their respective earning capacities, the amount and duration of maintenance, and other economic circumstances, including pension benefits. *Id.* Property division determinations are discretionary, and we uphold them absent an erroneous exercise of discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. A proper exercise of discretion requires that the circuit court examine the relevant facts, apply a proper standard of law, and use a demonstrated rational process to reach a reasonable conclusion. *Id.*

¶5 The circuit court properly exercised its discretion when it deviated from an equal division in Ronald's favor. The court considered that: (1) Ronald was married to Rosemary for only eleven of the thirty-six years during which his pension accrued; (2) Rosemary had already shared in \$280,000 worth of pension benefits Ronald received before the divorce; (3) under her proposed equal division, Rosemary would receive essentially all of the marital property except for Ronald's 84% share of his pension; (4) Rosemary was several years younger and thus had several more years of full-time employment ahead of her; and (5) Ronald required the full value of his pension to maintain a standard of living in retirement that he enjoyed during the marriage. These were reasonable factors to consider, and provided a reasonable basis for an unequal division.

¶6 The circuit court also reasonably limited the term of maintenance. Rosemary contends that the two-year cutoff was arbitrary because the court based it solely on Ronald's anticipated retirement date, without considering the fact that Ronald's income will continue to exceed Rosemary's after he retires. It is true that the court did not fully articulate its reasons for awarding only two years worth of maintenance. However, when the circuit court does not explain its reason for a discretionary decision, we may search the record for reasons supporting its decision. *Finley v. Finley*, 2002 WI App 144, ¶19, 256 Wis. 2d 508, 648 N.W.2d

536. Here, two reasons stand out. First, the gap between Ronald's and Rosemary's income, while presently quite substantial, will narrow significantly after two years. Additionally, Rosemary received the marital home, encumbered by only a small mortgage.² Ronald, on the other hand, will be paying housing costs out of his income in the foreseeable future, as he did not receive a residence or the cash to pay for one, but rather an amount sufficient for a down payment on a home. These factors provided a reasonable basis to limit maintenance to the equivalent of two years.

By the Court.—Judgment affirmed.

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

² There remained a mortgage balance of approximately \$27,000 on the \$188,000 home.

