

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 12, 2002

Cornelia G. Clark
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. 02-0981-FT
STATE OF WISCONSIN**

Cir. Ct. No. 01-FA-11

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

BARBARA JEAN STAPLES,

PETITIONER-APPELLANT,

V.

RICHARD JAY STAPLES,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Burnett County:
JAMES H. TAYLOR, Judge. *Reversed and cause remanded with directions.*

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

¶1 PETERSON, J. Barbara Staples appeals an order denying her motion under WIS. STAT. § 806.07 for relief from her divorce judgment.¹ She argues that the court erroneously found that the marital settlement agreement was not one-sided. Barbara also claims that the circuit court erroneously denied relief in spite of its findings that she was an abused wife and her husband's financial documentation presented at the stipulated divorce hearing was incomplete. Because the record fails to reflect a reasonable exercise of discretion, we reverse and remand for further proceedings.

BACKGROUND

¶2 The parties were married in 1984 and had four children. During the marriage, Barbara and the children were subjected to verbal and physical abuse. According to Barbara's affidavit submitted in support of her motion, in September 1997, "I quit my job and basically ran away to college. I was in no financial situation to take the children with me but I had to get out, as I feared for my life."²

¶3 In December 1997, Richard asked Barbara to go to a Christmas party and she agreed. In her affidavit, she stated: "By the end of the evening he threatened to kill me if I divorced him. I totally believed him." Barbara testified at the hearing on the motion that was the last time they had gotten into a physical fight before the divorce. "[B]efore we left the bar he was pushing me around. He

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All statutory references are to the 1999-2000 version unless otherwise noted.

² Barbara submitted an affidavit in support of her WIS. STAT. § 806.07 motion. For the purposes of the hearing on the motion, the court accepted the affidavit as true, stating: "I don't want to take testimony about whether or not abuse occurred. I'm going to accept it for the time being right now as being true. Don't ask her about anything in this affidavit." Instead, the court wanted to focus the testimony on how the abuse rendered her powerless.

was angry, he was drunk.” Barbara explained that she “didn’t let him push me around” because she felt she could stand up to him “[a] little bit because there was [sic] other people there.”

¶4 The previous incident of abuse occurred in the summer of 1996 in their friend’s driveway. Barbara testified that both had been drinking and Richard accused her of “fooling around with our friend.” Richard grabbed her by the hair, knocked her down and dragged her face through the gravel. On the way home, he grabbed her hair and smacked her into the window.

¶5 In November 1998, the parties filed a joint petition for divorce. According to Barbara’s affidavit, they engaged the services of a non-lawyer referred to as “Done Deal” to draft a marital settlement agreement, “which my husband told me we had to enter into or there would be no divorce.”

¶6 The marital settlement agreement provided that Richard would receive the equity in the parties’ home, a small piece of real estate adjacent to the home, and his pension plan. The net value of these assets equaled approximately \$45,810. In addition, the agreement provided that Richard was to receive vehicles, personal property, and was to be responsible for certain debts. Although the court made no findings on the value of these items, the record reflects that their net value was approximately \$10,000.

¶7 The marital settlement agreement awarded Barbara a \$500 motorcycle, an automobile subject to a lien in excess of its value, and home furnishings. Barbara was responsible for a number of debts she incurred after the parties’ 1997 separation, resulting in a net property settlement to Barbara in the

approximate sum of \$1,907.³ In October 1999, the parties appeared before a family court commissioner who accepted their stipulation and entered a judgment of divorce.

¶8 In June 2001, Barbara sought relief from the judgment pursuant to WIS. STAT. § 806.07(1). She claimed she gave up her right to marital property because of the abuse to which she was subjected throughout the marriage. At the hearing on her motion, she also testified that during the parties' separation preceding the divorce, she moved to Superior to attend college.

¶9 Barbara testified that Richard set up an appointment with "Done Deal" to draw up the divorce petition and that she accompanied him to one appointment. She testified that she agreed to the property settlement Richard wanted because: "I didn't have a choice. He told me if I wouldn't go along with this, I wouldn't get a divorce." She testified that she signed the marital settlement agreement "under duress because there was no other way to get a divorce." She testified that she never asked for an attorney because she could not afford one. She did not obtain a restraining order or notify authorities because she did not believe it would do any good.

³ Richard does not dispute Barbara's assignment of values to the assets comprising the marital estate. However, we do not have a precise record, factual findings, or adequate record citations to ascertain with confidence the exact figures of the debts and personal property. *See* WIS. STAT. RULE 809.19(1). Barbara's appellate brief appendix contains a table of contents; the table does not reference the record, however.

On remand, in its fact-finding role, the trial court is not bound by our recitation of facts. Therefore, to the extent it determines it necessary to its decision, it is free to accept or reject these numbers based on its assessment of the weight and credibility of the testimony. *See* WIS. STAT. § 805.17(2).

¶10 Richard denied the allegations of abuse. The court, however, stated:

[T]here's no question she was an abused woman. That I accept in spades. There [were] a lot of beatings going on. I call them beatings, even though the wife fought back, for the simple reason that the physical abilities are nowhere near equal.

