

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 17, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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. 01-0660-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

TAMMY L. SCHWALLER,

PETITIONER-RESPONDENT,

V.

MICHAEL A. SCHWALLER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Michael A. Schwaller appeals from the portion of the property division of the judgment of divorce which awarded the marital residence to Tammy L. Schwaller. Michael argues on appeal that the circuit court misused its discretion when it awarded the residence to Tammy. We conclude that

the circuit court properly exercised its discretion and affirm the judgment of the circuit court.

¶2 Michael and Tammy were divorced after twenty-three years of marriage. While the parties stipulated to most issues, they disputed who should get the marital residence. Michael argued that he should get the home because the home has both historical and present day importance to him because of its connection to his family. Tammy testified that she wanted to maintain the marital residence in order to provide a stable environment for their children. The court ultimately awarded the residence to Tammy, stating that it was an unusual situation but that Tammy and the children needed some stability.

¶3 Michael argues on appeal that the record did not support this conclusion and that the circuit court erroneously exercised its discretion when it awarded the marital residence to Tammy. The division of the marital estate is within the discretion of the trial court. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). We will sustain the court's decision if it 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. *Id.*

¶4 In this case, we conclude that the circuit court did not erroneously exercise its discretion. The court's decision was based squarely on Tammy's testimony that the retention of the marital home would provide stability for her and the children. The court's conclusion that the home should be awarded to Tammy was based on the facts and the law, and was a conclusion that a reasonable judge could make.

¶5 Michael argues that the court ignored the personal value of the home to him and the connection of the home to his family. The record does not support

this assertion. The court acknowledged the connection to Michael's family and stated that the situation was "unusual." The fact that the court ultimately concluded that Tammy's reasons for wanting to maintain the home were more compelling does not mean that it ignored Michael's reasons. It considered both arguments and decided in favor of Tammy. Michael has not demonstrated that the court erroneously exercised its discretion. The judgment of the circuit court is affirmed.

By the Court.—Judgment affirmed.

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

