

**COURT OF APPEALS
DECISION
DATED AND FILED**

DECEMBER 23, 1997

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. 97-1304-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

PAMELA SUE SIEBEN,

JOINT-PETITIONER-APPELLANT,

V.

BRUCE RAYMOND SIEBEN,

JOINT-PETITIONER-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Dunn County: JAMES A. WENDLAND, Judge. *Affirmed.*

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

PER CURIAM. Pamela Sue Sieben appeals a judgment of divorce from her former husband Bruce Raymond Sieben and an order denying her

motions for reconsideration.¹ She argues that the trial court erroneously exercised its discretion with respect to property division because it erroneously applied the factors set forth in § 767.255, STATS.; failed to properly value the property brought to the marriage; failed to take into consideration Bruce's \$106,398 personal injury settlement; and failed to consider the parties' agreement concerning property division. She further argues that the court should have found fraud based upon Bruce's dishonest testimony and discovery responses. We affirm the judgment and order.

After living together for nine years, the parties married in March 1993. Both before and during the marriage, Pamela was employed by 3M Corporation. Bruce had been employed by Northern States Power Company, but was disabled in a work-related accident in 1989. At the time of the divorce, he received \$864 per month social security. He also receives a maximum of \$1,000 per month from a worker's compensation settlement of \$106,398.06 that was placed in a restricted account. He is not allowed to receive more than the \$1,000 per month from the settlement. Bruce testified that the various payments he received were used to meet his ordinary daily expenses.²

At the time they began living together, Pamela owned a home in which she had approximately \$10,000 equity.³ Before the parties married, Pamela paid the monthly mortgage payments and real estate taxes and Bruce paid the utilities. Bruce testified that he also paid \$15,000 out of his worker's

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

² After the accident, he received \$26,000 for back pay, \$17,000 for his union pension, a \$36,000 settlement and, from 1989 to 1992, he received \$125,000 in worker's compensation.

³ The parties stipulated to the \$10,000 figure.

compensation settlements to build a garage on Pamela's property. He further testified that an additional \$6,000 of his worker's compensation was used to pay for remodeling a bedroom, living room, bathroom and laundry area. Pamela remodeled the basement, doing much of the labor herself.

Before the parties married, they purchased some rental trailers and other rental property and titled them jointly. In 1995, the parties decided to sell Pamela's home and reside together in a mobile home on rural land they had purchased. Pamela anticipated that the result of the transaction would be to leave her debt free. The net proceeds resulting from the sale of Pamela's home amounted to approximately \$50,000. Their new mobile home, basement, garage, well, septic system and driveway cost approximately \$89,000; this was nearly \$40,000 more than Pamela had anticipated.

In January 1996, they filed a joint petition for divorce. No children were born of the marriage. The parties were in their mid-forties at the time of the divorce. When the parties separated, Bruce took out a \$30,000 loan that he gave to Pamela to pay down the mortgage on their mobile home, leaving a balance of approximately \$44,000.⁴

The court denied maintenance to both parties. It awarded the mobile home to Pamela, finding that it had a fair market value of \$105,000 at the time of divorce. It awarded the rental properties to Bruce. It divided personal property and allocated the debts between the parties. The trial court found that the total assets awarded to Pamela, minus the debts, equaled \$66,767. It determined that the property awarded to Bruce, minus the debts, equaled \$3,657.

⁴ The mortgage loan included consolidation of other debts.

The trial court decided to deviate from an equal property division based upon the property Pamela brought to the marriage. The trial court concluded that Pamela was entitled to \$15,000 more than Bruce. It subtracted \$15,000 from Pamela's property division, \$66,767 minus \$15,000, and valued the property subject to division at \$51,767.⁵

The trial court next added Bruce's award of \$3,657, to \$51,767, to obtain \$55,424, the total value of property subject to division. To divide that portion of the marital estate equally, the court divided \$55,424 by two, arriving at \$27,712. Because the property subject to division awarded to Pamela was valued at \$51,767, and Bruce was to receive \$3,657, the trial court concluded that a \$24,000 equalization payment from Pamela to Bruce was required. It ordered that Pamela would be required to execute a note in the sum of \$24,000 to Bruce at 8% interest, secured by a second mortgage on her home. The court ordered payments of \$300 per month, with a balloon payment to be made at the end of a three-year term.

