

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 14, 2007**

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. 2006AP1570**

**Cir. Ct. No. 2005CV187**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**LILLIE LENSTROM, INDIVIDUALLY, AND BY HER ATTORNEY  
IN FACT, WILMA RUDOLPH,**

**PLAINTIFF-RESPONDENT,**

**v.**

**MATTHEW B. SIMPSON AND CATHERINE M. SIMPSON,**

**DEFENDANTS-APPELLANTS.**

---

APPEAL from a judgment of the circuit court for Rock County:  
JAMES WELKER, Judge. *Affirmed.*

Before Vergeront, Higginbotham and Bridge, JJ.

¶1 BRIDGE, J. This case involves a dispute over transfer of marital property by Ralph Lenstrom to Matthew and Catherine Simpson shortly before Ralph's death. His widow, Lillie Lenstrom, brought suit pursuant to a Durable Power of Attorney alleging undue influence, unconscionability, mistake,

fraudulent misrepresentation, fraud and unjust enrichment. In the alternative, the complaint alleged a cause of action under the Wisconsin Marital Property Act. The circuit court denied the Simpsons' motions for a jury trial and to dismiss the action. The court found that Ralph and the Simpsons acted together to defraud Lenstrom and that the Simpsons materially induced Ralph to convey the property. The court granted equitable relief, rescinding the sale.

¶2 On appeal, the Simpsons argue that Lenstrom's claims under the Marital Property Act entitled them to a jury trial. They also argue that the circuit court's findings underlying its denial of their motion to dismiss and its findings that the Simpsons intentionally defrauded Lenstrom were clearly erroneous. Finally, the Simpsons argue that the Marital Property Act provides the exclusive remedy. We conclude that the circuit court's factual findings are not clearly erroneous and we reject the Simpsons' arguments regarding the Marital Property Act. Accordingly, we affirm the judgment.

## **BACKGROUND**

¶3 Upon the death of their son, Ralph and Lillie Lenstrom inherited his farm. At the time, Ralph suffered from cancer. Shortly after his son's death, Ralph discovered he was terminally ill. He retained an attorney and made arrangements to transfer the son's farm property, along with related farm machinery and personal property, to Matthew and Catherine Simpson.

¶4 The farm land was valued at \$793,000 and was conveyed via land contract to the Simpsons for \$188,750 with no down payment, four percent interest and monthly payments of \$500 payable over thirty years. The farm equipment and personal property were valued at approximately \$160,000 and were

conveyed for \$15,300. Ralph also purchased a truck for \$32,000 which he titled in Mr. Simpson's name.

¶5 Following Ralph's death, Lenstrom, through her power of attorney, brought suit against the Simpsons. She sought rescission of both the land contract and the bills of sale conveying the farm equipment and personal property. In the alternative, Lenstrom sought to recover her interest in these properties under the Wisconsin Marital Property Act.

¶6 The Simpsons requested a jury trial, which the circuit court denied. During trial, the Simpsons moved to dismiss the action on the grounds that Lenstrom did not execute a power of attorney and did not authorize the suit. The circuit court denied the motion.

¶7 The circuit court ordered rescission of the land contract and the bills of sale because they were procured through fraud.<sup>1</sup> In addition, the court determined that Lenstrom did in fact authorize suit and execute a power of attorney. The Simpsons appeal.<sup>2</sup>

---

<sup>1</sup> After trial the Simpsons voluntarily transferred title of the truck to Lenstrom; that property was not made part of the order for judgment.

<sup>2</sup> Lenstrom asserts that, on appeal, the Simpsons challenge only the rescission of the land contract. The Simpsons do not dispute this assertion. We therefore do not address the bills of sale separately, although we note that our analysis of the Simpsons' challenge to the rescission of the land contract also applies to the rescission of the bills of sale.

## DISCUSSION

### *Right to a Jury Trial*

¶8 Lenstrom’s complaint sought rescission and restitution and also stated an alternative claim for relief under WIS. STAT. § 766.70 (2005-06)<sup>3</sup> of the Wisconsin Marital Property Act. The Simpsons requested a jury trial, asserting that, because the case involved “mixed equitable and legal causes of action,” they were guaranteed a right to trial by jury under article I, section 5 of the Wisconsin Constitution. Lenstrom argued that her claims against the Simpsons were primarily equitable in nature. The circuit court agreed with Lenstrom and denied the motion.<sup>4</sup>

¶9 Whether there is a constitutionally guaranteed right to a jury trial for a particular cause of action requires us to interpret a provision of the state constitution, which we review independently. See *Village Food & Liquor Mart v. H.S. Petroleum, Inc.*, 2002 WI 92, ¶7, 254 Wis. 2d 478, 647 N.W.2d 177.

