

**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. 97-1936-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

ERIC DEAN BLOMQUIST,

PETITIONER-RESPONDENT,

V.

DENISE L. BLOMQUIST,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed in part; reversed in part and cause remanded.*

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

PER CURIAM. Denise Blomquist appeals two aspects of her divorce judgment with her former husband, Eric.¹ Over her objection, the trial

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

court rejected her in-court repudiation of a child custody stipulation and entered judgment on the repudiated agreement. The trial court also ordered Denise to pay Eric child support out of her property division assets, regardless of whether her income would be sufficient to cover the child support award. On appeal, Denise makes two arguments: (1) the trial court unlawfully dishonored her right to repudiate the child custody agreement; and (2) the trial court wrongly forced her to liquidate assets for the purpose of paying child support. We conclude that the trial court should have honored Denise's repudiation of the child custody stipulation. We see no error, however, in the trial court's reliance on Denise's assets as a financial basis for her child support obligation. We therefore affirm the judgment in part, reverse it in part, and remand the matter for further proceedings.

First, the trial court wrongly entered judgment on the parties' custody agreement. Denise repudiated the agreement in open court, and this barred the court from enforcing it. *See Norman v. Norman*, 117 Wis.2d 80, 81-82, 342 N.W.2d 780, 781 (Ct. App. 1983). She had the right to repudiate it until the trial court approved it and incorporated it in the court's judgment. *Id.* Second, the trial court lawfully forced Denise to pay child support out of assets. Trial courts have discretion to consider assets in child support determinations, *Anderson v. Anderson*, 72 Wis.2d 631, 643, 242 N.W.2d 165, 171 (1976), and we see no reason why they may not require asset liquidation. The key criteria is a parent's ability to pay, regardless of whether that ability derives from income or assets. Moreover, the children's best interests are paramount; divorce courts must give these priority over parents' competing interests. *See Luciani v. Montemurro-Luciani*, 199 Wis.2d 280, 309, 544 N.W.2d 561, 572 (1996).

By the Court.—Judgment affirmed in part and reversed in part; cause remanded for further proceedings consistent with this opinion; no costs to either party.

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

