

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 27, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1005

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

INGO STANGE,

PETITIONER-RESPONDENT,

v.

JANE STANGE,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Chippewa County:
THOMAS SAZAMA, Judge. *Affirmed in part; reversed in part and cause
remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jane Stange appeals portions of her divorce judgment relating to maintenance, child support and property division. She

contends that the trial court failed to consider the necessary factors and provide a rational basis for its limited-term maintenance decision. She further contends that the trial court miscalculated her former husband's gross income for child support purposes and erroneously disregarded the parties' stipulation with respect to a parcel of real estate. We conclude that the record supports the trial court's child support decision and affirm that ruling. However, because the court's maintenance and property determinations fail to reflect a rational basis, we reverse those awards and remand for further proceedings.

FACTS

¶2 Jane and Ingo Stange were married in 1976. At the time of their marriage, they each had master's degrees in education and psychology, respectively. Three children were born to the parties: a daughter in 1980, a son in 1982 and another daughter in 1985. The parties agreed that Jane would forego her career until the youngest child entered school.

¶3 In about 1991, Jane began working as a substitute teacher. At the time of the divorce, Jane was fifty-four years old and was still working as a substitute teacher, earning approximately \$8,000 per year. The court noted her "standard of living has decreased significantly since the divorce began."

She has no cash savings She has no present ability to make repairs to her home or to replace items of furniture. She can no longer afford piano lessons or equestrian lessons She doesn't go out for dinner like they used to or shopping as she did in the past. She has no present ability to pay for her health insurance and has taken fewer vacations and camping trips. She has relied to some extent on relatives for financial assistance, and the kids have had to do with less or get help from relatives. She needs to renew her teaching license at a cost of \$600.00 or \$700.00 but has no cash for that expense.

¶4 Ingo is employed full-time as a licensed psychologist with the Department of Corrections. At the time of the divorce, he was fifty-three years old and earned approximately \$53,000 annually. Although Ingo did not obtain a doctorate degree during the marriage, he received additional education leading toward one. The trial court found:

Ingo's post-master's education was obtained during the marriage, and while Jane has set her career aside to raise the children and maintain the household. Much of this time Ingo was away from home either working or studying, and Jane was solely responsible for the day-to-day parenting and household duties.

....

The parties had discussed and agreed that Jane would temporarily set her teaching career aside so that they could start and raise a family and so that Ingo could pursue his career and job opportunities.

The court also found that "Ingo is likely to receive annual raises from the State, and may be in line for a more significant increase when he receives his doctoral degree."

¶5 The court observed, however, that "[u]nfortunately, Jane's return to the job market has not been as smooth as they had hoped." The court found that since 1994, Jane had applied for more than fifteen full-time teaching jobs without success. She has looked for jobs in a local newspaper with a wide circulation and has called the university and nine school districts within a thirty-mile radius of her home in May and August of each year. The court stated:

Jane has looked long and hard for teaching positions with no success. She has updated her resume as suggested, used computer access to job openings, called school districts, applied, and interviewed—all with no success.

¶6 The court noted that Ingo has suggested that Jane look for something else or return to school, but that Jane remains committed to her chosen profession because she likes teaching and believes she has a special talent for working with children. The court concluded that Jane “deserves an opportunity to continue the search, but not indefinitely.” Based upon a vocational expert’s testimony, the court determined that Jane’s earning capacity ranged from \$17,000 to \$28,500 as a full-time teacher or employed in another field.

¶7 During the marriage, both parties received inheritances. Ingo inherited \$230,000 from his father’s estate in 1996, most of which he invested in mutual funds in his name only. As a result, the court found that Ingo has \$365¹ per month in unearned income. The court noted: “This consists of the dividends on his investments only and does not include the capital gain distributions, which I liken to appreciation or increase in value of the assets.” The court found that Ingo used \$19,200 of his inheritance to pay off the family home’s mortgage, \$12,000 for a new vehicle for himself, approximately \$25,000 toward Jane’s mini-van, \$2,500 for a sailboat for himself and \$5,000 for a jet-ski for the children.

