

**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. 01-0287-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

VIRGINIA CAMDEN,

PETITIONER-APPELLANT,

V.

JERRY ALAN CAMDEN,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Rock County:
JOHN W. ROETHE, Judge. *Affirmed in part; reversed in part and cause
remanded with directions.*

Before Vergeront, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Jerry Alan and Virginia Camden were divorced after nineteen years of marriage. On appeal, Virginia challenges the property

division and maintenance award.¹ We affirm the trial court's property division, but reverse the maintenance award and remand for further proceedings consistent with this opinion.

¶2 At the time of the divorce, Virginia was fifty-five years old and Jerry was fifty-three years old. Virginia has breast cancer and is completely disabled. Jerry is in relatively good health and earns approximately \$4600 per month as a senior programmer analyst. They do not have children. The trial court awarded Virginia \$67,000 of the marital estate and awarded Jerry \$116,000. The trial court also awarded Virginia \$1500 per month in maintenance for two months and \$1000 per month in maintenance thereafter.

¶3 Virginia first argues that the trial court erred in awarding Jerry a larger share of their property. The division of the marital estate is committed to the trial court's discretion. *Hokin v. Hokin*, 231 Wis. 2d 184, 190, 605 N.W.2d 219 (Ct. App. 1999). All property owned by the parties is subject to division, except for property or funds acquired before or during the marriage by gift or inheritance. See WIS. STAT. § 767.255(2)(a). A trial court begins with the presumption that the marital estate is to be divided equally, but it may alter the distribution after considering various factors. See § 767.255(3).

¶4 The trial court awarded Jerry a larger share of the marital estate because it concluded that the estate had grown primarily through his economic efforts. The court noted that Virginia did some of the work around the house, but found that, even so, her contributions did not approach those of Jerry. The trial

¹ Pursuant to our order of March 20, 2001, this case was placed on the expedited appeals calendar. See WIS. STAT. RULE 809.17 (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

court may award an unequal division after considering “[t]he contribution of each party to the marriage, giving appropriate economic value to each party’s contribution in homemaking and child care services.” WIS. STAT. § 767.255(3)(d). Because the trial court considered Virginia’s contributions to the marriage, including those for which she was not paid, we conclude that the trial court acted within its discretion in making an unequal property division based on the fact that Jerry contributed more to the marriage. *See Hokin*, 231 Wis. 2d at 190-91.

¶5 Virginia next argues that the trial court erred in setting maintenance because it excluded from her proposed budget the costs associated with owning a vehicle. Maintenance awards are committed to the trial court’s discretion. *Id.* at 190. In deciding whether and how much maintenance to award, the trial court must consider the factors set forth in WIS. STAT. § 767.26 which are designed to further two objectives: support and fairness. *Hokin*, 231 Wis. 2d at 200-01. The former objective ensures the spouse is supported in accordance with the needs and earning capacities of the parties, while the latter ensures a fair and equitable arrangement between the parties. *Id.* at 201.

¶6 In setting maintenance, the trial court, without explanation, rejected Virginia’s request for costs associated with owning a vehicle. Our review of the record reveals no testimony or other evidence suggesting that Virginia does not need a car. To the contrary, Virginia testified that she uses a car to get to and from the doctor, to run errands around town when she is able, to go to the grocery store, and to visit her brother. Because we can ascertain no reason for the trial court to rule as it did in this regard, we conclude that the trial court erroneously exercised its discretion. *See id.* at 190. Therefore, we reverse the maintenance award and

remand for the trial court's consideration of an additional amount of maintenance to enable Virginia to have an automobile.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions.

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