¶10 WISCONSIN STAT. § 766.70 does not provide for a jury trial on its face. The Simpsons rely on *Haack v. Haack*, 149 Wis. 2d 243, 440 N.W.2d 794 (Ct. App. 1989), for the proposition that Lenstrom’s inclusion of a claim under

---

<sup>3</sup> All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

<sup>4</sup> In a footnote in their brief on appeal, the Simpsons assert judicial bias with respect to the court’s ruling on the jury trial issue. They raise this claim for the first time on appeal and without evidentiary support. The general rule is that an issue is waived if it is not raised before the trier of fact. *Saenz v. Murphy*, 162 Wis. 2d 54, 63, 469 N.W.2d 611 (1991), *overruled on other grounds by State ex rel. Anderson-El v. Cooke*, 2000 WI 40, 234 Wis. 2d 626, 610 N.W.2d 821. We decline to reach the issue.

§ 766.70 of the Marital Property Act provides that entitlement. We do not read *Haack* to support their position.

¶11 The plaintiff in *Haack* was a divorcing spouse who wished to amend her divorce petition to include a cause of action based on WIS. STAT. § 766.70. *Haack*, 149 Wis. 2d at 246. Section 766.70 sets out remedies for breach of good faith in matters involving marital property. The divorce statutes provide that no action under § 766.70 may be brought by a spouse against the other spouse during the pendency of a divorce action. See WIS. STAT. § 767.05(7).<sup>5</sup> The plaintiff challenged the constitutionality of § 767.05(7), alleging, among other things, that it violated her right to a jury trial under § 766.70. *Haack*, 149 Wis. 2d at 246.

¶12 In *Haack*, we held that, in order to maintain a cause of action under WIS. STAT. § 766.70, the plaintiff must be able to meet all of the preconditions for bringing that action, including the precondition of WIS. STAT. § 767.05(7), barring an action during the pendency of a divorce. *Id.* at 251. Absent the ability to meet all of the preconditions, we held that the plaintiff had no cause of action under § 766.70. *Id.* By that statement we did not implicitly hold that there is a right to a jury trial under § 766.70. Instead, we held that the plaintiff did not have a valid legal action.

¶13 Additionally, the Simpsons assert that their right to a jury trial turns on whether the claim is legal or equitable in nature. We disagree.

---

<sup>5</sup> WISCONSIN STAT. § 767.05(7) was subsequently renumbered to WIS. STAT. § 767.331. See 2005 Wis. Act 443, § 34.

¶14 In *Village Food*, the supreme court set out the following test for determining when a party has a constitutional right to have a statutory claim tried to a jury when: (1) the cause of action created by the statute existed, was known, or was recognized at common law at the time of the adoption of the Wisconsin Constitution in 1848; and (2) the action was regarded at law in 1848. *Village Food*, 254 Wis. 2d 478, ¶11. Here the Simpsons argue that they are entitled to a jury trial by virtue of the inclusion of Lenstrom's alternative claim for relief under the Wisconsin Marital Property Act. This argument is without merit. The Wisconsin Marital Property Act did not come into existence until 1984<sup>6</sup> and the Simpsons do not argue that the cause of action was recognized at common law in 1848. Therefore, we conclude that the Simpsons have not demonstrated a constitutional right to a jury trial in this matter.

*Acquiescence to Suit and Durable Power of Attorney*

¶15 Before the close of Lenstrom's case, the Simpsons moved to dismiss on the basis that, through her testimony, Lenstrom indicated that she: (1) did not authorize the suit against the Simpsons; and (2) did not sign the document granting power of attorney to her niece, Wilma. The court denied the motion without comment. The Simpsons did not renew their motion at the close of Lenstrom's case or at the conclusion of trial. The court found that Lenstrom did authorize suit and signed the power of attorney.

