

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 24, 2011

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. 2010AP1830-AC

Cir. Ct. No. 2009FA373

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

PAMELA JEAN CHRISINGER,

PETITIONER-RESPONDENT,

V.

JERRY ALLEN CHRISINGER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
RAMONA A. GONZALEZ, Judge. *Affirmed.*

Before Vergeront, P.J., Lundsten and Sherman, JJ.

¶1 PER CURIAM. Jerry Allen Chrisinger appeals from that portion of a judgment of divorce that divided marital property. Jerry argues that the circuit

court erred when it awarded his former wife, Pamela Jean Chrisinger, forty-two percent of the marital estate, and when it failed to consider future tax consequences when it valued an IRA. We conclude that the circuit court properly exercised its discretion by explaining its reasons for deviating from the statutory presumption that marital property be divided equally, and when it valued the IRA. Accordingly, we affirm the circuit court's judgment.

¶2 In this case, the court awarded Pamela less than fifty percent of the marital property. Jerry argues that even the reduced amount of forty-two percent was too much. We conclude, however, that the circuit court's exercise of discretion was reasonable.

¶3 Property division is within the circuit court's discretion. *Noble v. Noble*, 2005 WI App 227, ¶15, 287 Wis. 2d 699, 706 N.W.2d 166. We uphold the court's division of property "if the court gave rational reasons for its decision and based its decision on facts in the record." *Id.* (citation omitted). The circuit court must begin the property division analysis with the presumption that the marital estate will be divided equally, but may deviate from that presumption after considering the relevant statutory factors. *Settipalli v. Settipalli*, 2005 WI App 8, ¶12, 278 Wis. 2d 339, 692 N.W.2d 279. These factors include: the length of the marriage; the property brought to the marriage by each party; whether one party has substantial assets not covered by the property division; the parties' contributions to the marriage; the age and physical health of the parties; the earning capacities of the parties; the amount and duration of a maintenance award; the other economic circumstances of the parties; the tax consequences to each party; and any written agreement between the parties. WIS. STAT. § 767.61(3)

(2007-08).¹ The weight to be given to those factors is within the discretion of the circuit court. *Fuerst v. Fuerst*, 93 Wis. 2d 121, 131, 286 N.W.2d 861 (Ct. App. 1979).

¶4 At the time of their divorce, Jerry and Pamela, who were both over fifty years old, had been married for eight and one-half years. Jerry argues that the court improperly characterized the marriage as long-term and placed inordinate weight on this factor when explaining its reasons for giving Pamela forty-two percent of the marital property.

¶5 The court considered all of the relevant factors when it explained its reasons for giving Pamela less than the statutory amount. The court found that the parties had not signed a premarital agreement, which would have protected Jerry's assets, and that the fifty-fifty presumption therefore applied. The court determined that under the circumstances of the case, the marriage was long-term. The court also considered the parties' income, their contributions to the marriage, and Pamela's economic circumstances, medical conditions, and her inability to support herself. The court found that Pamela had incurred debt during the marriage that "put the parties into a deep financial hole." The court said it could not erase that, but it could give Jerry more of the marital property to make up for Pamela's debt. The court further found that Pamela had stayed in the marriage "for financial benefit," and considered that fact when it divided the property and awarded maintenance. The court further found that, based on Jerry's contribution to the

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

marriage, it would not be fair to divide their property equally, and awarded Jerry more.

¶6 In sum, the court applied the relevant factors and explained its reasons for deviating from the presumption that property be equally divided. Although there are facts that might support a greater award in Jerry's favor, we cannot say that the court acted unreasonably in arriving at the fifty-eight/forty-two division.

¶7 Jerry's second argument is that the circuit court did not properly consider the tax consequences when it valued an IRA. Pamela argues that, even if the court's failure to consider the tax consequences was error, it was harmless because the pensions were equally divided. Jerry has not explained why the tax consequences would be different for the two parties.² We conclude that the circuit court properly exercised its discretion when it valued the IRA.

¶8 For the reasons stated, we affirm the circuit court's judgment.

By the Court.—Judgment affirmed.

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

² We note that Jerry did not file a reply brief addressing Pamela's argument.

