



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

September 6, 2023

To:

Hon. Chad G. Kerkman
Circuit Court Judge
Electronic Notice

Brenda J. Dahl
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse

Christopher William Rose
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2022AP1321

In re the marriage of: Robert Gibbons Cotter v. Jennifer Marie Cotter (L.C. #2020FA758)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robert Gibbons Cotter appeals from judgment of divorce from Jennifer Marie Cotter. On appeal, Robert contends the trial court erroneously exercised its discretion when it divided the parties' property equally. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm the judgment as modified herein and remand for entry of a corrected judgment.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Property division determinations are entrusted to the discretion of the trial court and are not disturbed on review unless there has been an erroneous exercise of discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will uphold a discretionary decision if the court “examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Id.* (citation omitted). We “search the record for reasons to sustain” a discretionary decision. *State v. Thiel*, 2004 WI App 225, ¶26, 277 Wis. 2d 698, 691 N.W.2d 388. The valuation of marital assets is a finding of fact that we will not disturb unless it is clearly erroneous. *See Schorer v. Schorer*, 177 Wis. 2d 387, 396, 501 N.W.2d 916 (Ct. App. 1993).

An equal division of property acquired by the spouses during the marriage is presumed. WIS. STAT. § 767.61(3). This presumption is rebuttable, and a trial court may deviate from an equal property division after considering all enumerated statutory factors. Sec. 767.61(3)(a)-(m); *LeMere*, 262 Wis. 2d 426, ¶¶24, 34.

The only disputed issue at the bench trial was property division. The parties have no minor children, and both waived maintenance. Neither party requested an unequal division of the property. Prior to trial, the parties submitted lists of their assets and debts. Jennifer’s list, identified by the parties and the circuit court as a T-Square spreadsheet, set forth each item of property, added up the total assets, deducted the debts, and divided the assets equally to arrive at a proposed equalization payment. Robert’s submission also added the assets and subtracted the debts to arrive at the total value of the property in each party’s possession.

At the end of the bench trial, the trial court went through the parties’ assets and debts in great detail and set forth a valuation for each item, using Jennifer’s T-Square spreadsheet as its

guide. The parties agreed on who would keep many of the items and the values. At Robert's suggestion, the court ordered that if the Mexico property could be sold within five years, the proceeds would be divided equally. The parties also largely agreed on which items would be sold. The court stated, without objection, that the proceeds from sold items were to be divided equally, and Robert agreed that the division of the guns provided an equal offset, which he agreed was "fair." The court determined that unless it had specifically addressed an item, it would be assigned to the party in possession. The court specifically contemplated that Jennifer's T-Square spreadsheet would be revised to incorporate the court's decisions.

After the trial, Robert submitted several proposed judgments, each supported by a set of proposed findings of fact and conclusions of law, which provided for an unequal division of the parties' property. Among other things, Robert proposed dividing the value of the marital residence equally. He allocated to himself half of the equity in the residence (\$113,000) and allocated various items of property to himself or Jennifer without assigning dollar values to most of them.

Jennifer objected to Robert's submissions and filed a competing proposed judgment and supporting set of findings of fact and conclusions of law. Jennifer also submitted a revised T-Square spreadsheet setting forth which party possessed certain items of property and the values assigned by the trial court to the parties' assets and debts, including an agreed-upon value of \$226,866 for equity in the marital residence and values for each of the other items, such as motor vehicles, farm equipment and animals, and various debts. The total value of the property, after totaling the value of each asset and subtracting the total value of each debt, was \$303,666, which, when divided equally, was \$151,833. Given the court's allocation of the assets and debts to either Robert or Jennifer, a payment of \$75,833.40 from Jennifer to Robert was required to

achieve an equal property division.² The court adopted Jennifer's proposed findings and judgment, attaching the T-Square spreadsheet, and rejected Robert's proposed findings and judgments.

On appeal, Robert contends that the trial court erroneously exercised its discretion because it adopted Jennifer's proposed equal division of property and rejected his proposed unequal division of property. He contends the court failed to set forth the factors a court is to consider when the presumption of equal division is rebutted. This argument is without merit. Robert failed to request an unequal division at trial despite the fact that Jennifer's T-Square spreadsheet, which the court repeatedly indicated it was using in its rulings, set forth the math for an equal division. Absent a request, the court did not erroneously exercise its discretion in proceeding to divide the property equally pursuant to the un rebutted presumption of equal division. The court was given no reason to consider a departure from the presumed equal division of the total value of the parties' assets and debts and thus did not err in adhering to that presumption.

Notably, Robert does not develop any argument that the trial court *should* have granted an unequal division. Not only does he fail to point to such a request during trial, he does not identify any evidence that would rebut the presumption of equal property division. Instead, he relies solely upon his contention that the judgment of divorce does not reflect the court's purported intent to provide for an unequal division of the marital property. This argument is

² The T-Square spreadsheet does not list Jennifer's 401(k) or the parties' 2020 tax refund, both of which were to be divided equally. Robert agreed to the equal division of the 401(k), and did not object to the equal division of the tax refund. These items are not disputed on appeal.

without merit. As Robert acknowledges, the court never stated an intention to divide the parties' property unequally. To the contrary, the court repeatedly indicated its intention that the property division would be equal. That the court stated the house was to be equally divided when going through the property item by item does not support Robert's contention that the court intended to award an unequal property division, given that it valued and assigned the various items to whoever was in possession, and indicated that Jennifer's T-Square spreadsheet would be revised to reflect those values. The court's findings make clear its intention to divide the total value of the property equally. The proposed math adopted in the court's order is entirely consistent with the court's oral statements.

The parties identify one error in the T-Square spreadsheet that was incorporated into the judgment of divorce: the trial court allocated to Robert debts totaling \$5,000 on his two credit cards, despite crediting Robert's assertion that there was no outstanding balance on either card. Thus, Jennifer contends that the equalization payment from Jennifer to Robert should be reduced by \$2,500. We agree and direct the trial court to correct these errors in the judgment upon remittur. Beyond that, Robert does not challenge the court's valuation or the assignment of any identified asset or debt. Thus, we have no basis to determine that the court erroneously exercised its discretion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is modified and, as modified, summarily affirmed pursuant to WIS. STAT. RULE 809.21. This cause is remanded for entry of a corrected judgment.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals