

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 12, 2002

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. 01-1004
STATE OF WISCONSIN

Cir. Ct. No. 99-FA-265

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

KENNETH RAYMOND RYKAL,
PETITIONER-RESPONDENT,

V.

SANDRA KAY RYKAL,
RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

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

¶1 PER CURIAM. Sandra Kay Rykal appeals her judgment of divorce from Kenneth Raymond Rykal. She argues that the trial court erred when it rejected her expert's testimony regarding the fair market value of the marital

residence, in 1993, at the time of the marriage. We conclude that the trial court was free to reject the expert's opinion and instead value Sandra's premarital portion of the house based on the 1993 property tax bill. Accordingly, we affirm the judgment.

BACKGROUND

¶2 Sandra and Kenneth were married on July 24, 1993. Sandra owned a house before the marriage, which had been awarded to her in a previous divorce. Before their marriage, Sandra and Kenneth lived together in the house for several years, and they continued to reside there throughout their marriage.

¶3 During their marriage, Sandra and Kenneth both were employed and retained separate finances. Sandra paid the household expenses, and Kenneth contributed money toward the expenses each month. They built an addition to the house and did some remodeling. They both signed a mortgage to refinance the house.

¶4 Kenneth petitioned for divorce on August 27, 1999. Sandra and Kenneth decided that Kenneth would remain in the house after the divorce. They agreed that the house's fair market value was \$98,000 at the time of the divorce. Kenneth and Sandra disagreed, however, on its value at the time of the marriage.

¶5 The key issue argued at trial was the valuation of the marital residence in 1993. Kenneth argued that the value of the house should be equally divided as marital property. Sandra contended that she should receive credit for her premarital interest in the house, and she requested an equalizing payment.

¶6 Sandra introduced the expert testimony of real estate appraiser Laura Loonstra as to the fair market value of the property at the time of the marriage.

Loonstra “attempted to recreate a value of the real estate as of the day of the marriage” She estimated the 1993 fair market value of the house at \$46,000 after reviewing photographs of the house at the time and comparable sales from 1993. The 1993 property tax bill placed the fair market value at \$34,400.

¶7 At trial, the court departed from the presumed equal division of the property because it found that Sandra’s premarital interest in the house was a “substantial asset” and “a valid consideration by the court for deviation from the 50/50 division.” The court found further that Kenneth “brought very little with him to this marriage” and that his contribution to the home was “on a modest basis.”

¶8 The trial court was “satisfied that the fair market values established in the 1993 property tax bill is an accurate and appropriate valuation for the property.” It deemed Loonstra’s appraisal of the 1993 fair market value “at best, speculative.” The court relied thus on the 1993 property tax bill and found that the value of the house in 1993 was \$34,400. The court then divided the property accordingly. The trial court later entered a judgment of divorce.

¶9 Sandra now appeals only that part of the divorce judgment determining the house’s 1993 fair market value.

ANALYSIS

¶10 Sandra argues that the trial court was required to accept the testimony and valuation of her expert because it was undisputed. She argues that the property tax bill should not be considered because the basis of its valuation is unknown. We nevertheless conclude that the trial court was free to reject the

expert's opinion and value the house based on the 1993 property tax bill, which was self-authenticating and offered an alternate valuation of the house.

¶11 Property division is committed to the trial court's discretion. *Peerenboom v. Peerenboom*, 147 Wis. 2d 547, 551, 433 N.W.2d 282 (Ct. App. 1988). Although equal property division is presumed, the family court may deviate from an equal division after considering factors enumerated in WIS. STAT. § 767.255(3).¹ One factor the court may consider is the property each spouse brought to the marriage. WIS. STAT. § 767.255(3)(b). We will uphold a property division if the court gave rational reasons for its decision and based its decision on facts in the record. *Peerenboom*, 147 Wis. 2d at 551.

¶12 The valuation of a given asset, however, is a factual determination. *Siker v. Siker*, 225 Wis. 2d 522, 527-29, 593 N.W.2d 830 (Ct. App. 1999). As a result, appellate review of a trial court's valuation is under the clearly erroneous standard. *See id.* at 532. When reviewing issues of fact, appellate courts search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court did not but could have reached. *In re Estate of Dejmal*, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980).

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted. WISCONSIN STAT. § 767.255(3), property division, provides in relevant part:

(3) The court shall presume that all property not described in sub. (2)(a) is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering all of the following:

....

(b) The property brought to the marriage by each party.

¶13 As indicated, at issue here is the fair market value of the marital residence at the time of the marriage. Fair market value is the proper method of valuing property in a divorce proceeding. *Liddle v. Liddle*, 140 Wis. 2d 132, 138, 410 N.W.2d 196 (Ct. App. 1987). Fair market value is the price that property will bring when offered for sale by one who desires but is not obligated to sell and bought by one who is willing but not obligated to buy. *Id.*

¶14 In order to establish the fair market value of the house in 1993, Sandra presented expert witness testimony placing the value at \$46,000. The weight and credibility to be given to the opinions of expert witnesses is uniquely within the province of the trial court. *Siker*, 225 Wis. 2d at 528. The court was also presented with the 1993 property tax bill for the house, which contained a valuation for the property at \$34,400.

[W]hen the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of credibility of the witnesses. When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact.

Id. (citation omitted).

¶15 Here, the trial court was entitled to choose between the expert testimony and the property tax bill. *See id.* The trial court deemed the expert's opinion "at best, speculative" and found the valuation not credible. Contrary to Sandra's contention, the court gave reasons for its conclusion based upon the evidence. The court noted that the expert had performed only three retrospective appraisals in her career. It also considered that the expert "set a value based on photographs, having never seen the property at the time, having never seen the interior or the other amenities to the home"

¶16 In contrast, the valuation on the property tax bill was contemporary to the time of the marriage. Although Sandra's expert testified that, "tax assessments typically aren't in line with what is happening in the real market world," the property tax bill was sufficiently indicative of fair market value so as to provide the value on which property taxes were assessed. Sandra contends that no evidence in the record describes the basis for the property tax bill's fair market valuation. Contrary to Sandra's assertion, however, her own expert testified that the property tax bill valuation must be within 10% of fair market value once in every four-year period. The trial court could reasonably conclude that the bill was a closer approximation of fair market value than the expert's testimony. Because evidence in the record supports the court's valuation, we are bound to uphold it. *See Dejmaj*, 95 Wis. 2d at 154.

By the Court.—Judgment affirmed.

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

