

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-0206

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

KATHY JO STRITTMATER A/K/A KATHY JO KRAMER,

PETITIONER-APPELLANT,

v.

DALE P. STRITTMATER,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for La Crosse County:
DENNIS G. MONTABON, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Kathy Jo Kramer appeals from the trial court's judgment divorcing her from Dale Strittmater. The issues are: (1) whether the trial court properly exercised its discretion in ordering the family residence to be sold and the proceeds divided equally between Kramer and Strittmater;

(2) whether the trial court properly exercised its discretion in dividing Kramer's pension plan equally between Kramer and Strittmater; (3) whether the trial court properly exercised its discretion in denying Kramer's request for maintenance; (4) whether the trial court properly exercised its discretion in including debt incurred by Strittmater after the separation in the parties' marital debt; and (5) whether the trial court properly exercised its discretion in ordering Kramer to pay twenty-five percent of her gross income as child support to Strittmater. We resolve all issues against Kramer and affirm.

Kramer and Strittmater were married for nine years. They have two young children, Alec (7) and Ryan (4). Since the beginning of the marriage, Kramer has worked at the post office, where she works from 3:00 p.m. until midnight, earning \$35,700 per year. Strittmater worked at Heilman's Brewing Company when they married, but left his job to obtain a college degree. He received his degree in 1996 and now works as a quality assurance specialist at First Logic during daytime hours, earning \$27,000 per year.

The trial court's judgment divided the marital assets and debts, denied Kramer's request for maintenance, ordered joint custody of the two children, and ordered that the children be placed with Strittmater six nights per week and Kramer one night per week. Pursuant to the placement schedule set by the trial court, Kramer also cares for the children during the daytime hours during the week, though they spend the nights with their father. She takes Alec to school, picks Alec up after school, cares for Ryan from 8:15 a.m. until 2:45 p.m. and then takes both children to daycare before she goes to work at 3:00 p.m. At 5:00 p.m., Strittmater picks both children up from daycare and returns home.

Kramer first argues that the trial court misused its discretion in ordering Strittmater to sell the family residence and divide the proceeds. Because the trial court did not order that the title to the property be divested and transferred at the time the judgment of divorce was entered, she contends that the judgment is not “final” and she, in effect, received nothing from the equity in the home.

Section 767.255, STATS., the property division statute, does not require that all marital property be divested of title exactly at the moment of divorce. This statute allows for the trial court to “make a flexible and tailored response to the needs of the particular divorcing family.” *Lutzke v. Lutzke*, 122 Wis.2d 24, 36, 361 N.W.2d 640, 646 (1985). The trial court’s judgment is “final,” even though it includes directions that the home be sold and the proceeds divided. Kramer will receive her share of the proceeds when the home sells. The trial court did not misuse its discretion.¹

Kramer next argues that the trial court misused its discretion in dividing her pension. The crux of her argument is that the trial court should have awarded the entire pension to her and given Strittmater the family home. The trial court has broad discretion in valuing pension rights and dividing them between the parties. *Bloomer v. Bloomer*, 84 Wis.2d 124, 134, 267 N.W.2d 235, 240 (1978). The trial court’s decision to divide both assets equally spreads the risk of the home sale, and also spreads any benefits if the home sells for a greater price than expected. There was no misuse of discretion.²

¹ If Kramer believes that Strittmater is not complying with his obligation to sell the home, she may move the trial court for relief.

² Kramer also argues that the trial court overvalued the pension. Because the pension will be divided equally between the parties, any overvaluation will be shared between them.

Kramer next argues that the trial court erred in refusing to award her maintenance. She contends that she is entitled to maintenance because she was the primary wage earner while Strittmater attended college.

The interrelated objectives of maintenance are “to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective).” *LaRocque v. LaRocque*, 139 Wis.2d 23, 33, 406 N.W.2d 736, 740 (1987). The trial court should consider the length of the marriage; the age and physical and emotional health of the parties; the property division; each party’s educational level at marriage and at divorce; the earning capacity of the party seeking maintenance; and other factors. *See* § 767.26, STATS. The award or denial of maintenance is committed to the sound discretion of the trial court. *LaRocque*, 139 Wis.2d at 27, 406 N.W.2d at 737.

The trial court considered the appropriate statutory criteria in deciding to deny Kramer maintenance. It noted that the parties were relatively young and in excellent physical and emotional health. Although Kramer worked to support the family while Strittmater was in school, Strittmater had contributed nearly \$100,000 in assets that would not have otherwise been part of the marital estate during that same period of time.³ At the time of divorce, Kramer was earning \$35,700 per year while Strittmater was earning \$27,000 per year. Considering all these factors, the trial court concluded that Kramer was not entitled to maintenance. This was not a misuse of discretion.

³ The assets included an inheritance and a separate stock holding that was subject to a marital property agreement.

Kramer next argues that the trial court should not have included debt incurred by Strittmater after the separation in the debt division. Kramer relies on *Weiss v. Weiss*, 122 Wis.2d 688, 699, 365 N.W.2d 608, 614 (Ct. App. 1985) (trial court erred in reducing the marital estate by expenses incurred by husband after separation because the debts were not joint marital debts).

The trial court properly included the debts in the marital estate because they were debts for automobile repairs, home improvements, and family-related expenses. Strittmater was authorized to incur debt to repair his automobile by the temporary order in place during the separation. Any value to the home by virtue of the home improvements will be shared equally between the parties when the home is sold. Unlike the situation in *Weiss*, the debts incurred by Strittmater were marital debts. The trial court properly exercised its discretion in dividing these debts between the parties.

Kramer finally argues that the trial court erred in ordering her to pay twenty-five percent of her gross income as child support. She argues that the parties had agreed to share the children's expenses and not request child support of one another. She points to the unique arrangement they have for caring for the boys; Kramer takes care of the children during the day while Strittmater is at work and Strittmater takes care of the children in the evening while Kramer is at work.⁴

We commend Kramer and Strittmater for working out an arrangement that minimizes child care expenses and maximizes the amount of time that the boys spend with their parents. Nevertheless, however much a

⁴ We observe that the trial court specifically noted during the hearing on the motion to reconsider that, if Kramer changed jobs and was working during the day, she could move to have the placement and support orders revised.

surprise Strittmater's request for child support was to Kramer, Strittmater was not prohibited from requesting child support simply because none was paid during the separation or because he and Kramer initially agreed to share the children's expenses. See *Krieman v. Goldberg*, 214 Wis.2d 163, 178, 571 N.W.2d 425, 432 (Ct. App. 1997) (an absolute stipulation as to child support without time-limiting language is contrary to public policy and unenforceable).

The trial court used the percentage standards set by the Department of Health and Family Services under WIS. ADM. CODE § HSS 80.03(1). Section 767.25(1j), STATS., requires that the court use DHFS's percentage standards unless one party requests a deviation and the court finds the percentage standard is unfair to the children or any party. See § 767.25(1m). The DHFS formulas for arriving at the appropriate percentage standard are based on the number of overnights, but recognize that there may be care "equivalent" to overnight care, such as where the "payer provides day care while the payee is working." See WIS. ADM. CODE § HSS 80.02(25) and accompanying note. It does not appear that Kramer requested the court to consider that the care she provides is the equivalent of overnight care, or otherwise presented evidence that paying twenty-five percent in child support would be unfair to her or the children under these unique placement arrangements. Therefore, we conclude the trial court did not erroneously exercise its discretion based on the record before it.

By the Court.—Judgment affirmed.

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