¶8 Jane inherited \$72,000 from her parents in 1993. The court determined:

With some of these funds she bought a camper, a bookcase, a ski trip, and a Honda automobile. She also paid some general family expenses and contributed \$2,000.00 toward the purchase of her 1997 Dodge mini-van. She purchased the vacant lot next to their home for \$11,500.00 and titled it in her name and Ingo’s.

¹ Later, the trial court found that Ingo has net unearned monthly income of \$239 and pays \$510 per month estimated taxes on his investment income. No one attempts to reconcile these figures for this court.

The court also noted that Jane has used up some of her remaining inheritance for living expenses and to purchase an \$800 horse. The court found that Ingo “makes no claim to Jane’s inheritance or to the items that were purchased with those funds”

¶9 With one exception, the court excluded property purchased with their inheritances from the marital estate subject to division. *See* WIS. STAT. § 767.255.² Despite the parties’ stipulation to the contrary, the court included in the marital estate the vacant lot Jane had purchased with her inheritance and awarded it to Ingo. Ingo was also awarded his automobile, his retirement account and deferred compensation plans, reinvested dividends and personal property, for a total of \$115,068. Jane was awarded the family residence, valued at \$138,000, her vehicle, her IRA and reinvested dividends, for a total of \$162,323. The court ordered that Jane pay Ingo an equalization payment of \$23,627, at the rate of \$250 per month for thirty-six months with no interest accruing, and then increasing to

² WISCONSIN STAT. § 767.255, “Property division,” reads in part:

(2)(a) Except as provided in par. (b), any property shown to have been acquired by either party prior to or during the course of the marriage in any of the following ways shall remain the property of that party and is not subject to a property division under this section:

....

2. By reason of the death of another, including, but not limited to, life insurance proceeds; payments made under a deferred employment benefit plan, as defined in s. 766.01 (4) (a), or an individual retirement account; and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance or by a payable on death or a transfer on death arrangement under ch. 705.

3. With funds acquired in a manner provided in subd. 1. or 2.

(b) Paragraph (a) does not apply if the court finds that refusal to divide the property will create a hardship on the other party or on the children of the marriage. If the court makes such a finding, the court may divest the party of the property in a fair and equitable manner.

\$400 per month plus 10% interest on the declining balance for the following thirty-seven months.

¶10 The court found Jane's household budget for herself and two children to be \$2,229 per month. Ingo's budget was determined to be \$2,111, which included \$510 per month estimated taxes on his investments.

¶11 The court ordered child support on a percentage basis in accordance with the State guidelines: 25% until the second child reached the age of majority and 17% until the youngest was graduated from high school. Also, the trial court granted Jane maintenance for four years in the sum of \$520 per month for thirty months and \$800 per month for eighteen months thereafter.

STANDARD OF REVIEW

¶12 The determination of maintenance, child support and property division requires the exercise of discretion. *See Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981); *Evenson v. Evenson*, 228 Wis. 2d 676, 687, 598 N.W.2d 232 (Ct. App. 1999); *Sharon v. Sharon*, 178 Wis. 2d 481, 488, 504 N.W.2d 415 (Ct. App. 1993). Whether discretion was properly exercised is a question of law. *Seep v. Personnel Comm'n*, 140 Wis. 2d 32, 38, 409 N.W.2d 142 (Ct. App. 1987). Discretion is the reasoned application of the proper principles of law to the facts that are properly found. *Hartung*, 102 Wis. 2d at 66.

¶13 It is well established that a trial court, in the exercise of its discretion, may reasonably reach a conclusion that another court would not. *Liddle v. Liddle*, 140 Wis. 2d 132, 156, 410 N.W.2d 196 (Ct. App. 1987). We are to look to the record for reasons to sustain a trial court's discretionary decision. *See In re R.P.R.*, 98 Wis. 2d 613, 619, 297 N.W.2d 833 (1980).

DISCUSSION

1. Maintenance

¶14 Jane challenges the maintenance award. She claims that even assuming the court correctly found that within four years she will have full-time employment earning between \$17,000 and \$28,500 per year, her standard of living will be significantly lower than that enjoyed during the marriage. *See* WIS. STAT. § 767.26(6). She argues that the maintenance award ignores the disparity in the parties' incomes and does not serve the support and fairness objectives identified in *LaRocque v. LaRocque*, 139 Wis. 2d 23, 40, 406 N.W.2d 736 (1987). We conclude that the court's decision does not adequately address the fairness component and, therefore, reverse and remand for further proceedings.

