

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 9, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-1234

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

GAIL M. WASHINGTON,

PETITIONER-APPELLANT,

v.

MELVIN K. WASHINGTON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Ozaukee County:
JOSEPH D. McCORMACK, Judge. *Affirmed.*

Before Brown, Nettesheim and English,¹ JJ.

¹ Circuit Judge Dale L. English is sitting by special assignment pursuant to the Judicial Exchange Program.

PER CURIAM. Gail M. Washington appeals from an order denying her postdivorce motion to award her interest and appreciation from the date of divorce until payments begin on her lump sum award of a portion of Melvin K. Washington's federal employee pension. Because we agree with the circuit court that it lacked authority to revisit this aspect of the property division, we affirm.

After a series of hearings in 1993, the circuit court decreed on May 19, 1993, that Gail and Melvin were divorced. However, owing to continuing disputes between the parties, the findings of fact, conclusions of law and judgment of divorce were not entered until December 1995. In dividing the parties' property at the time of the divorce trial, the circuit court valued Melvin's pension at \$50,273 and awarded Gail \$23,910 of the pension as a lump sum. In 1997, Melvin moved the circuit court to amend the judgment of divorce to include language which would permit the United States Office of Personnel Management, which handles employee pension benefits under the United States Civil Service Retirement System, to process Gail's award of a portion of the pension. In response, Gail filed a motion to amend the judgment of divorce to provide that she receive interest and appreciation on her share of Melvin's pension from the date of divorce until payments begin.²

At an October 1997 hearing, Gail argued that the wording of the 1995 judgment of divorce permitted Melvin to receive the interest and appreciation on Gail's share of the pension as well as his own. The court declined to revisit this aspect of the judgment of divorce. Gail appeals.

² It is undisputed that Gail will not receive any payments on her lump sum share of Melvin's pension until his employment situation changes by termination or retirement.

On appeal, Gail argues that the circuit court erred when it concluded that it lacked authority to award Gail postdivorce interest and appreciation on her share of Melvin's pension. Gail argues that the result of the circuit court's ruling is unfair to her because Melvin will reap the appreciation on her share of the pension.

While it may be true that the result is unfair to Gail, we conclude that the circuit court did not have authority to revise the property division on Gail's postdivorce motion. Section 767.32(1)(a), STATS., precludes postjudgment modification of the property division. See *Spankowski (Zuercher) v. Spankowski*, 172 Wis.2d 285, 290, 493 N.W.2d 737, 740 (Ct. App. 1992).³

Gail argues that she sought clarification, not modification, of the 1995 judgment of divorce's provision relating to the division of Melvin's pension. Regardless of the caption on Gail's motion, the motion sought relief from the circuit court which had not been sought or contemplated at the time of the divorce. Gail's reply brief concedes as much. In her brief, she notes that prior to Melvin's request for additional language in the judgment of divorce to facilitate processing of Gail's award, Gail "never expressly asked for or sought interest or appreciation on her share of the pension plan." Gail sought a new ruling from the circuit court, not clarification of a prior ruling. For this reason, Gail's argument that the circuit

³ Gail did not ask the circuit court to exercise its discretionary authority under § 806.07, STATS., to modify the property division. See *Spankowski (Zuercher) v. Spankowski*, 172 Wis.2d 285, 290-91, 493 N.W.2d 737, 740 (Ct. App. 1992). Such authority can be exercised under § 806.07(1)(h) which permits relief from a judgment if extraordinary circumstances exist. See *Spankowski*, 172 Wis.2d at 291, 493 N.W.2d at 740. However, we question whether the failure to seek a provision in the property division to account for interest and appreciation on a divided asset to which one spouse has delayed access constitutes an extraordinary circumstance justifying relief from the judgment of divorce. Gail does not make a § 806.07 argument on appeal. Therefore, we do not address it. See *Lyman v. Lyman*, 184 Wis.2d 124, 137, 516 N.W.2d 767, 773 (Ct. App. 1994).

court had authority at the time of the divorce to award postdivorce interest and appreciation on a divided asset is of no moment.

We disagree that Gail can invoke the circuit court's general equitable powers to obtain the relief she seeks here. Modification of the property division provision of a judgment of divorce is governed by statute. *See* § 767.32(1)(a), STATS.; *see also* § 806.07, STATS.

By the Court.—Order affirmed.

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