¶16 In reviewing the sufficiency of the evidence to support the circuit court's finding that Lenstrom both authorized suit and signed the power of

---

<sup>6</sup> 1983 Wis. Act 186 became law on April 4, 1984.

attorney, we are to affirm the circuit court's factual findings unless they are clearly erroneous. Where the trial court is the finder of fact and there is conflicting evidence, the trial court is the ultimate arbiter of the credibility of witnesses. *Fidelity & Deposit Co. v. First Nat. Bank*, 98 Wis. 2d 474, 485, 297 N.W.2d 46 (Ct. App. 1980). We conclude that the record supports the circuit court's findings that Lenstrom authorized the suit and signed the power of attorney.

¶17 With respect to their claim that Lenstrom did not authorize the suit, the Simpsons point to the following exchange at trial:

Q. Do you remember starting a lawsuit against Matt and Cathy Simpson?

A. No, sure don't.

Q. Did you actually authorize or tell somebody they could start a lawsuit for you against Matt and Cathy Simpson?

A. No.

¶18 With respect to their claim that Lenstrom did not sign the power of attorney, the Simpsons point to the following. Lenstrom's attorneys signed and filed an amended complaint certifying that Lenstrom had signed a Durable Power of Attorney in which Wilma was appointed attorney-in-fact. An unexecuted copy of the power of attorney was introduced at trial, leaving open the question whether Lenstrom ever actually signed the document. In that regard, they rely on the following exchange at trial:

Q. Do you remember signing a document called a "Power of Attorney"?

A. No, I don't think I remember signing it. Maybe I did. Who knows?

- Q. You remember signing a document that gives your niece Wilma the right to control all your money and to—as if it was her own?
- A. No. I don't think I've signed no such a thing as that.
- Q. You wouldn't do that?
- A. I don't know if I wouldn't do it or not, but I don't think I have.

¶19 In response, Lenstrom points to the following evidence supporting her position that she both authorized the lawsuit and signed the power of attorney.<sup>7</sup> Lenstrom is approximately eighty-three years old. She has limited ability, a low I.Q. and did not attend school beyond the second grade. Wilma is Lenstrom's niece. Lenstrom testified that Wilma helped her with things including her financial affairs and stated, "Just about anything that comes along that needs to be helped, why, she helps me." In addition, Lenstrom testified as follows:

- Q. After David passed away, did you ever want to sell his farm?
- A. No.
- ....
- Q. If someone else wanted to take David's farm, what would you want to do?

---

<sup>7</sup> Lenstrom also asserts that the Simpsons' argument that Lenstrom did not authorize suit or the power of attorney constitutes a challenge to Lenstrom's capacity to sue and to Wilma's capacity to sue on Lenstrom's behalf. She asserts that pursuant to WIS. STAT. § 802.06(2)(b), the defense of lack of capacity to sue must be either made by motion before pleading or asserted in a responsive pleading. Accordingly, she argues that the Simpsons waived the defense by not raising it in their answer to the amended complaint.

We agree with the Simpsons' position that at the time they filed their answer they did not know that Lenstrom's attorneys would later produce an unsigned copy of the power of attorney at trial. When the Simpsons learned at trial of the possibility of a challenge to capacity, they moved to dismiss the case. We conclude that the Simpsons did not waive their defense regarding this issue.



- A. Well, I don't want nobody else to take it. Only myself.
- Q. If somebody wanted to take David's farm, would you want Wilma to help you?
- A. I suppose I would. Be glad for somebody to help me. I'd probably need help, wouldn't I.

¶20 The court also heard testimony from a Rock County Human Services Department social worker who investigated the financial dealings between the Simpsons and the Lenstroms. He testified that he had concluded that the dealings constituted financial elder abuse and that he referred the matter to the sheriff. The social worker contacted Wilma and told her that "knowing the ... financial climate of Rock County," there was a low likelihood of a criminal investigation. He recommended that she retain an attorney to pursue a civil action to return the farm and personal property to Lenstrom.

¶21 Wilma testified that Lenstrom had memory problems and that she also had a problem understanding terms such as "authorize," "commence" and "lawsuit." She testified that she explained the concept of the lawsuit to Lenstrom as follows:

The way I explained it to her was that we were going to see an attorney that would help us out in getting David's farm back. I never really used those terms [commence a lawsuit] at all with her because I didn't feel she would understand what I was talking about.

