

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 2, 2003

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. 02-0771
STATE OF WISCONSIN

Cir. Ct. No. 00-FA-1372

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

DIANE BREVOLD,

PETITIONER-RESPONDENT,

v.

MARK A. BREVOLD,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
ROBERT G. MAWDSLEY, Judge. *Affirmed.*

Before Nettlesheim, P.J., Anderson and Roggensack, JJ.

¶1 PER CURIAM. Mark A. Brevold appeals from the judgment divorcing him from Diane Brevold. On appeal, he challenges the circuit court's decision to deviate from an equal division of the parties' property. Because we

conclude that the circuit court properly exercised its discretion in this regard, we affirm.

¶2 The Brevolds married in July 1990. Mark was in jail from June 1990 to April 1991. The parties' child was born in March 1995, and Mark's son from a previous marriage also lived with them. Diane petitioned for legal separation in November 2000. At the time of the divorce hearing, the parties were living in a house in which a seventy-five percent interest had been gifted to them by Diane's mother. Mark and Diane rebuilt the house using bank financing. Diane's mother also lived in the house and contributed to the household expenses.

¶3 The court awarded seventy-five percent of the equity in the house to Diane. Mark challenges the court's treatment of the house and its award to Diane of a \$13,358 credit for reducing mortgages on the house, medical expenses and child support arrears incurred by Mark during the pendency of the action, and expenses Diane incurred for the residence, medical treatment and towing Mark's damaged truck to avoid accumulating storage charges at a body shop.

¶4 Equal division of the marital estate is presumed. WIS. STAT. § 767.255(3) (1999-2000).¹ However, the court may make an unequal division after considering various factors. *Id.* The division of the marital estate is within the discretion of the circuit 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.*

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶5 In unequally dividing the equity in the house, the court made the following findings relating to the house. Diane's mother gifted a seventy-five percent interest in the house to Mark and Diane in 1996. The house had been in Diane's family since 1928, a factor upon which the court placed significant weight. The property increased in value because Diane and Mark rebuilt the house and because the value of property on Pewaukee Lake had increased since Diane's mother gifted an interest in the house.² Diane's mother has a mental illness and could not have intended that by gifting a portion of the house, she would no longer have a place to live if Mark and Diane divorced. It was desirable for Mark's son and the parties' daughter to live in the house.

¶6 The court also made findings relating to the parties' contribution to the marriage. Mark was a drain on marital resources due to his substance abuse problems, sporadic employment and lack of contribution to the marriage. Mark's work history was sporadic due to a period of incarceration, substance abuse and lack of employment due to injuries. Mark turned his paycheck over to Diane to prevent him from wasting assets on controlled substances. Mark did not adequately confirm his employment situation at the hearing. The court also questioned Mark's ability to pay child support.

¶7 Diane handled the family's finances and made the greater financial contribution to the marriage. She cared for Mark's child from a previous marriage for whom Mark was not paying support or covering expenses. Diane also paid Mark's charge card bills and attempted to protect the family's resources from judgments and foreclosures in recent years. Maintenance was not available to

² The house was appraised at \$378,000, a figure Diane believed was too high.

Diane; therefore, a greater award of property was necessary to assist Diane in achieving a standard of living approximating the marital standard of living. The court also cited Diane's resolution of a situation involving Mark's completely damaged truck as an example of how Diane had to resolve problems created by Mark.³

¶8 In considering how to divide the equity in the house, the court found that Mark and Diane did not have a typical ten-year marriage and the house, under the circumstances of this case, was not a typical marital asset. In consideration of the unique facts surrounding the house and the parties' contributions to the marriage, the court awarded Diane seventy-five percent of the equity in the house.

¶9 On appeal, Mark argues that the circuit court improperly considered the origin of the house, its history in Diane's family, that Mark's son and Diane's mother also reside there, and that Diane's mother would not have gifted the property if she thought a divorce would affect her interest in the property or force her out of the house. We disagree. WISCONSIN STAT. § 767.255(3)(m) permits the court to consider such factors as it deems relevant. Under the facts of this case, the court, in its discretion, found these factors relevant.

