

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 6, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1259

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

CARL I. NELSON, JR.,

**PETITIONER-RESPONDENT-CROSS-
APPELLANT,**

V.

CHARLOTTE A. NELSON,

**RESPONDENT-APPELLANT-CROSS-
RESPONDENT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court
for Grant County: ROBERT P. VANDEHEY, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Charlotte Nelson appeals from a judgment of divorce. The issue is whether the court erroneously exercised its discretion in dividing the property. We conclude it did not. We affirm.

¶2 The trial court divided the property 80/20 in favor of Carl Nelson, Charlotte's husband. The most significant assets were: the farm that served as the marital residence, which Carl had owned before the marriage; certain farm machinery, also owned by Carl before the marriage; and the proceeds from sale of a rental house that Charlotte had brought to the marriage. As to these items, the court essentially returned to each party the property they had owned before the marriage, at its present value. The court then divided the small amount of remaining property approximately in half.

¶3 Charlotte argues that the trial court erred by including the proceeds from the sale of her rental house in the marital estate. The trial court also included the farm property Carl owned before the marriage. Charlotte argues that the trial court should not have included her premarital property, and *should* have included a portion of the farm, namely, the appreciation during the marriage and the value of a mortgage on the property that Charlotte claims was paid off with marital income.

¶4 We first note that, as to the claim about the mortgage payment, Charlotte provides no record citations to show that the mortgage was paid with marital income, and we did not find any evidence of that. Carl's testimony, though not entirely clear, appears to have been that the mortgage was paid with money he inherited from his mother. Therefore, we do not address the issue further. As to whether Charlotte's rental property should have been excluded, but the appreciation on the farm included, we do not see this argument as being

significant to the end result. In making this argument, Charlotte seems to assume that if her rental property is not included in the marital estate, an 80/20 split of the remaining marital estate would have left her with a greater total amount of money. However, there is no reason to think that the trial court would still have divided the estate 80/20 if Charlotte's rental property was left out. The trial court's decision was based in part on consideration of the post-divorce financial conditions the property division would create for each party. The court did not simply establish an arbitrary numerical division that would remain constant even if the assets were altered. Therefore, it seems to us that the issue is really one of property division, rather than composition of the marital estate.

¶5 Charlotte argues that the court did not sufficiently state its reasons for the 80/20 division. We disagree. Property division is a discretionary decision that we will affirm if the court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Sharon v. Sharon*, 178 Wis. 2d 481, 488, 504 N.W.2d 415 (Ct. App. 1993). We do not agree that the court's explanation of its reasoning was insufficient. The court noted a number of factors that were involved, including property brought to the marriage by each party, the inherited nature of some of the property, Charlotte's need for assets in lieu of maintenance, Carl's limited ability to repay the amount he would have to borrow to make the equalization payment, and the length of their marriage.

¶6 Charlotte also argues that the court erred by not providing an additional portion of the property division in lieu of maintenance. As we described above, the court did state that it was considering Charlotte's need for maintenance. However, that was not the only factor for the court to consider. Charlotte appears to believe that the court should have expressly described a

particular amount of the property division that was in lieu of maintenance. However, we are not aware of any legal requirement for the court to do that. We are satisfied that the court's balancing of the various factors involved led to a decision that a reasonable judge could reach. In particular, we note the trial court's concern that giving a greater share of the property to Charlotte would have presented Carl with a problem in making the equalization payment.

¶7 Because we affirm the judgment, we need not address the cross-appeal.

¶8 Carl has requested that we find Charlotte's appeal frivolous under WIS. STAT. RULE 809.25(3) (1999-2000).¹ He asserts that the appeal was filed in bad faith solely for the purpose of harassing him. However, he offers no factual basis for this assertion. He also argues that the appeal was without a reasonable basis in law or equity. Although Charlotte did not prevail, we are satisfied that the appeal had a reasonable basis in law.

By the Court.—Judgment affirmed.

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

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