¶11 Nonetheless, the court did not find that Barbara was powerless and forced to accept the stipulation. The court found that she was capable of exercising her own judgment, observing that she was “sophisticated enough to fight back” and get out of the marriage even after being threatened with death. It found further that the marital settlement agreement was not one-sided and that the absence of full financial disclosure was not a significant factor. The court explained:

I think if they would have had the assistance of counsel, I think this agreement may have been accepted by both the parties even if they both had lawyers. I don't find that it is that one-sided. And the family court commissioner, he had the chance to look at it and he accepted it.

¶12 The court determined that neither party had an attorney and that there were no intervening circumstances making it inequitable to deny relief. The court ruled that because the agreement was the result of a deliberate choice and was not one-sided, Barbara was not entitled to relief.

DISCUSSION

¶13 Barbara argues that the circuit court erroneously exercised its discretion when it based its decision on the finding that the marital settlement agreement was not one-sided. She points out that there was no dispute, and the court accepted as true, that the total equity in the three major assets equaled \$45,810. She argues that because the settlement agreement failed to award her

any share of these assets, the court’s finding that the agreement was not one-sided lacked a rational basis. We agree.

¶14 Although a property division in a divorce judgment is not subject to the continuing jurisdiction of the family court, the court has the discretionary authority to modify a property division under WIS. STAT. § 806.07. *See Spankowski v. Spankowski*, 172 Wis. 2d 285, 290, 493 N.W.2d 737 (Ct. App. 1992). The statute is applicable “when the circumstances are such that the sanctity of the final judgment is outweighed by the incessant command of the court’s conscience that justice be done in light of all the facts.” *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 549-50, 363 N.W.2d 419 (1985) (citation omitted). WISCONSIN STAT. § 806.07(1)(h) must be liberally construed to allow relief from judgments whenever relief is appropriate to accomplish justice. *Id.* at 550. “We are mindful—and the circuit courts should be mindful—that finality is important and that subsection (h) [of WIS. STAT. § 806.07] should be used sparingly.” *Id.* at 550.

¶15 WISCONSIN STAT. § 806.07(h) permits the court to grant relief if “extraordinary circumstances” justify relief. *Id.* The court should consider a wide range of factors, including:

whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; whether the claimant received the effective assistance of counsel; whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments; whether there is a meritorious defense to the claim, and whether there are intervening circumstances making it inequitable to grant relief.

Id. at 552-53.

¶16 The finding that there are grounds to reopen a judgment does not necessitate reopening it. *In re Paternity of L.S.G.*, 170 Wis. 2d 231, 238-39, 487 N.W.2d 644 (Ct. App. 1992). As part of its discretionary exercise, the court may consider factors that militate against granting relief. *Id.*

¶17 Under WIS. STAT. § 806.07, our review is limited to whether the trial court erroneously exercised its discretion. *State ex rel. Cynthia M.S. v. Michael F.C.*, 181 Wis. 2d 618, 624, 511 N.W.2d 868 (1994). We do not overturn a discretionary determination if the record shows that the court exercised its discretion and there was a reasonable basis for the court's determination. *Id.* Discretion contemplates a reasoning process that depends on facts of record, or facts reasonably derived from the record, and one that yields a conclusion based on logic and proper legal principles. *Id.* We must give due regard to the trial court's opportunity to assess the credibility of the witnesses and the weight of testimony. WIS. STAT. § 805.17(2).

¶18 Here, the record reflects that the court considered a number of appropriate factors in reaching its determination. For example, it found that neither party had the assistance of an attorney and that there were no intervening factors making it inequitable to grant relief. *See M.L.B.*, 122 Wis. 2d at 550.

¶19 Nonetheless, one of the reasons the court advanced in support of its decision to deny Barbara relief was that the marital settlement agreement was not one-sided. The court did not explain how it reached its determination that the agreement was not one-sided. We can locate nothing in the record to support this finding. The fact that Richard received at least \$45,810 in net assets and Barbara received less than \$2,000 is apparently undisputed. Because the court's reason

that the property division was not one-sided lacks a rational basis, it reflects an erroneous exercise of discretion.

¶20 Richard argues that a number of other factors support the court's exercise of discretion. He contends, for example, that the parties were separated for approximately two years before the divorce. He claims that this fact supports the inference that while Barbara suffered abuse from Richard, it did not render her powerless to stand up for her rights and make a deliberate choice to enter into the property division.

¶21 The problem with Richard's argument is that we cannot determine the extent to which the court based its determination to deny relief on its conclusion that the agreement was not one-sided. We are left with the question whether the court's ruling that Barbara entered into the agreement deliberately was based at least in part on this unsupported factor.

¶22 This court is not empowered to exercise the trial court's discretion. *Barrera v. State*, 99 Wis. 2d 269, 282, 298 N.W.2d 820 (1980). "In all Anglo-American jurisprudence a principal obligation of the judge is to explain the reasons for his actions. ... An appellate court should not supplant the predilections of a trial judge with its own." *McCleary v. State*, 49 Wis. 2d 263, 280-81, 182 N.W.2d 512 (1971). Because a rational basis cannot be gleaned from the court's articulation of its reasoning or our review of the record, we reverse and remand to the trial court to consider Barbara's WIS. STAT. § 806.07 motion and, in its discretion, accept additional evidence.⁴

⁴ Because this issue is dispositive, we do not reach Barbara's other assignments of error.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.

