COURT OF APPEALS
DECISION
DATED AND FILED

March 26, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1038 **Cir. Ct. No. 92-FA-329**

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

IN RE THE MARRIAGE OF:

RONALD W. MONETTE,

PETITIONER-RESPONDENT,

V.

CORINNE MONETTE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Barron County: JAMES C. EATON, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. In this post-divorce proceeding, Corinne Monette appeals an order approving the sale of property pursuant to the property division and distributing the proceeds. Corinne raises the following issues:

1. Whether the court erred as a matter of law ordering, confirming and, after reconsideration, approving the sale of individual property as a part of a divorce division of property?

2. Whether the court abused its discretion when ordering the sale, confirming the sale or reconsidering the sale of real estate in post divorce proceedings?

3. Whether the court abused its discretion in the apportionment of post divorce division of forced sale proceeds and awarding liquidated damages to third parties?

Because the record supports the trial court's ruling, we affirm the order.[1]

BACKGROUND

¶2 The parties were married in 1959. This dispute arises out of the division of a lakeshore resort belonging to Corinne and her former husband, Ronald Monette, that included approximately thirty acres of land, their homestead, and other buildings. In 1993, a judgment of divorce was entered incorporating a marital settlement agreement. With respect to the real estate, the settlement agreement stated:

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[1] Although labeled a judgment, we characterize the document from which Corinne appeals as an order. We do so for two reasons: first, for ease of discussion we wish to distinguish it from the 1993 divorce judgment. Second, because it evolved from motion proceedings that followed the divorce judgment, we believe "order" more accurately describes the court's directive.

Whether a written direction of a trial court constitutes a judgment is not determined by the designation the trial court uses. ***Booth v. American States Ins. Co.***, 199 Wis. 2d 465, 471, 544 N.W.2d 921 (Ct. App. 1996). Rather, the test is the statutory definition set forth in WIS. STAT. § 806.01(1)(a), stating that "A judgment is the determination of the action." ***Id.*** at 472. Generally, the determination of a motion has been referred to as an order. *See* ***id.*** However, "[a]n 'order' is no longer separately defined." ***Id.*** at 474 n.5.

We recognize that "[t]he distinctions between judgment and order for purposes of appeal are now largely nonexistent." ***Id.*** at 473-74. Whether entered in an action or special proceeding, and whether labeled an order or judgment, the appealability of a document depends on whether it is final. ***Id.*** at 474. All references to the Wisconsin Statutes are to the 1999-2000 version.

> All of the real estate owned by the parties shall be sold, the debts on the real estate paid, and the balance shall be divided equally between the parties; provided, however that when the resort real estate is sold, [Ronald] shall pay [Corinne] the sum of $7,115.00 from [Ronald's] half of the net proceeds to compensate [Corinne] for her interest in [Ronald's] retirement plan. The minimum sale price for the resort property shall be $300,000[.]
>
> ….
>
> Until such time as the properties are sold, the mortgage payments shall be made by [Ronald].

The settlement agreement also provided that until the resort property was sold, Corinne had sole possession of it. Ronald was to pay Corinne $600 a month as maintenance until its sale and, at that time, either party could petition the court to review the maintenance order. Neither party appealed the 1993 divorce judgment.

¶3 By 1997, the resort property had not yet sold, and Ronald brought a motion to enforce the sale provisions of the divorce judgment. Ronald claimed that Corinne refused to participate in efforts to sell the resort. The trial court agreed and ordered that property be sold pursuant to the judgment of divorce. Sarona Development PLC offered $415,000 and the court approved the sale in August 2000. In doing so, the court stated that it considered the appraisal of Craig Solum, who had been engaged by the prospective purchaser, that the property was worth $410,000.

¶4 Corinne did not appear at the closing, so it was rescheduled. Ronald testified that he could not reach Corinne or her attorney about the rescheduled closing date. Because of his fear that Corinne would sabotage the closing, Ronald obtained an ex-parte order from the circuit court permitting Ronald to convey the entire property interest in Corinne's absence. The order required that the sale proceeds be held in trust for disbursement upon court order.

