COURT OF APPEALS
DECISION
DATED AND FILED

December 8, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2115 **Cir. Ct. No. 2003FA137**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:

BARBARA J. DELZER,

PETITIONER-RESPONDENT,

V.

DONALD L. DELZER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County: RANDY R. KOSCHNICK, Judge. *Affirmed*.

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

¶1 PER CURIAM. Donald Delzer appeals a judgment of divorce. He argues: (1) that the circuit court erred in finding as a matter of fact that the parties

did not have an oral agreement governing the division of property at divorce; (2) that the circuit court erred as a matter of law when it concluded that oral marital property agreements are not binding in Wisconsin; and (3) that the circuit court misused its discretion in dividing the parties' property. We reject these arguments and affirm.

¶2 Donald first argues that the circuit court erred as a matter of fact in finding that the parties did not have an oral agreement regarding property division. Donald testified that they had an agreement, but the circuit court found that "[his] testimony concerning the oral agreement was not particularly clear or precise." Barbara testified that there was no agreement. The circuit court found that her testimony on this point was unequivocal. Barbara also testified that Donald never told her that he was reluctant to marry due to money issues. After considering the testimony from both parties, the circuit court concluded that Barbara was more credible. "[W]hen the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility of the witnesses." ***Gehr v. City of Sheboygan***, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977).

¶3 Donald argues that his testimony mandates a conclusion that there was an oral agreement. We conclude, however, that he has not shown that the circuit court's factual findings, which were based largely on credibility determinations, were clearly erroneous. Because Donald has not met the requisite legal standard for relief, we reject his argument that the circuit court erred in finding as a matter of fact that there was no oral agreement.

¶4 Donald next argues that the circuit court erred in concluding that oral marital property agreements are not enforceable in Wisconsin. Because we have

affirmed the circuit court's finding that no such agreement existed, we need not address this issue.

¶5 Donald next challenges the circuit court's property division. The circuit court must begin with a presumption that marital property should be divided equally. WIS. STAT. § 767.255(3) (2003-04);[1] ***LeMere v. LeMere***, 2003 WI 67, ¶16, 262 Wis. 2d 426, 663 N.W.2d 789. "A circuit court may deviate from the presumption of equal property division, but only after considering a lengthy and detailed list of statutory factors." ***LeMere***, 262 Wis. 2d 426, ¶16. We will uphold the circuit court's decision regarding a property division so long as the court "'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.'" ***Garceau v. Garceau***, 2000 WI App 7, ¶3, 232 Wis. 2d 1, 606 N.W.2d 268 (Ct. App. 1999) (quoting ***Long v. Long***, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995)).

¶6 Donald contends that the circuit court's property award was inequitable to him. He contends the court should have awarded him a larger share of the property because he brought $400,000 to the marriage, and the increase during the marriage in the equity of the real estate he owned is attributable to his efforts. The circuit court credited each party for the value of the property they brought into the marriage, but divided equally the increase in value of the property during the marriage. Taking into account the amounts the parties were awarded because of the amounts each brought to the marriage, Donald received

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

approximately 66% of the marital estate at divorce, or $725,000, and Barbara received approximately 34%, or $375,000.

¶7 The circuit court divided equally the increase in equity during the marriage of the property Donald owned because it found that both parties contributed equally to the marriage. Although Donald contends that the circuit court gave excessive weight to Barbara's contributions, our review of the testimony shows that the circuit court's finding that the parties contributed equally, albeit in different ways, is amply supported by the fact that Barbara did many tasks around the house, such as shopping, cleaning, laundry, painting, and yard work, as well as helping manage the apartment building. Because the circuit court "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," we conclude that the circuit court acted within the ambit of its discretion in dividing the property as it did. *See* ***Garceau***, 232 Wis. 2d 1, ¶3 (citation omitted).

¶8 Donald also challenges the property division by arguing that the circuit court erroneously failed to consider certain facts in making its decision. He asserts that the circuit court failed to consider their ages. We disagree. The circuit court's decision specifically states that, at the time of divorce, Donald was 55 and Barbara was 46. Donald contends that the court failed to consider the parties' practice of separating their financial affairs. Again, we disagree. The court's decision states that "[f]or the most part, the parties kept their finances separate, consistent with Donald's claim of an oral marital property agreement." The court may not have given these facts the sort of weight Donald wishes it had, but the court did consider the facts and was entitled to accord them little weight.

¶9 Finally, Donald contends that the court gave insufficient weight to the property brought to the marriage by Donald. We are not persuaded. The court gave Donald credit by awarding him the substantial amount he brought to the marriage. Circuit courts have broad discretion to make property division and maintenance decisions to achieve fairness and equity in individual cases. ***Haugan v. Haugan***, 117 Wis. 2d 200, 211, 343 N.W.2d 796 (1984). We cannot say that the circuit court here misused this broad discretion.

¶10 Therefore, we reject all of Donald's challenges to the property division.

By the Court.—Judgment affirmed.

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