

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 23, 2005

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. 04-0730

Cir. Ct. No. 02FA000048

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

CHRISTINE E. LUKAS,

PETITIONER-APPELLANT,

v.

PETER R. KERR,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Washington County: PATRICK J. FARAGHER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Christine E. Lukas appeals from that portion of the judgment of the circuit court that divided marital property. She argues on appeal that the circuit court erred when it divided the property by awarding a greater

percentage of the property to her husband, Peter R. Kerr. Because we conclude that Lukas has not established that the court erroneously exercised its discretion when it divided the marital property, we affirm.

¶2 Lukas, a citizen of the United States, and Kerr, a citizen of Australia, were married in Wisconsin in 1997. During their marriage, they lived both in Australia and Wisconsin, and acquired real property in both places. In January 2002, Lukas filed for divorce. The court held a trial on the division of property at which both Kerr and Lukas testified.

¶3 In its decision after trial, the court found that both parties had “failed to meet their burden of proof to provide satisfactory evidence as to their income over the years and the valuation of their assets.” The court further found that the parties lacked documentation of their income because during the marriage the parties had chosen to deposit their Australian income into an “offshore account” to avoid tax liability. The court stated that “the petitioner and the respondent seemed to have a clear memory of things that would benefit them individually and a vague or no recollection of things that might adversely impact them individually.”

¶4 Using the evidence it had, the court divided the property. The court began with the statutory presumption that the property is to be divided equally. *See* WIS. STAT. § 767.255(3) (2003-04). The court then considered the factors listed in § 767.255(3). The court concluded that the parties spent assets freely during their marriage, and there was no evidence that “the marital earnings of these parties increased the value of the property that the respondent brought into the marriage.” The court further found that there was credible evidence that the parties had an agreement that Kerr would get one particular piece of property in Australia, the Raynes Park property, while Lukas would get the home in

Wisconsin. The court stated that absent this agreement, the property division would be unfair “because it would give no credit for the contribution of the wife’s earnings from her work in Australia” towards that property. The court concluded that while there was no evidence from which it could assess the actual contribution Lukas made to the Australian property, “[t]he Court believes that this contribution was planned by the parties to be acknowledged by allowing the respondent to retain title to the properties in Australia in exchange for the petitioner having full interest in the [Wisconsin] property.”

¶5 We review the trial court’s decision about property division to determine whether the court properly exercised its discretion, and in the absence of an erroneous exercise of discretion, the award will be upheld. *Jasper v. Jasper*, 107 Wis. 2d 59, 63, 318 N.W.2d 792 (1982). We will not set aside the trial court’s findings of fact unless they are clearly erroneous. *Sellers v. Sellers*, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996).

¶6 “[A] discretionary determination 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.” *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). A trial court erroneously exercises its discretion when it “fails to consider relevant factors, bases its award on factual errors, makes an error of law, or grants an excessive or inadequate award.” *Olski v. Olski*, 197 Wis. 2d 237, 243 n.2, 540 N.W.2d 412 (1995). “When the trial court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness’s testimony.” *Lessor v. Wangelin*, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998) (citation omitted). This is especially true because the

trier of fact “has the opportunity to observe the witnesses and their demeanor on the witness stand.” *Id.* (citation omitted).

¶7 Based on the record before us, we cannot conclude that the circuit court erroneously exercised its discretion. The circuit court’s decision is rational and thorough. Despite finding that the parties’ testimony was not credible, the court gave a detailed description of the testimony it considered to reach the conclusion that the parties agreed to divide the property by giving the Wisconsin property to Lukas and the Australian property to Kerr. It is the role of the fact finder to determine the credibility of the various witnesses and to accept or reject portions of those witnesses’ testimony. The court properly exercised that role in this case and we see no basis to disturb its findings. Consequently, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2003-04).

