

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 13, 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. 98-2784-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

MARVIN J. HARTWIG,

PETITIONER-RESPONDENT,

v.

BETTY L. HARTWIG,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Lincoln County:
ROBERT O. WEISEL, Judge. *Affirmed.*

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

PER CURIAM. Betty Hartwig appeals those parts of a divorce judgment dividing the marital property and requiring Marvin to pay \$250 per

month maintenance.¹ The trial court unequally divided the property, returning to each party the property brought to the marriage. Betty argues that the trial court improperly treated part of Marvin's property as a gift and improperly exercised its discretion when it unequally divided the marital estate. She also argues that the maintenance award is inadequate in light of her substantially higher debt and lower income. We reject these arguments and affirm the judgment.

Betty argues that the trial court excluded part of Marvin's property from the marital estate based on a finding that it was gifted property under § 767.255(2)(a), STATS. That argument is based on a mischaracterization of the trial court's decision. When discussing an 80 acre parcel Marvin brought to the marriage, the court observed:

I don't find that this was all gifted property. At best, half of it was given to him and half to his first wife.

But, what is more significant I think is that he came into the marriage with his 80 acre parcel plus an additional 40 acres without any indebtedness on it and at least the shell of a home.

When specifically asked whether its determination was based on the property being gifted, the trial court responded,

I don't think its controlling in this case. It seems to me that the evidence established that half of the 80 was gifted because it was gifted half to him and half to his then first wife. The balance of the property was acquired prior to the marriage.

My main consideration here is that I believe I should give great weight to the fact that these parties each brought into the marriage separate property, and that is the appropriate basis that the Court is using to deviate from the 50/50 division.

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

We conclude that the trial court did not award Marvin the 80 acre parcel based on a finding that it was gifted property. Rather, it included the parcel in the marital estate and unequally divided the estate based on the property each party brought to the marriage.

Section 767.255(3), STATS., creates a presumption that all marital property will be divided equally. However, the court may unequally divide the property based on factors enumerated in the statute. Section 767.255(3)(b), allows the court to unequally divide marital property after considering the property each party brought to the marriage. Dividing marital property is committed to the trial court's discretion. *See Jasper v. Jasper*, 107 Wis.2d 59, 63, 318 N.W.2d 792, 794 (1982).

The trial court properly returned to each party the property brought to the marriage. Both parties had been married before. They came to the marriage with property they received as a result of their first divorces. Betty brought to the marriage securities valued at \$30,000. During the thirteen and one-half-year marriage, the parties treated the securities as Betty's and neither party actively managed the investment. At the time of the divorce, the securities had decreased in value. Marvin came to the marriage with 115 acres of vacant real estate valued at \$31,200.² The court found that an increase in property value resulted from market forces, not the actions of either party. Under these circumstances, the trial court reasonably returned to each party the property brought to the marriage.

² He also owned 5 acres of real estate with a half-finished house. The court awarded Betty one-quarter of the completed house's value.

Betty's argument relating to maintenance relies on an inaccurate statement of Marvin's income. The court found that Marvin earned \$24,000 per year, not \$33,000 as Betty argues. The court reasonably reduced Marvin's earnings by \$9,000 based on necessary travel expenses related to his job. The \$250 monthly maintenance results in equal distribution of the parties' total income. The court reasonably determined that Betty is not entitled to greater maintenance based on the debt she incurred by purchasing a home and a new car after the parties separated.

By the Court.—Judgment affirmed.

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

