

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 23, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-1054

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

MELVIN RAYMOND SMITH, JR.,

PETITIONER-APPELLANT,

v.

LINDA ANN SMITH,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Eau Claire County: GREGORY A. PETERSON, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Melvin Smith appeals the property division in a divorce judgment. The trial court awarded each party the household personal property in his or her possession at the time of the divorce and modified the equalization payment to reflect the differences in the values of these items.

Melvin argues that the trial court improperly exercised its discretion because it failed to specify the amount of equalization payment, did not provide sufficient reasons for adopting Linda's suggestion for dividing the property, and failed to account for the sentimental value of these items. We reject these arguments and affirm the judgment.

The parties stipulated to a property division, but contested the award of the children's furniture and toys, items of sentimental value that had little or no cash value, holiday ornaments, family pictures and videotapes, wall hangings, nick-nacks, and books. Linda turned over a box full of unidentified objects at the final hearing. All of the items she turned over to Melvin were chosen by her without input from him. She did not give him any photographs of her, noting that he kept photographs of old girlfriends in a trunk, some in compromising positions, and she wanted him to have no photographs of her.

Melvin suggested that the personal items should be chosen by the parties on an alternating basis, allowing him some input into the final distribution. The trial court rejected that suggestion, noting the parties' animosity. On reconsideration, Melvin suggested that the parties did not have to be in the same room to perform the division, but could do it by telephone from their attorneys' offices. The trial court rejected that suggestion and ordered that the parties retain the property in their possession, with any disparity in the economic value of these items to be adjusted in the equalization payment according to the values previously assigned by an appraiser. The trial court did order that Linda give Melvin the opportunity to purchase any of these items before selling them.

The property division in a divorce judgment is within the trial court's sound discretion. *See Bahr v. Bahr*, 107 Wis.2d 72, 77, 318 N.W.2d 391,

395 (1982). Discretion is properly exercised if the trial court's decision reflects a reasoned approach based on proper considerations and articulated reasons for its conclusion. *Steinke v. Steinke*, 126 Wis.2d 372, 379, 376 N.W.2d 839, 843 (1985). This court must affirm the trial court's discretionary decisions if they are reasonable. *See Liddle v. Liddle*, 140 Wis.2d 132, 156, 410 N.W.2d 196, 206 (Ct. App. 1987).

The trial court properly exercised its discretion when it allowed the parties to retain the property in their possession with an adjustment to the equalization payment. The court equally divided the marital property according to its fair market value, accomplishing the presumed equal division mandated by § 767.255(3), STATS. The amount of the equalization payment had been stipulated by the parties. By adding to or subtracting from that amount the appraised value of the items retained by each party, the court properly maintained the equal property division according to its fair market value. *See Schorer v. Schorer*, 177 Wis.2d 387, 399, 501 N.W.2d 916, 920 (Ct. App. 1993). While the court did not specify the amount of the equalization payment, it created a methodology by which it can be readily calculated.

The court gave sufficient reasons for accepting Linda's suggestion and rejecting Melvin's suggestions for dividing the personal property. The court reasonably concluded that Melvin's proposals were not feasible in light of the parties' personal animosity. Melvin's proposal on reconsideration would have resulted in extensive attorney fees to divide property that had almost no cash value.

The court properly rejected Melvin's suggestion that the children's furniture, toys and personal effects should be given to him because he has primary

placement. The court reasonably concluded that some of the children's belongings should be retained by their mother so that the children will be comfortable when under her care. Because of the adjustment to the equalization payment, Melvin has no valid complaint about the award of the children's furniture and other possession. The court adequately explained its rationale for allowing Linda to retain these items.

Melvin argues that the trial court did not take into account the sentimental value of these items. This argument is not adequately briefed. *See State v. Pettit*, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). Most of the items are not specifically identified and he does not explain their special sentimental value to him. He cites no authority for the proposition that the trial court must consider sentimental value. It appears that he would have this court order the circuit court to specifically divide items of diminimus value upon any party's suggestion that they have sentimental value and regardless of the costs to the parties in litigating these questions. We decline to adopt such a rule.

By the Court.—Judgment affirmed.

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