¶22 Wilma testified further that Lenstrom "did want to get David's farm back, that she felt that she had not sold it to anyone and that she had not signed any papers selling it to anyone." Wilma also testified that Lenstrom's signature was already on the power of attorney when Wilma signed it at the attorney's office. In addition, she testified that she had no doubt that Lenstrom signed the

power of attorney and that the exhibit introduced at trial was an accurate, although unexecuted, copy of the document that they had both previously signed.

¶23 We conclude that the circuit court's findings of fact are not clearly erroneous and support the circuit court's determination that Lenstrom both signed the power of attorney and authorized suit to regain possession of her son's farm.

*Sufficiency of the Evidence Establishing Fraud  
by Intentional Misrepresentation*

¶24 The Simpsons assert that, before Wilma came to stay with the Lenstroms, both Ralph and Lillie Lenstrom wanted the Simpsons to have David Lenstrom's farm. They argue that there was no credible evidence introduced to support a finding that Lenstrom did not understand that the document she signed was a land contract, nor was there credible evidence to support a finding that she was unduly influenced or coerced into signing the document. Lenstrom argues that there is substantial evidence in the record to support a finding that Lenstrom was adamant in not wanting to sell the farm. She argues that the evidence further supports a finding the Simpsons procured her signature through fraud and that they deceived her into believing that the farm had not been sold.

¶25 The elements of intentional misrepresentation are that: (1) the defendant made a representation of fact; (2) the representation was false; (3) the defendant made the representation knowing it was untrue or recklessly without caring whether it was true or untrue; (4) the representation was intended to deceive and induce the plaintiff to act upon it; and (5) the plaintiff believed the representation to be true and justifiably relied on it to his or her pecuniary damage. *See* WIS JI—CIVIL 2401; *see also* ***Tietsworth v. Harley-Davidson, Inc.***, 2004 WI

32, ¶13, 270 Wis. 2d 146, 677 N.W.2d 233; *Kimberly Area School District v. Zdanovec*, 222 Wis. 2d 27, 52, 586 N.W.2d 41 (Ct. App. 1998).

¶26 The court made the following findings of fact that relate to these elements. Ralph and the Simpsons were aware that Lenstrom was opposed to the sale of the farm. A lawyer drafted the document conveying the property at the request of Ralph and the Simpsons. Lenstrom was not advised of that arrangement. Ralph and the Simpsons went to the lawyer's office, leaving Lenstrom alone at home without telling her where they were going. Ralph and the Simpsons signed the contract at that time.

¶27 A few days later Ralph and Mr. Simpson took Lenstrom to a bank in Illinois and asked a bank officer there to notarize Lenstrom's signature on a document. The bank officer witnessed Lenstrom's signature but did not discuss the content of the document with her. From these events, the court concluded that there was little doubt that the reason for taking Lenstrom to the bank rather than taking her to the lawyer's office was because they knew that the lawyer would explain what she was signing and she would refuse to go along with the arrangement.

¶28 Lenstrom repeatedly testified that she would never agree to sell her son's farm. During a conversation between Ms. Simpson, Lenstrom and a relative, the relative asked whether the Simpsons had purchased the farm on a land contract. Ms. Simpson denied doing so and stated that they were merely renting to purchase. The relative then produced a copy of the land contract. Ms. Simpson became embarrassed and told Lenstrom that "I love you but I'll never be able to see you again." The circuit court concluded that:

This sequence of events makes it abundantly clear that Lillie did not realize that she had signed a land contract and did not intend to sell David's farm. In addition, it is absolutely clear th[at] Ms. Simpson was aware that they were deceiving Lillie with respect to the document she had signed and Ms. Simpson was continuing with that deception.

¶29 During this same period of time, Ralph transferred marital property valued at \$160,000 to the Simpsons for the sum of \$15,300. The Simpsons were aware that this was joint property and that Lenstrom did not consent to the transfer. The Simpsons also convinced Ralph to use marital funds in the amount of \$2,391.20 to pay for propane gas for the farm property. Ralph also did this without Lenstrom's consent.

