

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 22, 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. 2004AP2174

Cir. Ct. No. 2002FA1572

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

KIM A. NOORDOVER,

PETITIONER-RESPONDENT,

V.

JOHN A. NOORDOVER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
J. MAC DAVIS, Judge. *Affirmed.*

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

¶1 PER CURIAM. John A. Noordover appeals from a judgment of divorce from Kim A. Noordover. He challenges the property division and argues

that Kim should not have been awarded all the proceeds from the home she owned prior to the marriage. We affirm the judgment.

¶2 The Noordovers were married for three years before separating in December 2002. Each owned a lake home prior to the marriage. Kim's was on Pewaukee Lake and John's was on Okauchee Lake. At the start of the marriage, the parties lived in the Pewaukee Lake home until a severe raccoon infestation drove them from the home. They then lived in the Okauchee Lake home for a time. Their homeowner's insurance reimbursed them for moving and other expenses related to their ouster from the Pewaukee Lake home. They received a final settlement check from the insurer of \$680,000. In March 2001, the Pewaukee Lake home property was sold for \$880,000.

¶3 The circuit court awarded Kim all the benefits or proceeds still in existence from the Pewaukee Lake home, as well as the assets she acquired with the sale proceeds from the home. It is John's position that the parties received approximately \$1,500,000 relating to the Pewaukee Lake home and that Kim's original interest in the home at the time of the marriage was only \$189,000. He contends he is entitled to some of the increase in net worth that Kim experienced during the marriage.

¶4 John first argues that the circuit court's finding of the fair market value of the Pewaukee Lake home at the time of the marriage is clearly erroneous. *See* WIS. STAT. § 805.17(2) (2003-04).¹ The circuit court found that the property was worth over one million dollars at the time of the marriage. John points to

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

evidence at trial that in May 1999, when Kim acquired the property by buying out her ex-husband's interest under a right of first refusal, there was an offer to purchase for \$700,000.

¶5 We need not address whether the valuation of the Pewaukee Lake home at the time of the marriage was correct. The same is true of John's claim that the circuit court's analysis of Kim's net worth at the time of the marriage was flawed (which is based in part on his claim that the circuit court overvalued the Pewaukee Lake home). The circuit court did not make an equal division of property based on the value of various assets. Rather, in the exercise of its discretion, the circuit court deviated from the presumption of an equal division and awarded each party the property brought to the marriage. We need only consider whether this was a proper exercise of discretion. *See LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (the division of property is entrusted to the discretion of the circuit court and the decision will not be disturbed on review unless there has been an erroneous exercise of discretion).

¶6 A circuit court's discretionary decision is upheld as long as it is the product of a rational mental process in which the court examined the relevant facts, applied the correct legal standard and reached a conclusion that a reasonable judge could reach. *Id.*, ¶¶13-14. In deviating from the presumption of equal property division, the circuit court must consider the factors listed in WIS. STAT. § 767.255(3).

¶7 Here the circuit court did just what it is supposed to do. It considered each of the factors listed in WIS. STAT. § 767.255(3) and explained the effect, if any, the factor had on the division of the property. It concluded that the short length of the marriage and the property brought to the marriage were the

controlling factors. *See* § 767.255(3)(a), (b). It determined that returning the parties to their premarital status was appropriate and that to single out one asset for vastly different treatment was not fair.²

¶8 John contends that the enormous increase in Kim’s net worth is attributable solely to the money received as a result of the raccoon infestation of the Pewaukee Lake home. He argues that he is entitled to a portion of that “windfall” because he helped Kim finance the buy-out of her ex-husband by signing the mortgage and paying closing costs, he expended time and energy in the demolition of the home to ascertain the extent of the raccoon infestation, mortgage interest payments and real estate taxes on the home were paid during the marriage, and he “made contributions towards Kim’s children.”³ But the circuit court specifically found that Kim and John “both contributed substantially to their joint households ... both financially and otherwise. Certainly they both benefited substantially.” It considered John’s contributions and found them counterbalanced by Kim’s. This finding was based on credibility determinations to which we give due regard, *see Jacquart v. Jacquart*, 183 Wis. 2d 372, 386, 515 N.W.2d 539 (Ct. App. 1994), and is not clearly erroneous.

² The circuit court noted that John’s position was that each party would go back to his or her premarital assets except that they would share the Pewaukee Lake settlement. It also observed that the parties tried the case on the implicit agreement that each would generally keep what he or she started with.

³ The testimony found at the record citation John offers in support of his contention that he made contributions towards Kim’s children is vague. John testified that payments were made out of joint accounts for medical bills associated with Kim’s children, but he also acknowledged that he oversaw all the claims and payments received from insurance companies for those medical bills.

¶9 In conclusion, the circuit court employed the proper methodology in dividing the property. The decision demonstrates a proper exercise of discretion.

By the Court.—Judgment affirmed.

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

