

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 15, 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. 00-2713-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**EUGENE M. METKO,**

**PETITIONER-APPELLANT,**

**V.**

**ELLEN SUE METKO,**

**RESPONDENT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Outagamie County: JOHN DES JARDINS, Judge. *Affirmed in part; reversed in part and cause remanded.*

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

¶1 PER CURIAM. Eugene Metko appeals that part of a divorce judgment dividing the marital property.<sup>1</sup> He argues that: (1) the trial court improperly exercised its discretion when it awarded Ellen Metko the parties' residence; (2) the court should have valued the residence at \$190,000, the amount Ellen indicated she would pay for the house; and (3) the court erred when it determined that Ellen's vested, unmatured stock options<sup>2</sup> were not property subject to division. We affirm the decision to award Ellen the house and to value it at \$185,000. We reverse the ruling that the stock options are not property subject to division and remand the cause for further proceedings.

¶2 Dividing marital property is committed to the trial court's discretion. *See Jasper v. Jasper*, 107 Wis. 2d 59, 63, 318 N.W.2d 792 (1982). This court must affirm the trial court's discretionary decisions if they are reasonable. *See Vier v. Vier*, 62 Wis. 2d 636, 639-40, 215 N.W.2d 432 (1974). Discretion is improperly exercised when it is based on a mistake of fact, an error in computation, or when the property division is inappropriate to the parties' circumstances. *See Dean v. Dean*, 87 Wis. 2d 854, 877, 275 N.W.2d 902 (1979). The trial court's findings of fact will be sustained unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2).

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All statutory references are to the 1999-2000 version unless otherwise noted.

<sup>2</sup> Although the parties refer to the options as "unvested stock options," we believe the correct terminology is that they were vested and unmatured. *See generally*, Kathleen J. Quinlan, A Civil Advocate, Stock Options in the Dot-Com Economy: Classification, Apportionment and Valuation, 20 WISCONSIN JOURNAL OF FAMILY LAW 52 (July 2000). As the trial court noted "the only thing that has to occur is the passage of time until the date they can be exercised." Ellen cannot exercise the options until some future date but has the absolute right to exercise the options on that date.

¶3 The court properly exercised its discretion when it awarded Ellen the parties' residence. Eugene had moved out of the residence approximately one year before trial. Ellen made all of the mortgage payments and maintained the property for that year. Eugene had indicated that he wanted to sell the residence when the divorce action began, and hired a real estate firm and listed the property for sale. The court required Ellen to make equalization payments to offset the value of the house. Eugene has not established any improper exercise of discretion.

¶4 The trial court's finding of fact that the residence was worth \$185,000 is not clearly erroneous. It was supported by a certified appraisal that valued the house at \$181,000. Although both parties testified that the house was worth at least \$190,000 to them and they are competent witnesses, the trial court reasonably found that their valuations reflected "a lot of emotion" rather than the fair market value.

¶5 The trial court erred when it excluded the stock options from the marital estate. While placing a value on these options may be difficult, they are nonetheless a part of the marital estate. *See Chen v. Chen*, 142 Wis. 2d 7, 12, 416 N.W.2d 661 (Ct. App. 1987). Even though the options cannot be exercised until after the time of the divorce, they are an economic resource comparable to pensions or other employee benefits. *Id.* If it is not possible to determine their value with sufficient certainty, the court can rule that, upon sale of any stock purchased through the options, Ellen must pay a specific portion of the net profit to Eugene. *See id.* at 15.

¶6 Ellen argues that the trial court, in effect, accepted her argument that the marital property should be unequally divided. That was not the basis of the trial court's decision. Rather, it equally divided the marital property after excluding the stock options from the marital estate. Because the trial court made no findings upon which unequal division of the marital property could be sustained, we do not construe the decision as an intentional unequal property division.

¶7 Eugene requests that we direct the trial court to award Ellen the stock options at a value of \$94,060.34 and make appropriate adjustments to arrive at an equal property division. We will not restrict the trial court's options on remand. The trial court is free to divide the marital estate in any appropriate manner. This court's affirmance of its decision to award Ellen the residence should not be construed to require the court to award her the residence if inclusion of the stock options in the marital estate requires substantial changes in the property division.

*By the Court.*—Judgment affirmed in part; reversed in part and cause remanded. No costs on appeal.

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

