

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

AUGUST 15, 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(1), 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. 95-1006-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

ROBERT S. SCHROEDER,

Petitioner-Appellant,

v.

VICKI L. SCHROEDER,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Shawano County: THOMAS G. GROVER, Judge. *Affirmed.*

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

PER CURIAM. Robert Schroeder appeals that part of a divorce judgment dividing the marital property.¹ The trial court found that an

¹ This is an expedited appeal under RULE 809.17, STATS.

investment account was nonmarital property belonging to Vicki Schroeder. Robert argues that by placing the gifted money in a joint account, Vicki intended to donate half of the account to him. He also argues that the trial court improperly exercised its discretion when it refused to deviate from a substantially equal marital property division in light of Vicki's significant nonmarital assets inherited during the marriage. We reject these arguments and affirm the judgment.

During the marriage, Vicki received a gift of a house. She sold the house and placed the proceeds in a separate bank account. She then transferred the proceeds to an investment account. At Robert's insistence, she then put the investment account in both their names. All of the money in that account was received from the sale of the house. All of the money in the account is therefore traceable to Vicki and retained its separate identity. See *Brandt v. Brandt*, 145 Wis.2d 394, 408, 427 N.W.2d 126, 131 (Ct. App. 1988).

The trial court properly concluded that the investment account also retained its separate character and was not a part of the marital estate. Robert argues that when Vicki opened a joint account, she changed the character of the funds from exempt gifted property to marital property. Vicki's decision to place the account under joint ownership creates only a rebuttable presumption of donative intent. See *Trattles v. Trattles*, 126 Wis.2d 219, 224, 336 N.W.2d 379, 382 (Ct. App. 1985). Vicki rebutted the presumption by evidence establishing how the account was created. The trial court found that Vicki never intended to transfer half of the money to Robert, but only to establish a joint account to placate Robert after he reacted angrily to her placing the money in a separate account. Because we must defer to the trial court's determination of weight and credibility of witnesses, and because her testimony supports this finding, it is not clearly erroneous. Section 805.17(2), STATS.

The trial court properly exercised its discretion when it refused to deviate from the presumptive equal division of marital property. The court considered the substantial gift and inheritance Vicki received during the marriage, but found that it did not constitute grounds to vary from the equal property division presumptively created by § 767.255(3), STATS. Robert has a secure job that pays almost three times Vicki's average income. Robert's earnings and income potential offset Vicki's additional assets and provide an adequate basis for the decision to equally divide the marital property.

By the Court. – Judgment affirmed.

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