¶15 In deciding to award maintenance, the trial court must consider the factors in WIS. STAT. § 767.26.³ On review, the question is whether the trial

³ WISCONSIN STAT. § 767.26 provides:

Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 767.02 (1) (g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:

- (1) The length of the marriage.
- (2) The age and physical and emotional health of the parties.
- (3) The division of property made under s. 767.255.
- (4) The educational level of each party at the time of marriage and at the time the action is commenced.
- (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.

(continued)

court's application of the factors achieves both the support and fairness objectives of maintenance. *Forester v. Forester*, 174 Wis. 2d 78, 84-85, 496 N.W.2d 771 (Ct. App. 1993). The support objective is to support the recipient spouse in accordance with the needs and earning capacities of the parties. “The goal of the support objective of maintenance is to provide the recipient spouse with support at pre-divorce standards.” *Fowler v. Fowler*, 158 Wis. 2d 508, 520, 463 N.W.2d 370 (Ct. App. 1990). “This goal may require that the recipient spouse be awarded maintenance beyond bare subsistence needs.” *Id.* In a long-term marriage, “[i]t is reasonable to begin maintenance evaluation with [the] proposition that [the] dependent partner may be entitled to fifty percent of the parties’ total earnings.” *Id.*

¶16 The fairness objective is to ensure a fair and equitable financial arrangement between the parties in each individual case. *King v. King*, 224 Wis. 2d 235, 249, 590 N.W.2d 480 (1999). Over a long marriage, each party contributes to the income stream as marital partners and should share in the rewards. *Fowler*, 158 Wis. 2d at 519. “Sharing the rewards of the stream of income produced in a long marriage is encompassed in the fairness objective of

(7) The tax consequences to each party.

(8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.

(9) The contribution by one party to the education, training or increased earning power of the other.

(10) Such other factors as the court may in each individual case determine to be relevant.

maintenance.” *Id.* A trial court misuses its discretion if it fails to fully consider the dual objectives of maintenance. *Forester*, 174 Wis. 2d at 86.

¶17 Maintenance is not, however, a permanent annuity, but is to be designed to maintain a party at a standard of living until the party exercising reasonable diligence has reached a level of income where maintenance is no longer necessary. *Vander Perren v. Vander Perren*, 105 Wis. 2d 219, 230, 313 N.W.2d 813 (1982). Limited maintenance can serve many purposes, including an opportunity for the recipient spouse to become self-supporting, as well as an incentive to seek employment. *LaRocque*, 139 Wis. 2d at 40-41.

In determining whether to grant limited-term maintenance, the circuit court must take several considerations into account, for example, the ability of the recipient spouse to become self-supporting by the end of the maintenance period at a standard of living reasonably similar to that enjoyed before divorce; the ability of the payor spouse to continue the obligation of support for an indefinite time; and the need for the court to continue jurisdiction regarding maintenance.

Because limited-term maintenance is relatively inflexible and final, the circuit court must take particular care to be realistic about the recipient spouse's future earning capacity.

Id. at 41.

¶18 To determine the amount of maintenance, the court used a combined income analysis.⁴ We conclude that the court’s determination of \$520 per month

⁴ The court stated:

The \$520 has been computed as follows: after taxes and child support, Ingo takes home \$2,395.00 monthly; after taxes (25% federal, 6.7% state), he also realizes unearned income of \$239.00 monthly, for a subtotal of \$2,634.00; to that is added Jane’s present net income of \$616.00 per month; the total available income is \$3,250.00 per month; Ingo needs \$2,111.00 per month to maintain his household, and Jane needs \$2,229.00 before child

(continued)

for thirty months, to be increased to \$800 per month as Ingo's child support obligation diminishes, reasonably reflects Jane's needs and Ingo's ability to pay. We conclude that the record supports the amount awarded as maintenance. We are not satisfied, however, that its analysis adequately explains the four-year term limit.

