

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 4, 2009

David R. Schanker
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. 2008AP2147

Cir. Ct. No. 2007FA1019

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

LLOYD LEROY KRACHT,

PETITIONER-RESPONDENT,

v.

MARY ELLEN KRACHT,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
ROBERT DE CHAMBEAU, Judge. *Affirmed.*

Before Higginbotham, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Mary Ellen Kracht (now known as Mary Ellen Liesse, hereinafter “Liesse”) appeals from the portion of the judgment of divorce

that divided marital property. She argues that the circuit court did not consider all the relevant statutory factors and erroneously exercised its discretion when it divided the marital property. We conclude that the circuit court properly exercised its discretion, and we affirm the judgment.

¶2 Liesse and Lloyd Kracht were divorced in July 2008. They had been married for six years, and had lived together for seven or eight years prior to their marriage. Under the judgment of divorce, Liesse was required, among other things, to make an equalization payment to Kracht in the amount of \$26,500.

¶3 Liesse argues that while the circuit court made correct findings of fact, the court did not properly consider those findings when it applied the statutory criteria. WIS. STAT. § 767.61(3)(b) and (d) (2007-08).¹ She argues that the court did not properly consider the property she brought to the marriage, or the economic contributions that she made to the marriage. Specifically, Liesse argues that the court ignored the fact that a substantial amount of Kracht's pre-marital debt was paid by Liesse's pre-marital assets; Kracht did not contribute to the mortgage, taxes, and upkeep of the pre-marital residence; and Kracht misappropriated marital funds to a personal account. Liesse argues that as a result of the property division, Kracht is in a better position than he would have been had the marriage never occurred.

¶4 Kracht responds that the circuit court properly exercised its discretion by applying the law to the facts, and that the court considered the specific statutory factors that Liesse asked it to consider. Kracht further argues

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

that while Liesse asserts that the court did not consider all of the relevant criteria, she has not identified any applicable or relevant criteria that the court did not address. Kracht concludes that Liesse is really objecting to the manner in which the circuit court addressed its discretion, but that her argument shows that the court did exercise discretion. We agree.

¶5 The division of the marital estate lies within the sound 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 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. 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). Findings of fact will not be set aside unless they are clearly erroneous. *Settipalli v. Settipalli*, 2005 WI App 8, ¶10, 278 Wis. 2d 339, 692 N.W.2d 279. The trial court must begin the property division analysis with the presumption that the marital estate will be divided equally, but may deviate from that presumption after considering the relevant factors identified in WIS. STAT. § 767.61. *Id.*, ¶12.

¶6 We conclude that this case is controlled by our standard of review, and that the circuit court properly exercised its discretion when it divided the marital property. The record demonstrates that the circuit court considered the facts, and explained its reasons for deviating from the statutory presumption. The court awarded Liesse the marital residence, granted her a credit of \$53,000 for the down payment on the marital residence, and required that she make an

equalization payment to Kracht for the residence. Liesse's argument is essentially that the circuit court did not reach the result she wanted. While this may be so, it does not alter the fact that the court fully considered the facts and explained its reasoning for making the awards that it did. Its conclusion was one that a reasonable court could make by reasoning from the found facts. Because the circuit court properly exercised its discretion, we affirm the court's division of property.

By the Court.—Judgment affirmed.

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

