

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 19, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0355-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

MICHAEL ANDERSON,

Petitioner-Respondent,

v.

DEBRA ANDERSON,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Polk County:
JAMES R. ERICKSON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Debra Anderson appeals the property division of her divorce judgment.¹ After thirteen years in the U.S. Navy and eight years of marriage to Debra, Michael volunteered for an incentive plan encouraging early departure from the service; under the Navy's Voluntary Separation Incentive (VSI) plan, Michael received the right to receive monetary payments for twenty-

¹ This is an expedited appeal under RULE 809.

three years. The trial court classified Michael's VSI benefits as income and then excluded them from the property division. Debra submits two arguments on appeal: (1) the VSI benefits were property that the trial court should have included in the marital estate; and (2) the trial court undervalued several other marital assets. We reject these arguments and therefore affirm the judgment.

We will not overrule the trial court's decision to classify the VSI payments as income, not as property divisible in the property division. Divorce courts have considerable discretion to treat such separation benefits as income. See *Gohde v. Gohde*, 181 Wis.2d 770, 774-77, 512 N.W.2d 199, 201-02 (Ct. App. 1993). Although *Gohde* addressed the question in the context of the child support percentage standards, we conclude that the *Gohde* court's analysis can also apply to property division questions. *Gohde* effectively held that divorce courts had discretion to consider such payments income as long as they exhibited the customary characteristics of financial flows divorce courts usually denominate income. Here, Michael will receive his VSI payments over a twenty three year period. Unlike a pension, which is divisible in a property division, Michael earned his VSI payments by discontinuing his military career, not by continuing it. In large measure, the VSI payments represent the armed forces' buyout of Michael's future wages, not a substitution of a new annuitized benefit for pension benefits he had already earned. Michael's election substitutes one form of income for another; it does not substitute property for property. In the absence of contrary proof, the trial court reasonably classified the VSI benefits as income.

We also decline to overrule the trial court's valuation of the parties' personal property, including the forty-two U.S. EE savings bonds in Michael's possession. Like other property division questions, the trial court's valuation decision was a discretionary one. *Forester v. Forester*, 174 Wis.2d 78, 91, 496 N.W.2d 771, 777 (Ct. App. 1993). Although Michael testified that the EE savings bonds were worth \$36,000.00, his counsel informed the trial court by posthearing letter that they were worth only \$2,406.16. Debra never contested this amount, and it has a surface reasonableness when measured against the forty-two bonds' \$4,200 face value. In any event, Debra has not shown it to be materially inaccurate. The trial court's other valuations also seem relatively accurate. As the trial court noted, the parties' property was of modest value. Although the trial court made no express findings on these matters, Debra has not demonstrated that its valuations deviated from the property's actual value

by a material amount or that the trial court's property award was disproportionate in Michael's favor. In sum, we see no abuse of discretion.

By the Court. – Judgment affirmed.

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