

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 8, 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. 2004AP864

Cir. Ct. No. 2002FA444

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

DEBRA LOUISE GROFF,

PETITIONER-APPELLANT,

V.

JEFFREY ALAN GROFF,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Waukesha County:
RALPH M. RAMIREZ, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Debra Louise Groff appeals from that portion of the judgment of divorce that divided the marital property and denied her request to award attorney's fees. She argues on appeal that the trial court did not equitably

divide the property between the parties, and that the court erred when it refused to award her attorney's fees. Because we conclude that the court properly divided the property and that Debra did not establish that she was entitled to fees, we affirm.

¶2 The first issue Debra argues on appeal is that the trial court failed to properly exercise its discretion under WIS. STAT. § 767.255(3) (2003-04), when it divided the marital property.¹

We review the trial court's findings with respect to property division and maintenance to determine whether the court properly exercised its discretion. In the absence of an erroneous exercise of discretion, the award will be upheld. *Jasper v. Jasper*, 107 Wis. 2d 59, 63, 318 N.W.2d 792 (1982). Findings of fact will not be set aside unless they are clearly erroneous. WIS. STAT. § 805.17(2) (2001-02).

A trial court engages in an erroneous exercise of discretion when it "fails to consider relevant factors, bases its award on factual errors, makes an error of law, or grants an excessive or inadequate award." *Olski v. Olski*, 197 Wis. 2d 237, 243 n.2, 540 N.W.2d 412 (1995). Moreover, "a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

The trial court must begin the property division analysis with the presumption that the marital estate will be divided equally, but may deviate from that presumption after considering the relevant factors identified in WIS. STAT.

¹ Jeffrey Alan Groff argues that this court may summarily affirm and not address any of Debra's issues because her brief does not comply with the Rules of Appellate Procedure, WIS. STAT. ch. 809 (2003-04). We conclude that Debra's brief is adequate, although barely. Counsel is reminded that future filings in this court shall follow the citation requirements of WIS. STAT. RULE 809.19(1)(e). We will address the merits of Debra's arguments. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

§ 767.255(3). The weight to be given to those factors is within the discretion of the trial court. *Fuerst v. Fuerst*, 93 Wis. 2d 121, 131, 286 N.W.2d 861 (Ct. App. 1979).

Settipalli v. Settipalli, 2005 WI App 8, ¶¶10-12, 278 Wis. 2d 339, 692 N.W.2d 279. Further, the trial court need not consider all of the statutory factors, but may not ignore those factors that are clearly relevant. *Arneson v. Arneson*, 120 Wis. 2d 236, 254, 355 N.W.2d 16 (Ct. App. 1984).

¶3 Debra does not dispute that the court divided the property equally. Instead, she argues that the court did not divide the property equitably. She specifically argues that the court erred because it did not consider the factors under WIS. STAT. § 767.255(3).² She, in essence, contests details of that division. Debra apparently is arguing that the court needed to apply the statutory factors to explain each and every detail of the property division. We disagree. We conclude that the court properly exercised its discretion when it divided the property. Our review of the record establishes that the court considered the relevant factors, including the duration of the marriage, the property brought to the marriage by the parties, and the contribution of each party. The court engaged in a reasonable exercise of discretion and applied an appropriate standard to divide the property equally between the parties. We affirm that portion of the judgment.

¶4 Debra also argues that the trial court erred when it denied her request for attorney's fees because it did not make any findings on the need of the spouse seeking contribution, the ability to pay of the spouse ordered to pay, and the

² Jeffrey responds to this argument that the trial court need not address the statutory factors if it divides the property equally. While we consider this to be a novel argument, we need not address it in this case because of our conclusion that the court did consider the factors and did divide the property equally.

reasonableness of the total amount of the fees. See *Kastelic v. Kastelic*, 119 Wis. 2d 280, 290, 350 N.W.2d 714 (Ct. App. 1984). When denying the request for fees, the trial court said: “I simply don’t think she has clean hands in regards to that request. She hasn’t fulfilled her obligation, and I’m going to deny that request” We agree with Debra that the court did not make the appropriate findings. Jeffrey responds that the trial court properly denied Debra’s request for fees. He further argues that the trial court does not have to consider these factors when it denies a request for fees, only when it decides to award fees. While we agree with Jeffrey that the court did not err when it denied the attorney’s fees request, we do not agree with his argument about when the court considers these factors. There is not a threshold test by which the trial court first decides to award fees and then considers need, ability to pay, and reasonableness. Instead, the trial court considers these factors when making the determination of whether to award fees.

¶5 When the trial court does not make the appropriate findings on a request for fees, we may independently review the record to determine if the denial of the award was appropriate. See *id.* at 291. The record establishes that the only information Debra provided to the court was the amount of the fees she owed and had paid. She did not provide the court with information about her need or Jeffrey’s ability to pay. On this record, we conclude that the trial court did not err when it denied her request for fees. Consequently, we affirm the judgment of the trial court.

By the Court.—Judgment affirmed.

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

