

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 26, 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. 00-2097

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

TERRY K. VOICE,

PETITIONER-APPELLANT,

V.

MARY ELLEN JOHNSON,

RESPONDENT-RESPONDENT.

APPEAL from judgment of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed and cause remanded with directions.*

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

¶1 PER CURIAM. Terry Voice appeals the judgment divorcing him from Mary Ellen Johnson. He challenges the trial court's determination on several

economic issues. With the exception of a remand to correct a clerical error, we affirm.

¶2 The parties were married in 1987 after executing a prenuptial marital property agreement. They divorced in March 2000 and have an eight-year-old son. Voice came to the marriage with substantial assets and income. However, by the time of the divorce his business had failed, leaving him with substantial debts and a sharply reduced income.

¶3 The prenuptial property agreement awarded 83% of the assets to Voice in the event of a divorce, with Johnson to receive her 17% in installment payments. Using that formula, the trial court computed Johnson's 17% share of the marital property at \$42,308. However, due to Voice's precarious financial position, the court determined that installment payments were inappropriate, and instead awarded Johnson equity in the parties' home worth \$38,000. In other matters, the trial court ordered Voice to maintain his son as a 50% beneficiary on his life insurance until the son turned eighteen or graduated from high school, valued the parties homestead at \$148,000, valued other real property Voice owned at \$112,500, and ordered the parties to split equally a \$442 tax rebate check and a \$7,500 bill for an appraisal of Voice's business.

¶4 Voice contends that the trial court erroneously ordered him to maintain his son on the life insurance and should have given him a \$345 share of the \$442 tax rebate. He also claims the court overvalued certain assets, undervalued the homestead, and improperly divided the business appraisal bill. We review the court's valuation of assets as questions of fact, which we will not disturb unless clearly erroneous. *See Siker v. Siker*, 225 Wis. 2d 522, 527-28, 593 N.W.2d 830 (Ct. App. 1999). Voice's remaining claims challenge the court's

discretionary property division decisions, which we will uphold unless there is an erroneous exercise of discretion. *Spindler v. Spindler*, 207 Wis. 2d 327, 334, 558 N.W.2d 645 (Ct. App. 1996).

¶5 We conclude the trial court did not erroneously exercise its discretion by requiring Voice to maintain his son as a 50% life insurance beneficiary. Voice complains that the order is unfair to his adult children and to his daughter by another relationship during the marriage. If Voice does not die in the next eleven years, the trial court's order has no effect. In the meantime, it is a reasonable means of protecting his son from hardship should he lose Voice's support. Although Voice also complains that the trial court overvalued his life insurance, the provision in question requires him to maintain his son as a 50% beneficiary, regardless of the amount.

¶6 We also find no reversible error in the equal division of the tax rebate check. Under the trial court's allocation of property, Johnson received \$38,221 in marital property or 15.33% of the estate. Under Voice's proposed division of the tax rebate, she would receive \$38,097, or 15.28% of the estate. The difference is inconsequential. See *Helminiak v. Przekurat*, 184 Wis. 417, 419, 198 N.W.2d 746 (1924). Voice correctly notes, however, that the judgment assigns an erroneous \$642 value to the tax rebate check, and on remand from this appeal the trial court shall enter an amended judgment based on the correct amount of \$442.

¶7 We also conclude the trial court did not err in valuing the party's assets. Voice contends that the real estate other than the homestead had no value because he will likely be required to sell it to pay various business debts. His argument is without merit. There is no authority for the proposition that the trial

court cannot value marital assets at their present value merely because one party may subsequently sell them to satisfy debts. The trial court valued the homestead based on testimony from an expert appraisal witness. Its decision to accept the appraiser's opinion is a matter of weight and credibility, not subject to review. *Siker*, 225 Wis. 2d at 538.

¶8 The trial court's division of the \$7,500 appraisal bill did not constitute an erroneous exercise of discretion. At the time of the appraisal, Voice's business was still operating. He cannot reasonably contend that the marital property could have been divided without valuing it. The trial court reasonably determined that the appraisal was necessary and therefore beneficial to both parties, notwithstanding the fact that the business subsequently became defunct and had no value by the time of the divorce hearing.

¶9 Because Voice has not prevailed on any substantive issues raised in his appeal, we order that costs be allowed to the respondent. *See* WIS. STAT. RULE 809.25(1).

By the Court.—Judgment affirmed and cause remanded with directions.

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