¶30 Mr. Simpson drafted a document prior to the signing of the land contract<sup>8</sup> promising to care for Lenstrom after the sale of the farm. The document provided as follows:

This letter is to assure our commitment to Ralph and Lillie Lenstrom. In accordance with their wishes we will do everything in our power to carry out the quality of their lives on the farm. We will continue to assist with personal needs as well as to help maintain the farms. With this agreement we hope to preserve Ralph[']s and [L]illie[']s lifestyle which they enjoy today. In the event that we are unable to provide this assistance[,] the contract to purchase the farm may be considered null and void. Any mon[ie]s will be returned at that time also. Signed this 18th day of October, 2004.

The document was not made part of the land contract. The circuit court concluded that the Simpsons used Ralph's concern that Lenstrom would not be cared for after his death to induce Ralph to sell the farm and personal property to them.

---

<sup>8</sup> Although the document is dated October 18, 2004, at trial Mr. Simpson testified that he had drafted the document prior to executing the land contract on October 6, 2004.

¶31 Lenstrom testified that she did not believe that she ever signed a land contract that conveyed the farm to the Simpsons. The Simpsons continually told Lenstrom that they were only renting the farm up until the point that they were confronted with a copy of the land contract.

¶32 We conclude that the circuit court's findings of fact are not clearly erroneous and support the circuit court's determination that the Simpsons made intentional misrepresentations to Lenstrom that deceived her into signing the land contract even though she did not intend to sell the farm, resulting in a sale at a price substantially below the property's real market value.

### *Remedy*

¶33 The Simpsons assert that the circuit court erroneously exercised its discretion in the remedy it provided and argue that the Wisconsin Marital Property Act limits Lenstrom's recovery to a one-half share of the farm. A decision in equity is to be reviewed for an erroneous exercise of discretion. *Anderson v. Onsager*, 155 Wis. 2d 504, 510-14, 455 N.W.2d 885 (1990). An appellate court will sustain a discretionary act if it finds that 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. *Klawitter v. Klawitter*, 2001 WI App 16, ¶8, 240 Wis. 2d 685, 623 N.W.2d 169. "Whether the circuit court applied the correct legal standard in exercising its discretion presents a question of law, which we review de novo." *Robin K. v. Lamanda M.*, 2006 WI 68, ¶12, 291 Wis. 2d 333, 718 N.W.2d 38.

¶34 The relevant provisions of the Wisconsin Marital Property Act provide as follows:

**Section 766.53. Gifts of marital property to 3rd persons.** A spouse acting alone may give to a 3rd person marital property that the spouse has the right to manage and control only if the value of the marital property given to the 3rd person does not aggregate more than either \$1,000 in a calendar year, or a larger amount if, when made, the gift is reasonable in amount considering the economic position of the spouses. Any other gift of marital property to a 3rd person is subject to s. 766.70(6) unless both spouses act together in making the gift....

**Section 766.70. Remedies.** (6)(a) Except as provided in pars. (b) and (c), if a gift of marital property during marriage by a spouse does not comply with s. 766.53, the other spouse may bring an action to recover the property or a compensatory judgment equal to the amount by which the gift exceeded the limit under s. 766.53. The other spouse may bring the action against the donating spouse, the gift recipient or both. The other spouse must commence the action within the earliest of one year after he or she has notice of the gift, one year after a dissolution or on or before the deadline for filing a claim under s. 859.01 after the death of either spouse. If the recovery occurs during marriage, it is marital property. If the recovery occurs after a dissolution or the death of either spouse, the recovery is limited to 50% of the recovery that would have been available if the recovery had occurred during marriage.

¶35 We begin by analyzing WIS. STAT. § 766.53. A spouse may give marital property if: (1) the gift is less than \$1,000; (2) the gift is reasonable in amount considering the economic interests of the parties; or (3) both spouses act together in making the gift. The value of the farm was more than \$1,000 and both spouses did not act together in conveying the property. See supra, ¶¶4, 29. As to the reasonableness exception, the Simpsons introduced evidence at trial to the effect that the Lenstroms had “at least \$600,000.00 in cash in bank accounts, two farms, as well as numerous pieces of farm equipment and personal property, a small portion of which plaintiff’s expert appraised to be worth \$164,015.00.”