¶19 Also, the record does not disclose a reasonable basis from which to conclude that a four-year term meets the fairness objective. Although the court recited the appropriate factors, its explanation fails to demonstrate how its findings squared with a four-year term. The court's findings establish that Jane's absence from the job market to raise the children inhibited her career advancement. The court did not find, however, that Jane's anticipated salary range approximates one-half of the parties' income stream. Nor did it find that Jane's projected salary range would provide a standard of living comparable to that enjoyed during the marriage. In addition, the court did not indicate what factors, if any, would have led it to depart from an equal division of the income stream.

¶20 At the end of the four years, Jane's anticipated income range falls short of an equal division of the income stream. It is unclear from the record what the court was attempting to accomplish. "Circuit courts are not permitted to acknowledge statutory factors in form but ignore them in substance." *King*, 224 Wis. 2d at 252. Because the circuit court failed to articulate how its findings as to

support; after deducting \$1,094.00 in child support, she needs \$1135.00; her net income of \$616.00 and \$520 monthly maintenance will give her that amount. While these computations may seem to be cutting things pretty closely, I have also considered that Ingo will already have gotten a raise from the State, and he can expect raises almost annually. Jane, on the other hand, should soon be earning more than \$667.00 per month and will have health insurance available to her at a much reduced rate than she is now paying.

the statutory factors provide a basis for its four-year limit, we conclude that the court erroneously exercised its discretion.

¶21 Ingo argues that that “[o]ne of the main reasons the trial court determined that limited term maintenance was appropriate was because of Jane’s attitude” that she is not required to actively seek employment. He also contends that her “stubbornness is unreasonable” and that she resolved to shirk her responsibility of self-support. This argument is unpersuasive in view of the court’s findings that Jane had looked “long and hard” for employment as a teacher. We agree the court was entitled to find that a future indefinite job search, limited solely to the teaching field, would be unreasonable. Nonetheless, our review of the court’s findings fails to reveal any support for Ingo’s “shirking” argument. Even if Jane would obtain full-time employment at the anticipated salary range of \$17,000 to \$28,500, the court’s decision lacks an explanation of what factors led it to reject an equal division of the parties’ income stream.

¶22 Ingo further argues that an ex-wife does not have a legal entitlement to maintenance and that disparate incomes alone do not require a maintenance award. While Ingo’s propositions find support in the law, *see Gerth v. Gerth*, 159 Wis. 2d 678, 682-84, 465 N.W.2d 507 (Ct. App. 1990), the trial court apparently determined that they have limited applicability here. When the court awards maintenance, it misuses its discretion if it fails to fully consider the dual objectives of support and fairness. *Forester*, 174 Wis. 2d at 86.

¶23 Ingo also claims that a dependent party cannot avoid employment and simply rely on the supporting party to provide a standard of living comparable to that enjoyed during the marriage. *See Fowler*, 158 Wis. 2d at 521. While this also may be a correct statement of law, it does not respond to the argument that

Jane advances on appeal. On appeal, Jane contends that even with full-time employment, due to her absence from the job market while having the primary responsibility of raising their family, her earning ability has suffered. Jane claims it is unfair that her standard of living will thereby also suffer. Ingo does not identify anything in the record or the court's decision that responds to this argument. Therefore, we reverse and remand for the court to consider the term of its maintenance determination in light of the fairness objective.⁵

2. Child support

¶24 Jane's challenge to the child support award is whether capital gains on Ingo's investments are to be included as income for child support purposes when such gains are included for federal income tax purposes. The trial court found that Ingo has \$365 per month unearned income from his inheritance invested in mutual funds. It ruled: "This consists of the dividends on his investments only and does not include the capital gain distributions, which I liken to appreciation or increase in value of the assets." The court stated:

Dividends on shares of stock are ordinary income, and reinvesting dividends in additional shares is no different than purchasing shares with one's paycheck. On the other hand, capital gains distributions on mutual fund shares are nothing more than the mutual fund sharing its profits, or the increase in value of a share of the fund, with the fund's owners. I therefore liken capital gain distributions to the appreciation in value of an asset.

Consequently, the court included reinvested dividends as ordinary income subject to child support obligations, but excluded capital gains from its calculations.

⁵ Because the term and length of maintenance are intertwined, the court may consider both issues.

