

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 30, 2010

A. John Voelker
Acting 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. 2009AP2569

Cir. Ct. No. 2007FA29

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

CHRISTY L. HANDLAND,

PETITIONER-APPELLANT,

V.

THOMAS G. HANDLAND,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Juneau County:
JOHN P. ROEMER, JR., Judge. *Reversed and cause remanded with directions.*

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

¶1 PER CURIAM. Christy L. Handland appeals from that portion of a judgment of divorce that divided the marital property and ordered her former

husband, Thomas Handland, to pay her an equalization payment. Specifically, Christy argues that the circuit court did not follow its stated intent to divide certain property equally when it computed the increase in value of the equity the parties had in their homestead, an IRA, and an insurance policy. We agree that the circuit court did not properly calculate the equity in the marital home. Consequently, we reverse and remand with directions that the circuit court revise the judgment consistent with this opinion.¹

¶2 Christy and Thomas Handland were married in September 1999, and remained married for close to nine years. The circuit court characterized this as a “‘long’ short-term marriage.” The court decided to deviate from the fifty-fifty presumption in some respects, but said that it was “going to allow Christy to share in all of the monetary gains, whether from the homestead, the Wisconsin Retirement System, the Bank of Mauston IRA, or the increase in the cash surrender value of the Prudential Life Insurance Policy.” In a supplementary decision, the court calculated the value of the marital home as follows:

$$\begin{aligned}
 & \$182,000 - (\text{stipulated value of the home at the time of the divorce}) \\
 & -102,400 - (\text{value of the home at the time of the marriage}) \\
 & = \$79,600 \\
 & -61,302 - (\text{the outstanding mortgage}) \\
 & = \$18,298 \\
 & \text{divided by } 2 = \$9,149.
 \end{aligned}$$

¶3 Property division is within the trial court’s discretion. *Noble v. Noble*, 2005 WI App 227, ¶15, 287 Wis. 2d 699, 706 N.W.2d 166. We uphold the

¹ Although Christy challenges the division of these three assets, her brief focuses almost entirely on the mistaken calculations related to the homestead. The court’s valuation of the IRA and the insurance policy appears to be correct. On remand, the circuit court is free to reconsider its decision on the award of these two items.

court's division of property "if the court gave rational reasons for its decision and based its decision on facts in the record." *Id.* Further, the valuation of a particular asset is a question of fact. *Id.* "When reviewing fact finding, appellate courts search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court could have reached but did not." *Id.*

¶4 Christy argues that the court improperly calculated the value of the home at the time of the marriage. Christy asserts that Thomas had the burden to establish the value of the homestead at the time of the marriage, and that he did not meet it. She further argues that the court erred when it rejected the assessed value of \$56,100 for the home from the real estate tax bill for 1999, the year the parties were married, as "too high," but then used the 2000 tax assessment value of \$102,400 to determine the home's value at the start of the marriage. Christy argues that if \$56,100 was too high, then clearly \$102,400 was also too high. Christy then argues that since the value was too high, Thomas failed to meet his burden of proof and the value for purposes of determining her equity should be set at \$0. We disagree.

¶5 The record supports the circuit court's finding that the value of the home at the time of marriage was \$102,400. First, the court's statement that \$56,100 was "too high" for the value of the home was clearly a misstatement. After making this statement, the court went on to explain that \$102,400 made sense "in light of the testimony of the parties that the mortgage in 1999 was in the approximate amount of \$80,000.00. The Bank of Mauston, or any lending institution, is not going to lend this amount of money on [real estate with] a value of \$56,000.00." It is clear from this statement that the circuit court determined that the \$56,100 value was too low, rather than too high. Further, we see nothing

wrong in the circuit court using the real estate tax assessment to determine the value of the home. We will not overturn the court's finding on the value of the home at the start of the marriage.

¶6 Christy's second argument is that even if the court used the correct value for the date of the marriage, the court erred in its calculations when it determined that the increase in value was about \$18,000. Thomas responds that the circuit court's result is roughly equivalent to his proposal that the court divide the increase in value attributable to the amount the mortgage reduced over the course of the marriage (\$21,000). Thomas argues that since the amount the court divided, \$18,000, is close to \$21,000, we can infer that this was its intent.

¶7 We reject Thomas's argument because the court said, as we quoted above, that its intent was to equally divide the increase in value of the home and other assets. If the court had intended to adopt Thomas's argument, it would need only have compared the amount of the mortgage at the start of the marriage with the amount of the mortgage at the time of the divorce. Instead, the court considered the value of the home at the start and end of the marriage, as well as the reduction in the amount of the mortgage. The problem with the court's calculation, however, was that it considered the mortgage only at the end date.

¶8 The method that Christy proposes deducts the mortgage from the value of the home at both the start and end of the marriage to determine the increase in the parties' equity in the home. The court found the value of the home at the time of the marriage was \$102,400. Subtract from that amount the mortgage of \$82,362, and that leaves \$20,038 as the equity at the start of the marriage. The assessed value of the home at the time of the divorce was \$182,000. Subtracting from that the remaining mortgage balance of \$61,302 leaves \$120,698 in equity at

the end of the marriage. Deducting the initial amount of equity from the end amount results in \$100,660 as the amount of the increase in equity during the marriage. This is the amount the court should have divided between Christy and Thomas. Christy should have been credited with \$50,330. On remand, the circuit court shall credit Christy with this amount.

¶19 Christy also asserts that the court erred by not crediting her with equity in the increased value in an IRA and a life insurance policy. It appears that the court properly valued these items but here, too, did not follow its stated intent to equally divide the equity. On remand, the court shall consider whether to include the equity of these items in its award to Christy. Consequently, we reverse and remand the matter to the circuit court with instructions to revise the judgment of divorce consistent with this opinion.

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

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

