

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 17, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2536-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

JULIAN SANCHEZ,

PETITIONER-RESPONDENT,

v.

MARILYN DE CORA,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed in part; reversed in part and cause
remanded with directions.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Marilyn De Cora appeals from a judgment of divorce. The issues are whether the trial court erred in dividing the couple's property and denying her request for maintenance and contribution to attorney's

fees. We affirm as to property division, but reverse as to maintenance and attorney's fees.

De Cora first argues that the court erred in dividing their property. The trial court decided to leave the parties in possession of the assets and debts each possessed at the time of the divorce. Division of property is a discretionary determination. *Bahr v. Bahr*, 107 Wis.2d 72, 77, 318 N.W.2d 391, 395 (1982). De Cora says the court erroneously exercised its discretion by failing to divide the only "tangible liquid assets" in the marital estate, specifically, Sanchez's Duke University retirement account and his checking account at a North Carolina bank. We agree with De Cora that the court's statement of the reasons underlying its decision is sparse. But we have held that where a trial court fails to adequately set forth its reasoning in reaching a discretionary decision, we will search the record for reasons to sustain that decision. *Long v. Long*, 196 Wis.2d 691, 698, 539 N.W.2d 462, 465 (Ct. App. 1995).

The record shows that the parties had been separated for several years before the divorce, and during that time certain marital assets were liquidated. De Cora received a greater share of those assets than Sanchez. On that evidence, a reasonable judge could conclude that it would be appropriate to leave each party with the property they had themselves divided in the years of their separation. See *Schneller v. St. Mary's Hosp.*, 155 Wis.2d 365, 374, 455 N.W.2d 250, 254 (Ct. App. 1990) (test of a discretionary determination is not whether we would have decided the issue differently but whether a reasonable judge could have so concluded), *aff'd*, 162 Wis.2d 296, 470 N.W.2d 873 (1991).

De Cora also argues that the court erred in denying her request for maintenance. In reaching its maintenance decision, the court addressed only two

of the several factors set forth in § 767.26, STATS. The court found that De Cora has an earning capacity of \$25,000 per year and that the marriage was “very short.” The only evidence in support of the finding as to earning capacity is that De Cora held an unidentified job for an unidentified period of time in 1992 at which she earned \$12 per hour. Other evidence indicated that De Cora earned \$5 and \$7 per hour at two other jobs before and after 1992, she holds no college or associate degree, possesses no identified skill, and has not recently been employed steadily or full time. When asked whether De Cora ever earned more than \$5000 in a year during the marriage, Sanchez said, “She may have come close to it ... or maybe more than that, I don’t know.” At the time of trial she was a full-time student in a paralegal program.

On the basis of this record, we conclude the finding as to earning capacity is clearly erroneous. Therefore, we reverse as to maintenance and remand for further proceedings. In doing so, we express no opinion as to whether maintenance should be awarded. We hold only that the decision must be reconsidered, based on an appropriate finding as to De Cora’s earning capacity and as to other factors under § 767.26, STATS., which may be relevant.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions.

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