¶25 Jane argues that the trial court made an error of law by failing to include capital gains as income available for child support. “The trial court is required to calculate the appropriate award of child support by using the [WIS. ADMIN. CODE § DWD 40] percentage standards unless a party requests a deviation and the court finds that the percentage standards are unfair to the child or any party.” *Evenson*, 228 Wis. 2d at 687-88; *see also* WIS. STAT. § 767.25(1) and (1n)(b).⁶ WISCONSIN ADMIN. CODE § DWD 40.02(14) defines gross income as “(a) All income considered federal gross income under 26 CFR 1.61-1” plus additional sources not relevant here. Jane contends that Ingo’s capital gains on his mutual fund investments are gross income within the meaning of 26 C.F.R. 1.61.

¶26 WISCONSIN ADMIN. CODE § DWD 40.02(13)(a) defines gross income to include “[a]ll income considered federal gross income under 26 CFR

⁶ WISCONSIN STAT. § 767.25, “Child support” provides in part:

(1j) Except as provided in sub. (1m), the court shall determine child support payments by using the percentage standard established by the department under s. 49.22 (9).

(1m) Upon request by a party, the court may modify the amount of child support payments determined under sub. (1j) if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

....

(i) Any other factors which the court in each case determines are relevant.

(1n) If the court finds under sub. (1m) that use of the percentage standard is unfair to the child or the requesting party, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.

1.61- 1.” Gross income as defined in 26 C.F.R. § 1.61-1 means “all income from whatever source derived, unless excluded by law.”⁷

¶27 Although Ingo disputes that his capital gains income falls within the above definition, we are satisfied that it does. Nonetheless, this conclusion is not dispositive. We must determine whether the court erroneously exercised its discretion when it deviated from the percentage standards under WIS. STAT. § 767.25(1m).

¶28 Jane’s argument suggests that when a court decides whether an asset falls within the definition of gross income under WIS. ADMIN. CODE § DWD 40.02(13)(a), “fairness” determinations, such as whether the asset is readily convertible to cash or capable of being traded or sold, are outside the scope of the

⁷ Jane relies on the following sections:

26 C.F.R. § 1.61-1 Gross income.

(a) *General Definition.* Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether money, property, or services

26 C.F.R. § 1.61-6 Gains derived from dealings in property.

(a) *In general.* Gain realized on the sale or exchange of property is included in gross income, unless excluded by law.

26 C.F.R. § 1.61-7 Interest.

(a) *In general.* As a general rule, interest received by or credited to the taxpayer constitutes gross income and is fully taxable.

26 C.F.R. § 1.61-9 Dividends.

(a) *In general.* Except as otherwise specifically provided, dividends are included in gross income under sections 61 and 301.

court's discretionary power under WIS. STAT. § 767.25(1m). Essentially, Jane contends that once a court determines that a form of income falls within the code's definition of gross income, it has no choice but to include it in the payor's gross income under the percentage standards. Based on *State v. Wall*, 215 Wis. 2d 595, 599-600, 573 N.W.2d 862 (Ct. App. 1997), we are unpersuaded.

¶29 Courts may deviate from the percentage standards upon a finding by the greater weight of the credible evidence that applying the percentage standards would be unfair to the child or either party. See WIS. STAT. § 767.25(1m). In its discretion, a court may consider “[a]ny other factors which the court in each case determines are relevant” to its decision on whether to deviate from the percentage standards. WIS. STAT. § 767.25(1m)(i); *Wall*, 215 Wis. 2d at 600. “Therefore, when determining fairness, a court is free to examine *any* factor it deems relevant.” *Wall*, 215 Wis. 2d at 600. For example, a relevant factor when determining fairness would be “whether to include in gross income any noncash income that, although taxable under the federal income tax code, does not generate additional cash or assets and therefore does not enhance the payor's financial means to make child support payments.” *Id.*

¶30 Thus, under WIS. STAT. § 767.25(1m)(i), the court may deviate from the guidelines if by the greater weight of the credible evidence it would be unfair to include the noncash income in the payor's gross as defined in WIS. ADMIN. CODE § DWD 40.02(13)(a). *Wall*, 215 Wis. 2d at 600. We are satisfied that the trial court's explanation provides a fairness rationale for not including Ingo's capital gains as income to be included in his base for child support calculations. Accordingly, the court's determination is not overturned on appeal.

