

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 5, 2006

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. 2005AP2058

Cir. Ct. No. 2003FA205

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JAMES L. ARD,

PETITIONER-APPELLANT,

V.

PATRICIA A. ARD,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Shawano County:
THOMAS GROVER, Judge. *Affirmed.*

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

¶1 PER CURIAM. James Ard appeals his judgment of divorce, arguing that the trial court erroneously exercised its discretion by failing to give

him “credit” for property he brought into the marriage, and failing to consider his tax consequences in the event a sale of the farm becomes necessary to fund the property division. We disagree and affirm.

¶2 The parties were twice married and divorced. The first marriage lasted nearly thirty years, and the parties were divorced in 1993. Patricia Ard received a \$140,000 settlement as a result of the first divorce, and James received one of the two farms the parties then owned, together with the machinery, equipment and milking cows. A second farm and the young stock were sold to fund Patricia’s settlement.

¶3 The parties resumed living together a year after their first divorce. In the meantime, Patricia went back to work outside the farm. When Patricia came back into the household, her assets and earnings were invested in the farm. The parties were remarried in 1997. They divorced for the second time in 2005. At the final hearing, James expressed his desire to remain in farming and stated that he would “find a way” to fund whatever property division the court may award to Patricia. After the hearing, the trial court issued an oral decision which divided the marital estate equally. James now appeals.

¶4 An equal division of a marital estate is presumed under WIS. STAT. § 767.255. *Preiss v. Preiss*, 2000 WI App 185, ¶10, 238 Wis. 2d 368, 617 N.W.2d 514. The division of property rests within the sound discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will sustain a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). When reviewing fact

findings, we search the record for reasons to sustain the circuit court's discretionary decision, not for evidence to support findings the court could have but did not reach. *Steiner v. Steiner*, 2004 WI App 169, ¶18, 276 Wis. 2d 290, 687 N.W.2d 740. Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2).¹

¶5 Here, the court found that each party brought to the marriage the property they received from the first marriage, and further found that the contributions of each party during the marriage were equal. The court also found that both parties intended to merge the assets they brought from the first marriage into the second marriage, and the parties commingled their respective assets. In its oral decision, the court reasoned:

So, first of all, what I think happened here is that these people when they got back together they brought what they had before, what they received out of the first marriage, they brought back into the second marriage and I think they invested it in the farm operation; and that includes everything that James got out of that first marriage and everything Patricia got out of that first marriage She's convinced me that moneys that were in accounts, that she had mutual funds, that she had funded with money from the first marriage, were then reinvested again. And I think that the same can be said for James, he took his farm operation and they put it back together again is what they did. I think that they thought everything was going to be permanent again and I believe that they both intended to in effect merge the assets. I don't—I don't know that I can separate out the assets in any meaningful way ... I think their assets have been so commingled

¶6 The circuit court properly exercised its discretion in equalizing the division of property. The court considered the proper statutory factors and gave

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

appropriate weight to factors warranting an equal division. Ample evidence in the record also supports the court's findings and conclusions.

¶7 James insists the trial court failed to properly exercise its discretion by ignoring the testimony of his appraiser establishing the value of the farm at \$173,000 as of the time of the first divorce in 1993.² However, this value is only relevant if we accept James's premise that the circuit court was required to allow James "credit" for property he brought into the marriage. Once the circuit court rejected this premise, the court was required to determine the value of the farm at the time of the second divorce.

¶8 Next, James claims that the trial court failed to consider his tax consequences in the event a sale of the farm was necessary to fund a property division. However, the record establishes neither that James intends to sell the farm to fund the property division, nor the tax consequences of any such a sale. A court is not obligated to consider the tax consequences of a hypothetical or speculative disposition of property. *Preuss v. Preuss*, 195 Wis. 2d 95, 106, 536 N.W.2d 101 (Ct. App. 1995). When there is no evidence that a liability is imminent or likely, consideration of such an assertion strays into the realm of speculation and mere theory. *Id.* Here, James expressed his intention to continue farming, and the court gave James the option of executing a mortgage to Patricia at six percent over fifteen years or refinancing the farm to pay off the equalization payment within ninety days. The sale of the farm is speculative. The trial court did not erroneously exercise its discretion.

² We note that the circuit court did not ignore the testimony of the appraiser as to the value of the farm. In fact, the court found the value of the real estate and the buildings to be \$460,000, halfway between the parties' respective appraisals of \$450,000 and \$470,000.

By the Court.—Judgment affirmed.

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

