

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 21, 2002

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.

**Appeal No. 01-2711
STATE OF WISCONSIN**

Cir. Ct. No. 00-FA-230

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

AMY SUE HALVORSEN,

PETITIONER-RESPONDENT,

V.

RONALD MARTIN HALVORSEN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
EMILY S. MUELLER, Judge. *Affirmed.*

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. Ronald Martin Halvorsen appeals from the judgment of divorce entered by the circuit court. He argues on appeal that the circuit court erroneously exercised its discretion when it did not deviate from the

requirement that property be divided equally, when it valued the parties' pensions, when it included his premarital property in the property division, and when it did not credit him with certain payments he made. Because we conclude that the circuit court did not erroneously exercise its discretion, we affirm.

¶2 Ronald Halvorsen and Amy Sue Halvorsen were married in 1996. Both had been married previously, and Amy had two children from her previous marriage. No children were born of this marriage. Ronald worked as a firefighter and had other business interests. Amy worked as a flight attendant. They were divorced four and one-half years later by a judgment entered on August 27, 2001. The parties waived maintenance but disputed the appropriate division of property. A trial was held to the court and the court entered judgment. Ronald appeals.

¶3 The division of the marital estate lies within the discretion of the trial court. *Trieschmann v. Trieschmann*, 178 Wis. 2d 538, 541, 504 N.W.2d 433 (Ct. App. 1993). “The trial court’s decision must ‘be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.’” *Id.* at 541-42 (citation omitted). The trial court must not only state its findings of fact and conclusions of law, but must also state the factors upon which it relies in making its decision. *Id.* at 542.

¶4 Ronald argues that the circuit court erroneously exercised its discretion in a number of respects. First, he argues the circuit court should have deviated from the requirement that the property be divided equally between the parties. WIS. STAT. § 767.255(3) (1999-2000). The circuit court, however, did deviate slightly from this requirement. The court awarded certain adjustments to Ronald before dividing the property equally. This resulted in Ronald receiving

slightly more than fifty percent. To the extent the court did not adopt Ronald's valuations of various assets, it is clear the court questioned Ronald's credibility. The court noted that Ronald was unable to account for substantial sums of money, including unexplained deposits, and transfers and loans from one corporation to another. The circuit court fully explained its reasons for the property division and applied the appropriate factors. This was a proper exercise of the court's discretion.

¶5 Ronald argues that the court inequitably valued the parties' pensions. The determination of the value of a pension fund is within the discretion of the trial court. *See Garceau v. Garceau*, 2000 WI App 7, ¶9, 232 Wis. 2d 1, 606 N.W.2d 268. The circuit court found that Ronald became eligible for retirement at age fifty. Amy, on the other hand, did not become eligible until age sixty-five. The court found that Ronald said that he "hadn't really thought about" when he would retire but "thinks he would like to retire at age 60." The court concluded that it was not possible to determine at what age he would actually retire, and decided to value the pension at the value he could receive if he retired at the time of the divorce. We cannot conclude that this was an erroneous exercise of discretion.

¶6 Ronald also argues that the circuit court erred when it did not exclude his premarital property from the property division. Ronald appears to be under the misapprehension that all premarital property is excluded. Under WIS. STAT. § 767.255, all property is part of the marital estate except that which was acquired by the party either prior to or during the marriage by gift, bequest, devise or inheritance, except upon a showing of hardship. *See Fowler v. Fowler*, 158 Wis. 2d 508, 515, 463 N.W.2d 370 (Ct. App. 1990). Ronald has not argued that any of the contested property was acquired by him as a result of gift, bequest,

devise or inheritance. Instead, he attacks the circuit court's credibility determinations, asserting that the evidence he presented was more credible than that presented by Amy. These determinations, however, are findings of fact. We sustain a trial court's findings of fact unless they are clearly erroneous. *Klinefelter v. Dutch*, 161 Wis. 2d 28, 33, 467 N.W.2d 192 (Ct. App. 1991). We are not convinced that the circuit court erred.

¶7 Ronald's final argument is that the circuit court erred when it failed to credit him with certain payments he made as a result of what he alleges was Amy's deceit and bad faith. Again, however, the circuit court made specific findings of fact and credibility determinations to reject the requested credits. Further, the court did adopt one of the requested credits. The court allowed Ronald credit for \$6100 in child support payments which Amy did not collect from her previous husband. Again, we are not convinced that the circuit court erroneously exercised its discretion when it refused to adopt the additional credits.

¶8 For the reasons stated, 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.

