

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 6, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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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.

**Appeal No. 01-1220  
STATE OF WISCONSIN**

**Cir. Ct. No. 96-FA-202**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN RE THE MARRIAGE OF:**

**JERRY J. GARCEAU,**

**PETITIONER-RESPONDENT,**

**V.**

**BRENDA S. GARCEAU, N/K/A BRENDA S. DEPIES,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Fond du Lac County:  
STEVEN W. WEINKE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Brenda S. Garceau appeals from an order setting a method by which she will realize the value of Jerry J. Garceau's termination benefits package. In a prior appeal, we remanded for further proceedings after

deciding that the termination benefits package should be included in the property division in the parties' divorce. We affirm.

¶2 Jerry is an American Family insurance agent. In *Garceau v. Garceau*, 2000 WI App 7, ¶8, 232 Wis. 2d 1, 606 N.W.2d 268 (*Garceau I*), we held that Jerry's American Family termination benefits package had to be included in the marital estate for division at divorce. The termination package constitutes Jerry's "extended earnings based on a percentage of renewal service fees earned during the twelve months prior to" Jerry's departure from American Family. *Id.* at ¶4. We reversed the circuit court's refusal to include the benefits in the parties' marital estate and remanded for valuation and distribution of the benefits. *Id.* at ¶17. We also offered the circuit court some guidelines for valuing the benefits package. *Id.* at ¶¶9-12.

¶3 On remand, the circuit court found that it is unknown when Jerry will leave American Family via retirement or termination, thereby triggering the calculation and payment of the benefits. The court took alternative approaches to valuing the benefits. In the first approach, the court found the current value of the benefits to be \$56,383, which the court reduced by 7% for the nonrenewal rate of insurance policies and by 20% for tax considerations to reach a value of \$41,949. Brenda's share of that is \$20,579. Because the ability to gain access to these funds is deferred, the court calculated the present value of \$20,579 using a 5.5% interest

factor for a period of thirty years, yielding a present value payable to Brenda of \$3,967.<sup>1</sup>

¶4 In the second approach, the court allowed Brenda to receive her share of the benefits when Jerry receives his share. Brenda’s share would be based on accounts in existence at the time of the divorce.<sup>2</sup>

¶5 On appeal, Brenda argues that she should receive \$20,579 now, not \$3,967. Valuation and division of the marital estate is within the circuit court’s discretion. *Id.* at ¶3. We will uphold the court’s discretionary 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.* The circuit court had discretion to choose a valuation method. *Id.* at ¶¶9, 11. The circuit court “may tailor its own solution based on the particular case, so long as the method used is ‘reasonably calculated to produce a fair result.’” *Id.* at ¶9 (citation omitted).

¶6 One of the valuation approaches we discussed in *Garceau I* permits the circuit court to “calculat[e] the present value the future benefits will have when they vest and awarding that amount to the” other spouse. *Id.* In a pension setting, this method requires the court to consider the pension-earning spouse’s life

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<sup>1</sup> Brenda does not dispute the reductions for nonrenewals and tax consequences. However, in her appellant’s brief, Brenda contends that her share of \$41,949 is \$20,974. The circuit court found that Brenda’s share was \$20,579. To the extent the circuit court made a mathematical error, it was up to Brenda to seek reconsideration so that the error, if any, could be corrected. See *Schinner v. Schinner*, 143 Wis. 2d 81, 93, 420 N.W.2d 381 (Ct. App. 1988). Brenda did not seek reconsideration. Therefore, we work with the circuit court’s figure: \$20,579.

<sup>2</sup> On appeal, Brenda does not dispute this method of dividing and distributing the benefits.

expectancy and the probability that the spouse might die before the benefits vest. *Id.* In consideration of the nature of Jerry's termination benefits, these factors must be slightly modified to address the length of Jerry's remaining relationship with American Family, which the circuit court found was thirty years.<sup>3</sup>

¶7 The benefits are not a traditional pension plan (whose value increases over time) or an established fund available for distribution at this time. The benefits are available only when Jerry departs American Family. The benefits will be calculated under a mathematical formula depending on Jerry's number of years as an agent with American Family and the renewal service fees earned during the twelve months preceding his departure. *Id.* at ¶4. In reducing Brenda's share of Jerry's benefits to present value, the court placed Brenda in the same position as Jerry: giving her access to the funds at a present value to account for the fact that neither party can have access to the funds until Jerry departs American Family many years in the future.

¶8 Under the facts of this case, we affirm the circuit court's discretionary decision to set a present value for Brenda's share of the benefits package.

¶9 Although Brenda does not appear to challenge the circuit court's alternative method of dividing the benefits, we comment on it nevertheless because it is at odds with the guidance set out in *Garceau I*.

¶10 As an alternative, the court allowed Brenda to receive her share of the benefits when Jerry receives his based on accounts in existence at the time of

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<sup>3</sup> Brenda does not dispute this finding.

the divorce. The mechanism set up by the circuit court requires Jerry to provide the court annually with a list of each insurance policy he has sold or for which he receives a commission commencing with the date of divorce. When Jerry departs American Family and starts receiving payments of the benefits, Brenda would receive one-half of the benefits received arising from those accounts which Jerry also serviced at the date of divorce.

¶11 In *Garceau I*, we declared inappropriate a valuation method which holds open division of the benefits until Jerry departs American Family. *Id.* at ¶10. We held that this approach would not be appropriate for several reasons: (1) an agent could manipulate accounts to create a turnover in policies and therefore no continuing renewals; (2) this approach overlooks retained customers who switched policies; (3) prolonging asset division does not promote judicial administration; and (4) the parties' best interest is not served by dragging out the divorce and related financial matters. *Id.*

¶12 The circuit court's alternative runs afoul of *Garceau I*. But, as we have stated, Brenda's appeal focuses on the present value calculation. Therefore, we do not address this issue further.

*By the Court.*—Order affirmed.

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

