COURT OF APPEALS
DECISION
DATED AND FILED

November 30, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2841 **Cir. Ct. No. 2004FA142**

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

IN RE THE MARRIAGE OF:

LORI FERG,

PETITIONER-APPELLANT-CROSS-RESPONDENT,

V.

RUSSELL FERG,

RESPONDENT-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Waupaca County: RAYMOND S. HUBER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lori Ferg appeals from a judgment divorcing her from Russell Ferg. Russell Ferg cross-appeals. We affirm.

Marital Agreement

¶2 Lori argues that the marital agreement the parties signed before their wedding should not have been enforced. A marital agreement is equitable, and thus may be enforced, if: (1) "each spouse has made fair and reasonable disclosure to the other of his or her financial status"; (2) the agreement was entered into voluntarily and freely; and (3) "the substantive provisions of the agreement dividing the property upon divorce are fair to each spouse." ***Button v. Button***, 131 Wis. 2d 84, 89, 388 N.W.2d 546 (1986). "The first two requirements must be assessed as of the time of the execution of the agreement." ***Id.*** "[T]he third requirement is also assessed as of the time of the execution of the agreement and, if circumstances significantly changed since the agreement, then also at the divorce." ***Id.*** We will affirm a circuit court's determination of the equity of a marital agreement unless it misuses its discretion. ***Krejci v. Krejci***, 2003 WI App 160, ¶18, 266 Wis. 2d 284, 667 N.W.2d 780. A circuit court properly exercises its discretion if it considers "the relevant law and facts and set[s] forth a process of logical reasoning." ***Id.***

¶3 Lori first argues that Russell did not make a fair and reasonable disclosure of his financial status when they entered the agreement because he overvalued the assets he brought into the marriage. She argues that the "north 80" farm was improperly listed as having a value of $150,000, which was an overvaluation because Russell had purchased the farm for $75,000 the year before they got married.

¶4 The circuit court was well aware of the fact that Russell had listed in the marital agreement that the property was worth much more than its purchase price. The court explained why it acquiesced in the valuation:

> Clearly, the most significant question for valuation, I'm satisfied, would relate to what's been referred throughout much of the trial as the, north 80. That property was certainly bought for substantially less than was reflected in the marital agreement. However, Mr. Ferg testified that he put substantial work in improving the property [before the marriage]. Apparently [he] did substantial work improving the barn, put an addition on it; substantial work improving the home. The property was pretty run down and he fixed it up. He supplied documentation, and I don't remember the exhibit now off the top of my head, which showed a substantial amount of money put into the property in fixing it up. On balance, I cannot today, absent some specific testimony from an expert witness, which would have been a property appraiser, knowledgeable on the values of properties back at the time the marital property agreement was entered into, indicating that the valuation was substantially out of line.

The circuit court determination that the $150,000 value should be used was reasoned and reasonable. Lori's other overvaluation claim about the cattle debt is not substantiated by any citations to the record. Therefore, we conclude that the circuit court properly exercised its discretion in concluding that Russell had made a fair and reasonable disclosure of his financial circumstances.

¶5 Lori next argues that she did not voluntarily enter the agreement. She contends her assent was involuntary because she did not receive the agreement until six days before her wedding, to which three hundred and fifty guests had been invited, she didn't have a lawyer and had no opportunity to determine whether Russell's financial representations were accurate. She also points out that she was six months pregnant, and thus not in a good position to delay the wedding.

¶6 "In determining whether the agreement was entered into voluntarily and freely, the relevant inquiry is whether each spouse had a meaningful choice." ***Button***, 131 Wis. 2d at 95. "Some factors a circuit court should consider are

whether each party was represented by independent counsel, whether each party had adequate time to review the agreement, whether the parties understood the terms of the agreement and their effect, and whether the parties understood their financial rights in the absence of an agreement." ***Id.*** at 95-96.

¶7 The circuit court reasonably concluded that Lori had a meaningful choice in deciding to sign the agreement. The circuit court considered factors that were potentially coercive, noting in particular that it was troubled by the fact that Lori did not have an attorney and was not given the agreement until a week before the wedding. Even so, the court believed that Lori and Russell were in essentially equal bargaining positions because they both knew the wedding was coming up on the weekend, and while there was pressure on Lori, Lori could have reversed that and put it on Russell by saying she would not sign, making it his choice to acquiesce or call off the wedding. While we might not have reached the same decision, the circuit court's determination that Lori had a meaningful choice in deciding to sign the agreement was a determination that a reasonable court could reach.