¶5 After the closing took place, Corinne brought several motions seeking relief from the sale, which were denied. After a lengthy hearing[2] on Corinne's motion for reconsideration on March 16, 2001, the court entered an order determining that Corinne consciously sought to frustrate and thwart the sale of the resort. It determined that she had ample opportunity to challenge the sale but that her allegations of an inadequate sale price, fraud, lack of notice, and title defects were without merit. The court found that the $415,000 sales price was supported by the opinion of an expert real estate appraiser. The court approved the sale and ordered that after certain deductions were to be taken, the proceeds were to be divided equally between the parties. Corinne's appeal follows.[3]

I.

¶6 Relying on the Marital Property Act, WIS. STAT. ch. 766, Corinne argues that the trial court erroneously approved the sale of the resort when, by virtue of a 1987 deed, a portion of the property was owned by her individually. This issue is not properly before us. At the March 16, 2001, hearing, the court found there was no suggestion in 1993, when it first heard the case, that the property was owned by anyone other than the two parties. Whether property was individually owned and not subject to division under WIS. STAT. § 767.255 should

[2] We note that the March 16, 2001, hearing commenced at 8:19 a.m. and concluded at 10:25 p.m., with only minimal breaks.

[3] Corinne's notice of appeal purports to appeal a March 16, 2001, document. However, unassisted by the parties, our search of the record uncovers no order dated March 16, 2001. To be appealable, an order must be in writing and entered. ***Ramsthal Adver. Agency v. Energy Miser, Inc.***, 90 Wis. 2d 74, 75, 279 N.W.2d 491 (Ct. App. 1979).

Because the final order is dated April 9, 2001, we construe the appeal as from that order and previous nonfinal orders. *See* WIS. STAT. §§ 808.04(8) and 809.10(4).

have been litigated at the time of trial. Also, in the event that Corinne was dissatisfied with the court's ruling, she could have appealed the 1993 divorce judgment. Corinne elected not to appeal.[4]

¶7 At a post-divorce hearing, Corinne told the court: "You were very, very exact in our divorce proceedings because we had a complicated case. [Y]ou went through more detail probably than any judge would ever have gone through, and covered every issue." We agree with this statement. The record shows great patience on the part of the trial court. The parties had the opportunity to litigate their issues concerning property ownership at the time of the divorce trial. Nevertheless, this issue was not raised.

¶8 In addition, Corinne's reliance on WIS. STAT. ch. 766, the Marital Property Act, is misplaced.

> When the marriage is ongoing, marital property principles of ownership are paramount. When dissolution is instituted, the considerations of sec. 767.255, Stats., supplant ownership as legislative priority. As a commentator who had an active part in the formulation of the marital property act noted, "section 767.255 suspends the ownership rules that would otherwise apply to married persons and determines property ownership in the context of divorce." Weisberger, *The Marital Property Act does not change Wisconsin's divorce law*, 60 Wis. B. Bull. 14, 14 (May 1987).

Haack v. Haack, 149 Wis. 2d 243, 255, 440 N.W.2d 794 (Ct. App. 1989). Because Corinne's argument is unsupported by appropriate legal authority, it may

[4] Corinne stated that she spoke to two attorneys who advised her to appeal the judgment of divorce.

be rejected on this ground alone. ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980).

II.

¶9 Next, Corinne argues that the trial court erroneously approved the sale of the resort property because their joint will indicates they wanted to partition and divide the homestead and the campground. She contends, therefore, the trial court forced an unwanted sale. We are unpersuaded. Although the record shows that an unwanted sale was forced on Corinne, it also demonstrates that Ronald sought the sale.

¶10 Corinne alludes to an unsuccessful mediation, but does not accompany this assertion with appropriate record citation. *See* ***Tam v. Luk***, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990). Although at various points in time the parties attempted to negotiate an alternative to the sale, it is apparent that their attempts were not successful. We conclude that the failed mediation attempts do not serve as grounds for reversal.

¶11 Corinne accuses the president of the bank, which apparently held a mortgage on the property, of embezzlement. She also claims he improperly notarized her signature on a mortgage. She does not, however, explain the relevance of this accusation to the order approving the property's sale. Because this argument is not developed, it does not support reversal. *See* ***State v. Flynn***, 190 Wis. 2d 31, 58, 527 N.W.2d 343 (Ct. App. 1994).

