

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 24, 2007

David R. Schanker
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. 2006AP952

Cir. Ct. No. 2005FA253

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

ERNEST FRANCIS TOMPKINS,

PETITIONER-RESPONDENT,

V.

LUDMYLA PAVLIVNA SKORYCHENKO TOMPKINS,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
GREGORY B. HUBER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ludmyla Tompkins appeals a judgment of divorce. Ludmyla argues the circuit court's determinations regarding maintenance, property division, and costs were in error. We disagree and affirm.

BACKGROUND

¶2 Ludmyla married Ernest Tompkins on November 18, 2004. Ludmyla was fifty-nine years old and Ernest was sixty. Both Ludmyla and Ernest were previously married and divorced. On May 10, 2005, Ernest filed an action for divorce.

¶3 A final hearing was held on February 16, 2006. The court awarded Ludmyla six months of maintenance. For property division, the court awarded Ludmyla her personal property, a vehicle Ernest had purchased, and half of the balance of a joint bank account. The account contained \$853. Ludmyla was instructed to pick up the money from Ernest's attorney's office.

¶4 Ludmyla did not contact Ernest's attorney. Instead, she filed an order to show cause why Ernest had not paid her half of the joint bank account. Ludmyla did not appear at the hearing on her order to show cause. The court dismissed the order and awarded Ernest \$300 in costs. Ernest's attorney then forwarded the remaining balance of the bank account, less the \$300 in costs to Ludmyla's address in the record.

DISCUSSION

¶5 The determinations of maintenance and the division of property are matters entrusted to the circuit court's sound discretion. *LaRocque v. LaRocque*, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987); *Jasper v. Jasper*, 107 Wis. 2d 59, 62, 318 N.W.2d 792 (1982). An award of costs is also a matter of circuit court

discretion. WIS. STAT. § 814.07.¹ “A discretionary determination, to be sustained, must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law.” *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶6 Upon a judgment of divorce, “the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering” those factors listed under WIS. STAT. § 767.56. Ludmyla contends she should have received more maintenance. Here, the court considered at least three of those factors listed in § 767.56 before awarding Ludmyla maintenance. First, the court considered the short duration of the marriage—six months at the time the action was filed and slightly over a year by the time a divorce was granted. *See* WIS. STAT. § 767.56(1). Second, the court considered Ludmyla and Ernest’s similar age and health condition. *See* WIS. STAT. § 767.56(2). Third, the court considered the property division of the marriage—Ludmyla received the property she brought to the marriage, plus a vehicle and half the bank account. *See* WIS. STAT. § 767.56(3). These factors support the court’s exercise of discretion.

¶7 Upon every judgment of divorce, “the court shall divide the property of the parties.” WIS. STAT. § 767.61(1). While there is a presumption of an equal division of marital property, courts may alter this distribution after considering those factors laid out in § 767.61(3). Ludmyla contends she should have received a greater portion of the marital property. Again, the court considered the short

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

duration of the marriage, the fact that Ernest contributed essentially all of the property to the marriage, and the parties' similar age and physical and emotional health. *See* WIS. STAT. §§ 767.61(3)(a)(b) and (e). However, she does not develop any argument as to why the court's division was in error. We conclude the court appropriately exercised its discretion.

¶8 Under WIS. STAT. § 814.07, “[c]osts may be allowed on a motion, in the discretion of the court or judge, not exceeding \$300” When Ludmyla failed to appear for the hearing on her order to show cause, Ernest asked the court for costs. On appeal, Ludmyla fails to present any argument as to how the court erred. She also fails to support her argument with any record citation. She merely asserts her failure to appear was the result of the court not giving her a notice of the hearing she requested. We also note that Ludmyla did not follow the court's original instructions on how to obtain her money. Therefore, we conclude the court appropriately exercised its discretion by awarding costs to Ernest.

By the Court.—Judgment affirmed.

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

