

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 9, 1998

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. 97-3345-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

GERALDINE L. ROETTGER,

PETITIONER-RESPONDENT,

v.

DONALD H. ROETTGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for St. Croix County: CONRAD A. RICHARDS, Judge. *Affirmed.*

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

PER CURIAM. Donald Roettger appeals the property division and maintenance rulings from the divorce judgment dissolving his marriage to

Geraldine Roettger.¹ He makes two arguments: (1) the trial court unlawfully included in the marital estate the homestead he purchased one year before the marriage, in violation of case law and the Marital Property Act; and (2) the trial court wrongfully awarded Geraldine maintenance. This second argument misstates the record. The trial court vacated its existing \$500 monthly maintenance award and then held maintenance open for an indefinite term. We therefore address the decision to hold open maintenance, not the issue Donald raises. The trial court's decision on each issue was discretionary and must have a reasonable basis in the record to withstand appellate review. *See Haack v. Haack*, 149 Wis.2d 243, 247, 440 N.W.2d 794, 796 (Ct. App. 1989); *Littmann v. Littmann*, 57 Wis.2d 238, 250, 203 N.W.2d 901, 907 (1973). We reject Donald's arguments and therefore affirm the judgment.

The trial court correctly included the homestead in the marital estate. First, the divorce code makes all property except gifted and inherited property part of the marital estate. *See* § 767.255(2)(a), STATS. The homestead was neither; Donald purchased the property before the marriage. The cases Donald has cited excluded gifted and inherited property from the marital estate; they are not precedent for excluding homesteads purchased before the marriage. *See Plachta v. Plachta*, 118 Wis.2d 329, 348 N.W.2d 193 (Ct. App. 1984). Second, the Marital Property Act, ch. 766, STATS., governs property rights during the marriage, not at divorce; it therefore affords Donald no relief here. *See Abitz v. Abitz*, 155 Wis.2d 161, 176, 455 N.W.2d 609, 615 (1990). Third, Donald does not argue that the homestead issue called for the trial court to divide the marital estate in unequal shares. We will not address that unargued issue. *See Waushara*

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

County v. Graf, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19 (1992). We note, however, that the parties were married thirty-one years and that the length of the marriage would have weighed against an unequal division.

The trial court had the discretion to hold maintenance open for an indefinite term. The trial court had a duty to take Geraldine's economic needs into account on this question and try to continue a lifestyle comparable to hers during the marriage. *See LaRocque v. LaRocque*, 139 Wis.2d 23, 35, 406 N.W.2d 736, 741 (1987). Geraldine was fifty-three years old and Donald's wife for thirty-one years. She spent most of her life as a housewife. She had no high school diploma or marketable skills. She also has many medical problems that limit her job prospects. On the other hand, Donald at age sixty-three still has the ability to pay maintenance, and his desire to retire, which would lower his income, did not obligate the trial court to close the maintenance issue; the court knew that Donald could resume work at any time. The trial court also had the discretion to hold maintenance open on the basis of Donald's economic ability, which derived from his overall wealth, independent of current income. In short, the trial court had adequate grounds to keep the issue open until the parties' medium-term and longer-term finances became clearer. We see no erroneous exercise of discretion.

By the Court.—Judgment and order affirmed.

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