¶12 Corinne further contends that Ronald committed fraud and that the court ignored her revelation that there was a 1998 deed from Ronald granting her a one-half interest in the resort as a single woman. She asserts that Ronald's

counsel, who drafted the instrument, never delivered it but held it in his file. In support of her argument, Corinne directs this court's attention to the transcript of an October 12, 2000, hearing, where she appeared pro se after having discharged her attorney. The October 12 proceeding was a hearing on Corinne's request for a stay of the court's order for the distribution of the sale proceeds. We conclude that the cited portions of the record fail to support her allegations of fraud.

¶13 Corinne further claims that the trial court ignored the value of the property and never considered an appraisal. This argument neglects the court's finding that it based its decision to approve the $415,000 in part on the appraisal by Craig Solum, who determined the fair market value to be $410,000.

¶14 At the March 16, 2001, hearing on her motion to reconsider the order denying her motion to overturn the sale, Corinne produced an appraisal indicating that the property was worth between $550,000 and $650,000 and that the sale was based upon a misidentification of the number of lineal feet of shoreline.

¶15 The realtor who handled the sale testified, however, that he had known the property for thirty years. He testified to the effect that there was no misidentification of the number of feet of shoreline. He explained that a portion of the area that Corinne's appraisal characterized as shoreline was not shoreline, not even swamp, but "dry run," an area that is only wet during times of melting snow or heavy rain.

¶16 The court observed that Corinne had the opportunity to present her appraisal before the property was sold. The court noted that Corinne had not presented any potential buyers at that price. The court found that if the parties could produce a buyer who would offer a higher price, the court could not "conceive that I wouldn't have approved the higher price."

¶17 Additionally, the record discloses that $300,000, ordered as the minimum price at which the land could be sold, was based upon the parties' marital settlement agreement. An appellate court will generally not review an error that was "invited" or induced by the appellant in the trial court. *See* ***Shawn B.N. v. State***, 173 Wis. 2d 343, 372, 497 N.W.2d 141 (Ct. App. 1992). The concept of invited error is closely related to the doctrine of judicial estoppel, which recognizes that "[i]t is contrary to fundamental principles of justice and orderly procedure to permit a party to assume a certain position in the course of litigation which may be advantageous, and then after the court maintains that position, argue on appeal that the action was error." ***State v. Gove***, 148 Wis. 2d 936, 944, 437 N.W.2d 218 (1989). Because the record indicates that the minimum price of $300,000 was based upon the parties' agreement, Corinne's subsequent claim that the $415,000 purchase price was too low is rejected.

¶18 Next, Corinne claims that the court failed to consider that she was excluded from the closing and not provided an accounting from the bank of the mortgage payoff. Corinne fails to show why she could not otherwise discover the information provided at closing. Corinne also fails to indicate she took adequate steps for discovery to obtain an accounting from the bank. Because of the amount of discovery contained in the record, the parties were no doubt aware of its availability. In any event, at one of the hearings on Corinne's motions, the realtor handling the sale testified as to the settlement charges and closing costs. Because Corinne does not establish prejudice by her non-appearance at closing, we conclude that Corinne's allegations fail to establish reversible error.

III.

¶19 Corinne argues that "upon reconsideration March 16, 2001, the question of sufficiency of the evidence is subject to appellate review and the record speaks to manifest errors, fraud and mistake showing the courts [sic] failure to exercise its discretion concerning these issues raised."[5] Under this heading, Corinne advances a variety of arguments. First, she argues that the court improperly reduced her maintenance from $600 to $300. Without record citation, Corinne contends, "[U]nder the known circumstances already in the record and when her medications exceeded $600.00 per month, this was clearly inadequate." We conclude that to properly address this argument, we would have to first develop it. We decline to do so. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 NW.2d 392 (Ct. App. 1995).

¶20 Corinne also complains that her appeal from a judgment entered in an eviction action commenced by the buyer was dismissed as untimely. Because the eviction action is not before us in this appeal, we do not consider it further.

