

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 13, 2007

A. John Voelker
Acting 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. 2006AP1995-FT

Cir. Ct. No. 2003FA367

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

EVANGELINE YVETTE KENT,

PETITIONER-RESPONDENT,

V.

SIMON WILLIAM KENT,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Simon Kent appeals a property division order entered after his divorce judgment.¹ Simon argues that because the property division was based on assets valued at the time of the divorce, assets he uses to make his equalization payment should also be valued as of the time of the divorce. We reject Simon’s argument and affirm the judgment and order because the court did not order Simon to use stock to finance the equalization.

¶2 Simon was divorced from his wife Evangeline on December 30, 2004. Their marital estate consisted largely of investment and retirement accounts and, because the parties could not decide on how to divide the estate, the property division was held open for quite some time. Simon was prohibited from liquidating any of the assets pending the division. At one of the many hearings following the divorce judgment, the court noted the question of valuation had arisen. The court stated that it would value the assets as of December 31, 2004, regardless of whether they increased or decreased in value after that date.

¶3 Eventually, the property division was decided and the distribution of assets required Simon to make a \$64,000 equalization payment to Evangeline. On July 10, 2006, the court ordered Simon to finance this payment by transferring four retirement accounts to Evangeline and by transferring “assets of a sufficient value to make the total value of \$64,000.”

¶4 Simon wanted to make the equalization payment by transferring Avici Systems stock to Evangeline. However, he wanted to make the transfer based on the December 2004 values and asked the court to add such qualifying

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (2005-06).

language in the order.² Instead, the court signed the order drafted by Evangeline’s counsel, which specified no valuation date. Simon appeals.

¶5 Property division is committed to the trial court’s discretion. *Scheuer v. Scheuer*, 2006 WI App 38, ¶13, 290 Wis. 2d 250, 711 N.W.2d 698. We will only reverse an erroneous exercise of discretion. *Settipalli v. Settipalli*, 2005 WI App 8, ¶10, 278 Wis. 2d 339, 692 N.W.2d 279. Assets subject to property division in a divorce are normally valued at the time of divorce unless special circumstances exist. *Bussewitz v. Bussewitz*, 75 Wis. 2d 78, 82, 248 N.W.2d 417 (1977); *Schinner v. Schinner*, 143 Wis. 2d 81, 98, 420 N.W.2d 381 (Ct. App. 1988).

¶6 Here, Simon’s basic complaint is that if he transfers the Avici stock based on its current value, he is doubly punished for the delay in property division even though some of that delay is attributable to Evangeline. We note first that there is no showing the trial court erroneously exercised its discretion when it decided the valuation date would be December 31, 2004—the time of the divorce. This determination is in accord with established law. Further, Simon demonstrates no special circumstances; because of the inherent nature of stocks and other investment accounts, we do not believe “special circumstances” encompasses a mere change in the value of the assets.

² Assume Simon owes Evangeline \$10,000 after transferring the retirement accounts. Assume that the Avici Systems stock was worth \$100 per share on December 31, 2004, but is now worth \$50 per share. Applying the current value, Simon would have to transfer 200 shares to make the \$10,000 payment. If Simon were allowed to value the stock as of the time of divorce, he would only have to transfer 100 shares.

¶7 The problem with Simon’s argument is that the court did not order him to make the equalization payment through a transfer of Avici stock. It ordered him to transfer four retirement accounts³ and “assets of a sufficient value” to total \$64,000. That Simon wants to make the payment with an asset that has lost value is his own choice, not the court’s order. *Cf. Scheuer*, 290 Wis. 2d 250, ¶23.

By the Court.—Judgment and order affirmed.

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

³ Simon has not argued the division should be recalculated based on any value changes in the retirement accounts, only the stock price.