Pamela's primary contention is that the court erroneously awarded her only a portion of the equity she had in the residence at the time it was sold. She argues that she is entitled to it all. We are unpersuaded. Section 767.255, STATS., presumes an equal division of the property owned by the parties at the time of the divorce, and includes all property of the parties except that acquired by gift, bequest, devise or inheritance or to have been paid for with funds so acquired. Section 767.255(2) and (3), STATS. No exception is made for property brought to

⁵ Pamela does not challenge the trial court's numbers or findings of fact.

the marriage which is not acquired through gift, bequest, devise or inheritance. *Arneson v. Arneson*, 120 Wis.2d 236, 246, 355 N.W.2d 16, 21 (Ct. App. 1984).

The trial court however, in its discretion, may consider property brought to the marriage as a factor justifying departure from the equal division of the marital estate. Section 767.255(1)(b), STATS. We do not reverse an exercise of discretion if the decision is the result of a rational mental process where the facts of record and law relied on are stated and considered together to achieve a reasoned and reasonable result. *Rodak v. Rodak*, 150 Wis.2d 624, 631, 442 N.W.2d 489, 492 (Ct. App. 1989).

Here, the record supports the trial court's decision and discloses a reasonable result. The trial court first considered that although the parties lived together for some time, the length of the marriage was sufficiently short to justify considering the property the parties brought to the marriage. The court considered that before the parties lived together, Pamela had \$10,000 in equity in her residence. Once they began to live together, they commingled assets, making it difficult to determine each party's interest in a given asset. For example, Bruce contributed \$21,000 of his worker's compensation settlement to build a garage and remodel Pamela's residence. The court concluded because none of the property was gifted or inherited, any equity built up while the parties were living together "would have been transferred at the time of the marriage in to what's called in divorce actions marital property." The court also concluded: "And so it isn't a situation where the court can look at the equity that was in that home at the time of the sale of the Viking Street home and say that that is entirely hers."

The trial court did not improperly value Pamela's equity in her house. Instead, it observed that based upon the record presented, it was difficult to

precisely value the property brought to the marriage and, in any event, Pamela's property became part of the marital estate presumably subject to an equal division. Pamela does not cite legal authority for her proposition that she is entitled to be reimbursed dollar for dollar for her premarital asset.

In consideration of the property brought by Pamela to the marriage, the court awarded Pamela \$15,000 more than Bruce received. Because the court considered the facts of record together with the applicable law, and applied a rational approach to reach a reasoned result, we cannot say that it erroneously exercised its discretion.

Pamela also argues that the trial court erred because it failed to make specific findings with respect to Bruce's injury award of \$106,398. We disagree. The court implicitly considered the settlement as income. The record supports this finding. Bruce testified that his access to the settlement is restricted to receiving a maximum of \$1,000 per month. Pamela fails to demonstrate reversible error.

Next, Pamela argues that the trial court erred by ignoring the parties' agreement with respect to Bruce's \$30,000 payment on her mortgage. She argues that § 767.255(L), STATS., requires the court to consider any written agreement regarding property division. She concedes, however, that the parties here had no written agreement. Bruce merely testified that when the parties filed for divorce, he agreed to pay \$30,000 toward the mortgage on the mobile home. The record indicates that Bruce took out a \$30,000 loan and applied its proceeds to the mortgage. Pamela contends that the "instrument conveying payment from Bruce to Pamela is a writing sufficient to clearly indicate what the parties' intent was regarding their agreement."

We disagree. The record is unclear to what "instrument" Pamela refers. In any event, we decline to hold that an instrument of payment constitutes a marital agreement under § 767.255(L), STATS. We conclude that the court did not err when it did not enforce the agreement.

Next, Pamela argues that on her motion for reconsideration, the trial court erroneously failed to find fraud with respect to discrepancies in Bruce's answers to interrogatories. She claims Bruce's answers indicated that he had listed a \$1,288 payment to a furniture store, as well as a \$1,288 payment to a credit card company, when in fact he made no payment to the furniture store. Also, she claims that on his answers to interrogatories he listed a check, #1452, that he had written to be \$2,500, when a copy of the check indicated it to be \$2,005.

The record fails to support Pamela's claim that the trial court erred by failing to find fraud. The interrogatory asked Bruce to account for proceeds of the sale of real estate. The copy of check #1452 indicates that it was in fact written out for \$2,500, consistent with the answer to the interrogatory. Also, the record shows that because Bruce's check to a furniture company was rejected, Pamela had charged the items and Bruce wrote out a check to pay the credit card company. Although the answer to the interrogatory was erroneous, the trial court found that there was insufficient evidence to find fraud. We agree. Although this item was listed twice, Pamela fails to show that the information was misleading to her in any way. We conclude that Pamela failed to show reversible error.

By the Court.—Judgment and order affirmed.

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

