COURT OF APPEALS DECISION DATED AND FILED

January 14, 2003

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. 02-1025

Cir. Ct. No. 98FA2475

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

IN RE THE MARRIAGE OF:

ELLEN M. GLEASON,

PETITIONER-RESPONDENT,

V.

RICHARD J. GLEASON,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL P. SULLIVAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

¶1 PER CURIAM. Richard J. Gleason appeals from an order, following remand from this court, modifying a previous order relative to the property division in a divorce proceeding. Gleason claims the trial court's calculations were erroneous and that the trial court's deviation from the statutory

presumption of an equal property division was not reasonable or supported by the evidence. Because these issues were already conclusively determined by the earlier appeal, we are bound by our decision and must reject Gleason's arguments. Moreover, we cannot conclude that the trial court erroneously exercised its discretion. We affirm.

BACKGROUND

¶2 Richard and Ellen were divorced in July 1999, after six years of marriage. As a part of the property division, the parties entered into a stipulation in which they agreed that the marital estate was worth $151,370. This number represented the total marital estate after removing $28,829, which represented Ellen's gifted or inherited property. The $151,370 marital estate included $32,040, which the trial court found represented the amount Ellen brought to the marriage, $4,150,[1] which the trial court found represented the amount Richard brought to the marriage, and the remainder, which represented the appreciation and growth of the estate during the marriage. Thus, in the final determination, Richard received $4,150 plus one-half of $115,180 and Ellen received $32,040 plus one-half of $115,180.

¶3 The trial court found that a fifty-fifty division of property was not appropriate because of the short duration of the marriage and because of the difference in the amount of assets each party brought to the marriage. Therefore, the trial court divided the property so that both Ellen and Richard would receive

[1] In the record, this amount is at times referred to as $4,150 and at times referred to as $4,115. In the most recent order, however, the trial court used $4,150; therefore, we do so as well.

the pre-marital amount each brought to the marriage, plus fifty percent of the remainder of the marital estate.

¶4 During the first appeal in this matter, this court reversed the property division order because the trial court had made an erroneous calculation. On remand, the trial court conducted proceedings to correct that error. In doing so, the trial court discovered that it had erroneously credited Ellen two times with her gifted/inherited property. The trial court corrected this mistake to reach the numbers referred to above. It entered an order reflecting its decision. Richard appeals from that order.

DISCUSSION

¶5 Richard complains again about the trial court's decision, claiming that: (1) it made erroneous calculations; and (2) it failed to provide a reason for deviating from the statutory presumption of a fifty-fifty split. These are the same issues Richard raised in the first appeal from this case. By summary order, we conclusively determined that there was "no reason to disturb the court's findings of fact, or the court's conclusion that a straight fifty-fifty division of the property in this case was not appropriate." *See* ***Gleason v. Gleason***, No. 00-1827, unpublished slip op. (Wis. Ct. App. Oct. 25, 2001). Thus, the second issue Richard raises here is precluded by the law of the case doctrine and will not be reconsidered. ***State v. Brady***, 130 Wis. 2d 443, 448, 388 N.W.2d 151 (1986). Because the record supplies ample evidence for the trial court's decision to deviate from the statutory presumptive fifty-fifty division and because the trial court provided a reasoned explanation for doing so, we conclude there is no reason to reconsider the prior ruling.

¶6 On the first issue, Richard argues more specifically that the total estate was actually over $180,000, that he brought more than $4,150 to the marriage, and that Ellen's premarital amount was actually less than that found by the trial court. We reject his claims.

¶7 The division of the marital estate is within the discretion of the trial court. ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). We will sustain the trial court's decision as long as it examined the relevant facts, applied the proper standard of law and, using a rational process, reached a reasonable conclusion. ***Id.*** Moreover, the valuation of a particular marital asset is a finding of fact which we will not upset unless clearly erroneous. ***Id.***

¶8 On remand, the trial court explained and corrected the numbers used during the property division. It appears that Richard failed to read or understand the trial court's recent order governing this matter. The trial court explained that the marital estate was $151,370, not the $180,000-plus figure which Richard wanted. The reason for this was that Ellen's gifted and inherited property was not included. Gifted and inherited property is not considered marital property. WIS. STAT. § 767.255(2)(a). The trial court found that the $28,829 was gifted/inherited property and not subject to division. Richard attempts to argue that Ellen commingled this property into the marital estate. The trial court did not so find, and we cannot conclude that the trial court's finding was clearly erroneous. The gifted/inherited property is still traceable, and there is no evidence that Ellen converted that property to joint tenancy. Accordingly, the trial court was correct to use the $151,370 figure as the marital estate.

¶9 Second, the trial court found that Richard brought $4,150 to the marriage and that Ellen brought $32,040. Again, there is evidence in the record to

support the trial court's findings; therefore, this court cannot conclude that the findings were clearly erroneous. Richard argues that there was testimony showing he brought a larger amount than that found by the trial court and that Ellen brought a smaller amount than that found by the trial court. We are not persuaded. The trial court heard the testimony from both parties and made credibility determinations which were reasonable. Accordingly, we hold that the trial court did not erroneously exercise its discretion when it entered the order upon remand from this court.

¶10 The trial court followed our instructions, corrected the calculation error, and reached a reasonable determination. Therefore, we affirm the order of the trial court.

By the Court.—Order affirmed.

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