¶36 The circuit court did not make an explicit finding with respect to the relative economic interests of the parties. It did, however, describe the terms of the contracts at issue as “unconscionable if this is deemed to be anything other than an attempted gift by Ralph Lenstrom” and that “[t]he sale of this property for a small fraction of what it is worth with no payment on the principal for the next 30 years would be shocking to the conscience of anyone.” The court also stated:

The conduct of the defendants in this case is reprehensible. They took advantage of a grieving, vulnerable aging couple at a time when Ralph Lenstrom was facing death. While they were not long-time friends, they induced him to make a gift worth three-fourths of a million dollars on the representation that they would take care of Lillie Lenstrom. They conspired to defraud Lillie by inducing her to sign a contract for the sale of a farm, a contract that was effectively a gift. They did so knowing that she was adamantly opposed to the sale of the farm.

¶37 From these statements, we can reasonably infer that the circuit court’s finding regarding the relative economic interests of the parties was determined in support of the judgment. See *Sohns v. Jensen*, 11 Wis. 2d 449, 453, 105 N.W.2d 818 (1960). We therefore conclude that none of the exceptions in WIS. STAT. § 766.53 for gifting marital property apply.

¶38 We next examine the remedies provided in WIS. STAT. ch. 766. WISCONSIN STAT. § 766.70(6)(a) states that a spouse may bring an action against the donating spouse, the gift recipient, or both. It also provides that if the gifting spouse is deceased, recovery by the other spouse is limited to fifty percent of the amount that would have been available if the recovery had occurred during marriage.

¶39 WISCONSIN STAT. § 766.15 requires that a spouse shall act in good faith with respect to the other spouse in matters involving marital property.

WISCONSIN STAT. § 766.70(1) provides that a spouse has a claim against the other spouse for breach of that duty. Section 766.70(6)(a) provides that a spouse may bring an action to recover marital property or to seek compensatory judgment by proceeding against either the spouse, the gift recipient or both. Read together, these provisions address remedies available when one spouse breaches the duty of good faith to the other spouse. By their terms, they do not limit remedies by a defrauded spouse against third parties.

¶40 The Simpsons rely on *Socha v. Socha*, 204 Wis.2d 474, 555 N.W.2d 152 (Ct. App. 1996), and *Gardner v. Gardner*, 175 Wis. 2d 420, 499 N.W.2d 266 (Ct. App. 1993), in support of their position that WIS. STAT. § 766.70 provides the exclusive remedy for a defrauded spouse. The Simpsons' reliance on these cases is misplaced. Both *Socha* and *Gardner* involved actions between spouses. In both cases we held that § 766.70 provides an exclusive remedy as between spouses; we did not so hold with respect to third parties. *See Socha*, 204 Wis. 2d at 479; *also Gardner*, 175 Wis. 2d at 424. These cases do not support the Simpsons' position.

¶41 The circuit court, citing *Nelson v. Albrechtson*, 93 Wis. 2d 552, 287 N.W.2d 811 (1980), concluded that the land contract was void because Lenstrom, a joint tenant, was defrauded and did not consent to the transfer of the property. In *Nelson*, the supreme court held that one joint tenant lacked the authority to unilaterally convey the other joint tenant's interest in real property:

Just as one spouse cannot convey the interest of the other in homestead property, so also '[o]ne joint tenant cannot alienate the interests of the other joint tenants or in any way affect such interests.' Joint tenants do have the right to sell their individual interest and thereby sever the joint tenancy. However, it is clear here that no such partial sale was contemplated. The attempt by one joint tenant to convey



the interest of another joint tenant or the entire property is of no effect.

*Id.* at 563 (quoting 4 Thompson, Real Property § 1780 at 31 (1979)) (citations omitted).

¶42 The Simpsons argue that *Nelson* was decided before the effective date of the Wisconsin Marital Property Act. While *Nelson* predates the Wisconsin Marital Property Act, as we determined above, the Marital Property Act does not apply to the facts of this case and accordingly the enactment has no bearing on the holding in *Nelson*.

¶43 Accordingly, we conclude that the circuit court properly exercised its discretion in fashioning the appropriate equitable remedy.

### CONCLUSION

¶44 For the reasons discussed above, we conclude that the circuit court properly denied the Simpsons' demand for a jury trial. We also conclude that there was sufficient evidence supporting the circuit court's findings that the Simpsons intentionally defrauded Lenstrom. We conclude further that the Wisconsin Marital Property Act does not provide the exclusive remedy for Lenstrom. Accordingly, we affirm the circuit court.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.



