**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

March 28, 2000

**Cornelia G. Clark**
**Acting Clerk, Court of Appeals**
**of Wisconsin**



**No. 99-1473**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**ROGER R. BJORK,**

**PETITIONER-RESPONDENT,**

**V.**

**CAROL BJORK,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Iron County: DOUGLAS T. FOX, Judge. *Affirmed.*

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

¶1 PER CURIAM. Carol Bjork appeals that part of the divorce judgment dividing the parties' property. She argues that the trial court improperly exercised its discretion when it failed to credit her with property brought to the marriage and when it assigned her half of a debt, the proceeds of which were used

to support the family business that was awarded to Roger Bjork. She also argues that the court erred when it found that the value of the sawmill business was zero or, alternatively, the court should have valued the parties' property on a date other than the date of the divorce. Finally, she argues that the court improperly exercised its discretion when it proceeded to trial before she arrived. We reject these arguments and affirm the judgment.

*¶2* Citing WIS. STAT. § 766.31(7)[1], Carol argues that the court should have credited her with $20,000 she brought to the marriage from the sale of a previous home that was used to purchase the parties' residence. She argues that the $20,000 from her former home is nonmarital property. The Marital Property Reform Act, WIS. STAT. ch. 766, does not apply to property division upon divorce. *See* ***Kuhlman v. Kuhlman***, 146 Wis. 2d 588, 591, 432 N.W.2d 295 (Ct. App. 1988). The property division in a divorce case is governed by WIS. STAT. § 767.255, which creates a presumption that the property will be equally divided, as the trial court did in this case. Unless acquired by gift or inheritance, property brought to the marriage is subject to division. *See* WIS. STAT. § 767.255(2)(a). Property brought to the marriage is a factor that allows but does not compel the trial court to deviate from the presumptive equal division. *See* WIS. STAT. § 767.255(3)(b). The parties were married for seven years, and each of them put money into their home. The trial court properly refused to attempt to turn back the clock and return the parties to the position they would have been in had they never married.

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶3 The court properly exercised its discretion when it equally divided a $22,300 debt that accumulated during the marriage. Carol received $8,000 in excess disability payments that had grown to $22,300 by the time of the divorce. The $8,000 had been applied to the parties' sawmill business. Carol contends that the debt should be considered a business debt and assigned to Roger because he was awarded the business.[2] The trial court appropriately treated the debt as any other debt incurred by the parties during the marriage. As the trial court noted, that money represents a part of the value of the business. Each party knowingly took those benefits and put them into the business, which, at the time of the divorce, had no value. The court also refused to compel Carol to account for $10,000 she withdrew from the business shortly before the divorce. Equally dividing the debt constitutes a reasonable exercise of the trial court's discretion.

¶4 The finding that the sawmill business had zero value is supported by the evidence. A finding of fact will be upheld on appeal unless it is clearly erroneous. *See* WIS. STAT. § 805.17(2). The finding was supported by the testimony of two expert witnesses. Timothy Makela concluded that the proprietor's capital in the business was negative $20,877. William Joki, a CPA, testified that the business had no market value based on the small return for the investment dollars involved. The business generated only $30,000 annual profit on nearly $1,000,000 gross sales. A 3% return on capital would not attract a buyer. As the trial court noted, the income generated from the business reflected Roger's labor and skill, not the inherent value of the business. As the arbiter of

[2] Carol also argues that in addition to having to pay half of this debt, she was required to pay Roger $6,750. That amount merely reflects the equalization payment required to achieve an equal division of the marital property. That sum has no specific relationship to the debt in question, and our holding that the trial court properly exercised its discretion when it equally divided the marital estate obviates the need to further address that argument.

the witness's credibility, the trial court could reasonably reject the testimony of Carol's expert witness, who valued the business at $78,605. *See* ***Raz v. Brown***, 213 Wis. 2d 296, 306, 570 N.W.2d 605 (Ct. App. 1997).

¶5 Carol notes that Roger listed the equity in the business at $671,388 in bank documents submitted in 1997, and that it was worth almost $61,000 in the spring of 1998. She argues that if the correct value at the time of the divorce was zero, the court should have valued the marital estate at an earlier date because Roger dissipated the value of the business when it was in his sole control. The value of marital property is ordinarily determined on the day of the divorce. Carol provided no evidence of bad faith, waste, fraud, or purposeful squandering of marital capital. *See* ***Anstutz v. Anstutz***, 112 Wis. 2d 10, 12-13, 331 N.W.2d 844 (Ct. App. 1983). Variations in the methods used by accountants and the purposes for which the estimates were sought adequately explain the variation. The record demonstrates no basis for assigning a different value to the business by using an alternate date of valuation.

¶6 Finally, the trial court properly commenced proceedings in Carol's absence. She went to the wrong courthouse and did not arrive until after Roger testified. Carol had four months' notice of the correct location of the trial. Her attorney was present throughout the proceedings. She had an opportunity to present her evidence, and has not identified any specific prejudice that ensued from her absence.

*By the Court.*—Judgment affirmed.

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