¶10 The court's findings mesh with the relevant statutory factors. The parties made unequal contributions to the marriage, WIS. STAT. § 767.255(3)(d); the house needs to be maintained for Mark's son and the parties' daughter, § 767.255(3)(h); Diane will not receive maintenance, § 767.255(3)(g); and the

³ Diane testified that she and Mark mortgaged the house to buy the truck. After the truck was irreparably damaged, Mark did not apply all of the insurance proceeds to the mortgage debt, leaving a debt on a nonexistent truck. Diane had to pay to have the truck towed to avoid accumulating storage charges.

house was gifted to Diane and Mark with the expectation that Diane's mother would reside there, § 767.255(3)(m).

¶11 Mark argues that the circuit court made six erroneous findings of fact. The court found that Mark's substance abuse problem and sporadic employment constituted a lack of contribution to the marriage. Mark argues that the record shows that he was only incarcerated for approximately ten months at the beginning of the marriage and he worked during the entire marriage except when he was unable to do so due to injury or termination by an employer who was restructuring a business.

¶12 Notwithstanding the evidence cited by Mark, there was evidence from which the court could infer that Mark did not contribute to the marriage. Mark testified that he was incarcerated twice, hospitalized for injuries, hospitalized after he threatened to kill Diane and received inpatient substance abuse treatment. Mark also was a drain on marital resources and a source of financial instability.

¶13 The court's finding that Diane made the greater financial contribution to the marriage is supported in the record. The parties' main asset, the house, became subject to division due to a gift by Diane's mother. The record also establishes Diane's efforts to safeguard and manage the family's financial situation. The court found that Diane was responsible for child care for Mark's son and the parties' daughter.⁴

⁴ Diane testified that Mark did not contribute to the support of his son. The son's mother is deceased.

¶14 Mark argues that the record does not support the circuit court's finding that the value of the house increased because it was lake property. The court observed that the value increased because Mark and Diane rebuilt the house and because lake property was increasing in value. However, we fail to see how this consideration bears upon the court's decision to unequally divide the equity in the property in light of the factors upon which the court placed the greater weight: the facts surrounding the house and the parties' contributions to the marriage.

¶15 Mark challenges the finding that Diane's mother would not have gifted the house had she thought the house would be sold in the event of a divorce. Diane testified at trial that Mark had assured her that he would never take the house out of the family. It is undisputed that Diane's mother is mentally ill, and the court reasonably inferred that she would not have transferred a substantial portion of the house to Mark and Diane had she believed she would lose her place to live.

¶16 Mark complains about the \$13,358 credit to Diane. The credit, which is described in paragraph three of this opinion, was appropriate. The credit reflects the court's perspective on the contributions of Mark and Diane to the marriage.

¶17 Mark also complains that the court refused to permit him to update his financial disclosure statement and did not consider testimony that he had suffered financial losses. At the hearing, Mark filed an updated disclosure statement. He then testified that the updated statement might be wrong. In particular, the disclosure statement valued Mark's retirement account at \$25,000, but Mark testified that the value of the account over the past year had decreased to approximately \$11,000.

¶18 Mark did not present a statement showing the balance in the retirement account. In its ruling, the court assigned a value of \$25,000 to this asset noting that Mark's disclosure statement stated one value while his testimony stated another, lesser value. This was essentially a credibility determination, which the court was free to make. *See Patrickus v. Patrickus*, 2000 WI App 255, ¶26, 239 Wis. 2d 340, 620 N.W.2d 205.

¶19 Although Diane received a very favorable property division, the circuit court stated its reasons for doing so in light of the facts and the law. The court did not misuse its discretion in unequally dividing the marital estate.

By the Court.—Judgment affirmed.

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

