

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 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. 01-0940-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

TRACI J. PURDY,

PETITIONER-APPELLANT,

v.

BRIAN M. PURDY,

RESPONDENT-RESPONDENT.

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

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Traci Purdy appeals from the judgment divorcing her from Brian Purdy. The issues pertain to the trial court's division of the marital

assets. While we may not have reached the same conclusions as the trial court were we reviewing its decision de novo, our standard of review requires that we affirm in part and reverse in part.

¶2 The parties divorced in 2000 after six years of marriage. They resolved most issues by stipulation, and litigated only certain property valuations, and Brian's request for credit against the marital property division for: (1) home equity he brought to the marriage; (2) \$15,000 he received in 1996 as a plaintiff in an employment-related class action lawsuit; and (3) \$13,000 in life insurance proceeds he received when his mother died in 1997. The trial court credited Brian with \$6,000, \$5,000 and \$10,000 respectively, and consequently granted him property worth \$21,000, and equally divided the remainder of the marital assets. The court concluded that the short length of the marriage justified a credit to Brian for the home equity he brought into it, and for the lawsuit proceeds. As for the life insurance proceeds, the trial court concluded that they were not Brian's individual property because he had used them to buy jointly owned property. However, the court again considered the length of the marriage and the source of the proceeds to award a substantial part of them solely to Brian. On appeal Traci challenges the \$21,000 credit to Brian as a misuse of the court's discretion.

¶3 The trial court must presume that all marital property shall be divided equally, but may alter the distribution upon consideration of various factors, including the length of the marriage and the property brought to the marriage by each party. WIS. STAT. § 767.255(3) (1999-2000).¹ Dividing property under this statute is a matter for the trial court's discretion. *Gardner v.*

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted. This is an expedited appeal under WIS. STAT. RULE 809.17.

Gardner, 190 Wis. 2d 216, 236, 527 N.W.2d 701 (Ct. App. 1994). We affirm discretionary determinations if they are based on facts of record and the applicable law, and if the resulting determination is reasonable. *Sharon v. Sharon*, 178 Wis. 2d 481, 488, 504 N.W.2d 415 (Ct. App. 1993). It is not necessary that we agree with the decision so long as it is reasonable. *Steinbach v. Gustafson*, 177 Wis. 2d 178, 185-86, 502 N.W.2d 156 (Ct. App. 1993).

¶4 The trial court misused its discretion by crediting Brian with \$6,000 in home equity. Brian bought the home in 1989 and therefore owned it five years before it became a marital asset. However, there was no evidence of record that any equity accrued during that time. Nor was there evidence as to the home's value in 1994. Although it was sold for an approximate \$30,000 profit in 1999, the parties substantially improved the home after the marriage. Because the trial court had no facts of record to value the equity Brian brought to the marriage, and could only speculate, its decision was unreasonable. The trial court should not have awarded Brian any credit for home equity.

¶5 The trial court could reasonably award Brian \$5,000 out of the class action settlement. Brian's \$15,000 share of the settlement compensated him for unpaid overtime he should have received between 1984 and 1996. The trial court could reasonably infer that a substantial amount of his claim accrued before he married Traci in 1994. It was therefore reasonable to credit him with approximately half of the net proceeds of the settlement, for property brought to this short marriage.

¶6 The trial court also reasonably awarded Brian \$10,000 credit for the approximately \$13,000 he received from his mother's life insurance policy. Traci disputes that the trial court correctly noted that Brian used \$10,000 of the proceeds

as a down payment on the parties' new homestead. Brian responds by pointing to his undisputed testimony that the money paid off a loan he used to buy the homestead property. Regardless of that dispute, the issue is whether the trial court reasonably credited money to Brian that was unarguably his before he mingled it with marital funds and/or assets. *See* WIS. STAT. § 767.255(2). Again, we conclude that the trial court's reliance on the fact of a short marriage, and the source of the money, reasonably justified a credit. No costs to either party.

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

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