¶21 Citing the Marital Property Act, Corinne contends that the trial court may order an accounting between married persons. *See* WIS. STAT. § 766.70(2). Corinne's citation is inapplicable. *See* ***Haack***, 149 Wis. 2d at 251-54. In any event, the trial court carefully set out the credits and adjustments in its

[5] We acknowledge that the contentions argued do not precisely track the issues that Corinne identified in her brief. Also, each brief heading contains numerous separate arguments, which are not identified by a one-sentence summary as required by WIS. STAT. RULE 809.19(1)(e). Inadequate compliance with rules of procedure hampers our ability to address the issues. This court cannot continue to function at its current capacity without requiring compliance with the rules of appellate procedure, the purpose of which is to facilitate review. *See* ***Cascade Mtn., Inc. v. Capitol Indemn. Corp.***, 212 Wis. 2d 265, 270 n.3, 569 N.W.2d 45 (Ct. App. 1997). Lack of compliance is subject to sanction. WIS. STAT. RULE 809.83.

disbursement order. Corinne identifies no specific error. Accordingly, her argument does not support reversal.

¶22 Corinne further argues that upon reconsideration, the court failed "to recognize elements of fraud, inadvertence, mistake, hardship and inexcusable neglect." When Corinne made these allegations at the hearing on her motion for reconsideration, the trial court stated: "But you're starting to throw stuff at the wall and hoping something sticks." The court required that the parties focus on the issues at hand and submit proof of their allegations. After the lengthy March 16 hearing, the trial court found that Corinne's evidence failed to support her allegations. Because Corinne's brief points to no facts of record to show that the court's findings were erroneous, we do not overturn the court's ruling.

¶23 Corinne also contends: "Despite reasonable pleading and the court granting a hearing for reconsideration, the court unfairly awarded 75% of the trial attorney's fees in the amount of $3,499.76." She argues that the court did not identify any proceedings as frivolous or taken for purposes of delay.

¶24 At the close of the March 16, 2001, reconsideration hearing, the trial court stated on the record:

> [O]n the totality of this record I do find that the case was elongated by Corinne's exertions …. After August 14th, [2000] though, I believe that there was, to put it gently, dilatoriness. I think the exertions that [Ronald's counsel] had to go through were forced upon him and his client. … I think we spent about three-quarters of today re-litigating August 14th and before that. That was wasted effort ….

¶25 In its written findings of fact and conclusions of law, the court stated that it would award Ronald attorney fees of 75% of the thirteen hours spent in court at the reconsideration hearing relitigating issues that had already been

decided; the court determined that thirteen hours at $150 per hour equaled $1,462.50.

¶26 In addition, the court found that a portion of Ronald's fees since August 14, 2000, was attributable to Corinne's unnecessary litigation. Upon the affidavit submitted by counsel, the amount of $3,499.76 was "found to be attributable to Corinne's actions which were not reasonably related to resolution of the issues between the parties" following the final divorce judgment.

¶27 The decision whether to award attorney fees is addressed to trial court discretion. ***Randall v. Randall***, 2000 WI App 98, ¶22, 235 Wis. 2d 1, 612 N.W.2d 737. The court may award attorney fees because one party "has caused additional fees by overtrial." ***Id.*** Here, the trial court's explicit findings amounted to a determination that Corinne caused additional fees by over-trial. We conclude that Corinne has not met her burden to establish that the trial court erroneously exercised its discretion in awarding Ronald attorney fees.

¶28 Next, Corinne claims that the court unfairly assessed her rental fees for remaining on the property after the closing. She does not accompany this one sentence argument with legal or record citation. "This argument is not a developed theme reflecting legal reasoning, but instead is supported by only one general statement. We decline to review issues inadequately briefed." ***State v. Blanck***, 2001 WI 288, ¶27, 249 Wis. 2d 364, 638 N.W.2d 910. Also, "this court does not consider arguments broadly stated but not specifically argued." ***Id.***

¶29 Finally, Corinne concludes with a broad attack, claiming that "the final order of the court upon the record March 16, 2001, was without reasoned findings and excluded evidence which was necessary and material to the issue of fairness, values and fraud." We reject this argument. The record is replete with the trial

court's reasoned findings. Insofar as Corinne alleges that material evidence was erroneously excluded, she fails to develop this contention with appropriate legal and record citation. *See* ***id.***

CONCLUSION

¶30 The trial court observed that the parties were divorced in 1993, but because their property had not been sold, they were "seven years after the fact still wedded at the hip financially. That's intolerable for one or the other of them." The court observed that Ronald, age sixty-four, was entitled to be finished with his divorce action. The court determined that Corinne had ample opportunity to demonstrate that there was something wrong with the $415,000 offer to purchase and failed to do so. Based upon our review of the record, we agree. Consequently, we affirm the court's order.

By the Court.—Order affirmed.

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