¶8 Lori also argues that the substantive provisions of the agreement were not fair. She contends that the agreement became less and less fair as time elapsed because she and Russell both put effort into operating the farm together for nearly seventeen years. We disagree. Unlike a situation where a prenuptial agreement provides that the parties do *not* share in the appreciation of assets brought to the marriage, the agreement provided that the parties shared the appreciated value of any assets, allowing Lori to reap the benefits of her work in running the farm. The agreement excluded the first $192,000 from the marital estate at the time the agreement was executed, and excluded the same amount at

the time of divorce. Thus, the agreement did not become less fair as time passed. We conclude that the circuit court properly exercised its discretion.

$80,000 Debt to Parents

¶9 Lori argues that the circuit court should not have attributed to Russell an $80,000 debt he owed his parents. She contends that the debt was no longer enforceable because more than six years had passed since the debt had become actionable. *See* WIS. STAT. § 893.43 (2003-04).[1] She also contends that the circuit court erred in treating the loan as a "gift" to the extent it was no longer legally enforceable.

¶10 The circuit court's decision to treat the $80,000 debt as a real obligation is supported by the record. Russell's father testified that Russell still owed him this money. The circuit court found that, while the $80,000 debt was "oral in nature," there was written documentation of the debt because the marital agreement made specific reference to it. The court acknowledged that the indebtedness might no longer be legally enforceable, but found that the debt was nevertheless a real obligation, whether or not it was legally enforceable. The court further found that, to the extent the debt was not legally binding, it could reasonably be characterized as a gift. However, because there was factual support for the court's finding that the debt was a real obligation and we affirm that finding, we need not address the "gift" alternative.

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

Credits for John Deere 7300 Chopper

¶11 Lori next challenges the circuit court's decision with regard to the John Deer 7300 chopper. Lori has not provided adequate record cites for her factual assertions. We will not sift the record for facts that support Lori's argument. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463. In addition, her argument is confusing and not clearly presented. We will not review an issue that is inadequately briefed. ***Roehl v. American Family Mut. Ins. Co.***, 222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998).

$11,000 in Loan Payments

¶12 Lori next argues that the circuit court should have reduced the marital debt by $11,000. She contends Russell made loan payments from farm assets shortly before trial that reduced the principal balances due, but the circuit court considered the balances due before the payments were made in making its calculations. In its decision on the motion for reconsideration, the circuit court explained that it was unable to resolve this factual issue because it did not have a transcript. The court ordered the matter held open, inviting the parties to submit more documentation. Because the circuit court held the matter open, this issue is not properly before us in the context of this appeal.

$20,000 for Seed

¶13 Lori next argues that the debt balance on the farm's line of credit should be reduced by $20,000 Russell spent for seed. Russell contends that Lori has waived the right to raise this issue because she did not raise it before the circuit court. Lori has not responded to Russell's waiver argument in her reply

brief, so we conclude she has conceded the point. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

Attorney's Fees

¶14 Lori contends that some of her attorney's fees ought to be paid out of the farm checking account because Russell used the farm account, which was supposed to be a marital asset, to pay for part of his attorney's fees before the divorce. Lori has not adequately developed the facts in support of her argument. In the appellant's brief, Lori states that as much as $15,000 of Russell's attorney's fees were paid from the farm checking account. Before the circuit court, Lori's attorney stated that $10,000 of Russell's fees had been paid from the farm account. In addition to these factual inconsistencies, Lori provides no record cites in making her argument. We will not consider this argument further because it is not adequately developed. ***Roehl***, 222 Wis. 2d at 149.

Loss Carry-Forward

¶15 Lori argues that the circuit court erroneously exercised its discretion in awarding Russell the large federal income tax loss-carry forward. She contends that the loss carry-forward provides Russell with a substantial benefit and, erroneously, she received no assets to offset that benefit. We first note that this argument is poorly developed. Lori has not explained the amount of offsetting assets she believes she should be awarded and no evidence was presented about the present value of the loss carry-forward. Even if Lori had developed the argument with sufficient factual detail, we conclude the circuit court acted reasonably in awarding the benefit to Russell because he is continuing the farming business and the carry-forward is integral to the financial operation of the farm.