3. Property Division

¶31 Finally, Jane argues that the trial court erroneously exercised its discretion when it refused to accept the parties' oral stipulation that Ingo would make no claim on the vacant lot she purchased with her inheritance. She points out that from the commencement of the divorce, the parties stipulated that each would receive the property acquired with their separate inheritances. We conclude that the record fails to reflect the court's reasoning for rejecting the parties' stipulation, and therefore we reverse the court's property division and remand for further proceedings.

¶32 At the outset, we note that Jane erroneously relies on *Wyandotte Chemicals Corp. v. Royal Elec. Mfg.*, 66 Wis. 2d 577, 589, 225 N.W.2d 648 (1975), which held: "Generally then, oral stipulations made in open court, taken down by the reporter, and acted upon by the parties and the court are valid and binding." *Wyandotte* is a civil action governed by the rules of civil procedure. Under WIS. STAT. § 807.05, all stipulations made between parties in open court, on the record, are binding.

¶33 In contrast, an agreement made under immediate contemplation of divorce is governed by WIS. STAT. § 767.10. *See Ayres v. Ayres*, 230 Wis. 2d 431, 438, 602 N.W.2d 132 (Ct. App. 1999). The relevant portion of § 767.10(1), provides:

The parties in an action for annulment, divorce or legal separation may, subject to the approval of the court, stipulate for a division of property, for maintenance payments, for the support of children, for periodic family support payments under s. 767.261 or for legal custody and physical placement, in case a divorce or legal separation is granted or a marriage annulled.

¶34 “The family court ‘represents the interests of society in promoting the stability and best interests of the family.’” *Id.* (citation omitted). Based on this duty, the supreme court has stated that “there is no such thing in this state as a divorce by consent or agreement.” *Id.* (citation omitted). “The parties cannot by stipulation proscribe, modify, or oust the court of its power to determine the disposition of property, alimony, support, custody, or other matters involved in a divorce proceeding.” *Id.* (citation omitted). Accordingly, a divorce stipulation is merely a recommendation to the trial court. *Evenson*, 228 Wis. 2d at 686.

¶35 Nonetheless, although the trial court has the authority to reject a stipulation made in contemplation of divorce, its decision to do so must demonstrate a rational basis. “Because ‘the exercise of discretion is not the equivalent of unfettered decision-making,’ the record on appeal must reflect the circuit court's reasoned application of the appropriate legal standard to the relevant facts in the case.” *Milwaukee Women's Med. Serv. v. Scheidler*, 228 Wis. 2d 514, 524, 598 N.W.2d 588 (Ct. App. 1999) (quoting *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982)).

¶36 Here, the court summarized its reasoning as follows: “The vacant lot was purchased with Jane’s inheritance, but she titled it in hers and Ingo’s names, thereby transmuting it to marital property. It has been awarded to Ingo.” We cannot accept the court’s reasoning. The court’s explanation provides a basis for awarding the lot to Ingo, but provides no reason for rejecting the parties’ agreement in the first place.

¶37 Ingo contends that the record provides a rational basis. He points to an exhibit Jane offered proposing that the lot be awarded to Ingo. This contention would be persuasive if it were not for the trial court’s written decision recognizing

that Ingo “makes no claim to Jane’s inheritance or to the items that were purchased with those funds.” Consequently, Ingo’s claim that Jane’s exhibit misled the court fails to provide a rational basis for the court’s decision.

¶38 Ingo further suggests that the court was attempting to effectuate an equal division of the marital estate by awarding the lot to him. This argument does not withstand scrutiny. If the court had accepted the parties’ stipulation, the lot would have been characterized as Jane’s separate property not subject to division. The marital estate could be equally divided without including property to which Ingo made no claim.

¶39 Because we are unable to perceive a rational basis for the court’s decision to reject the parties’ stipulation, we reverse the property division and remand for the court to consider any factors it deems relevant in accepting or rejecting the parties’ stipulation and fashioning its property division.⁸

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

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

⁸ On remand, the court is not bound by the issues raised on appeal with respect to property division. *Evenson v. Evenson*, 228 Wis. 2d 676, 693, 598 N.W.2d 323 (1999).