The court also reasonably concluded that Lori could avail herself of the benefit of the loss carry-forward, should it affect Russell's income for the better in an unforeseen way, by seeking maintenance or more child support.

Maintenance and Child Support

¶16 Lori next argues that the circuit court erred in calculating Russell's average yearly income, which had negative consequences for its child support and maintenance decisions. Determining farm income is difficult in the best of circumstances, which is hardly what we have here. The income information before the circuit court was complicated and presented in a confusing manner. The circuit court took a reasonable approach to assessing the information before it by looking at several different methods for determining Russell's income: (1) by averaging his income as stated on tax returns over several years; (2) by looking at the amount of income as reflected by financial documents prepared by Russell; and (3) by looking at the amount of income as reflected by Russell's monthly living expenses. Due to the difficulty in determining Russell's income, the circuit court also specifically held open maintenance to Lori for five years, which will provide Lori recourse should the estimate of Russell's future income prove to be understated. Under the complex facts presented here, we conclude that the circuit court properly exercised its discretion.

CROSS-APPEAL

$9000 Debt to Lee Bertram

¶17 Russell contends that the circuit court misused its discretion in characterizing Lori's debt to Lee Bertram, her boyfriend, as marital debt because there was inadequate evidence showing it was marital debt. Lori testified that she

received a loan from Bertram of $9000 after she petitioned for divorce, which she used to purchase household items for her new home. This was a credibility issue and the circuit court resolved it in Lori's favor, as was its prerogative. Because the circuit court's determination is supported by Lori's testimony, the circuit court did not misuse its discretion.

$15,000 from Russell's Father for Hungerford Farm and International 1900 Truck

¶18 Russell argues that the circuit court should not have included the $15,000 gift from his father for the Hungerford Farm as marital property because his father intended to give the $15,000 only to Russell. Even if Russell's father intended to give the money to only Russell, Russell's actions, not his father's intent, are determinative. Russell used the gift to purchase property jointly held with Lori, thus creating a marital asset. Russell also argues that the value of the Knight mixer given him by his father to trade in to purchase the International 1900 truck should not have been included in the marital estate because his father intended the gift for only him. Once again, however, the record supports the circuit court's finding that Russell used the gift to purchase a marital asset.

Leaving Maintenance Open

¶19 Russell contends that the circuit court should not have left maintenance to Lori open. The circuit court concluded that Russell's income was sufficiently difficult to determine that it was appropriate to leave maintenance open so that Lori could come back in future years and present evidence that Russell was making more money than the court had anticipated in denying maintenance. Given the highly variable nature of farm income and the difficulty involved in determining income in a complex business operation such as the one

here, the circuit court properly exercised its discretion in leaving maintenance open. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) (we will sustain a discretionary determination if it is "demonstrably … made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law").

Russell's Request for Attorney's Fees

¶20 Russell argues that the circuit court misused its discretion in denying his request for a contribution toward his attorney's fees. Russell complains that his attorney's fees were higher because he had to provide Lori with a substantial amount of information pursuant to her discovery requests because he was in charge of the farm's operation and had the business records. "When making the decision to award attorney fees, the trial court must take into consideration the reasonableness of the fee, the need of the spouse requesting contribution, and the ability of the other spouse to pay." ***Popp v. Popp***, 146 Wis. 2d 778, 798, 432 N.W.2d 600 (Ct. App. 1988). While Russell's attorney had to spend extra time supplying the information relating to the farm, Lori's attorney also had to evaluate and analyze that information. We see no reason to think that Russell's attorney necessarily spent more time that Lori's attorney. We conclude that the circuit court reasonably denied Russell's request for attorney's fees.[2]

[2] Russell cites case law that concerns the award of attorney's fees in divorce cases based on over-trial, but does not develop his over-trial argument. We will not review an issue that is inadequately briefed. ***Roehl v. American Family Mut. Ins. Co.***, 222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998).

By the Court.—Judgment affirmed.

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