COURT OF APPEALS
DECISION
DATED AND FILED

September 24, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1069-FT **Cir. Ct. No. 00-FA-33**

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

IN RE THE MARRIAGE OF:

PETER A. LIPTAK,

PETITIONER-APPELLANT,

V.

THERESA A. LIPTAK,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Oconto County: LARRY JESKE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Peter Liptak appeals the property division entered in his divorce judgment.[1] He argues that the trial court erroneously included a parcel of inherited real estate as property subject to division. He further contends that the court erred when it included among the parties' debts their adult daughter's student loan. Because the record supports the trial court's determination, we affirm the judgment. .

Background

¶2 Peter and Theresa Liptak were married in 1976. In 1985, Peter and his brother, James Liptak, inherited from their mother an older house with thirty acres of real estate. Peter testified that the value of a one-half interest in the property was $66,000. In 1987, because of a looming bankruptcy, Peter and Theresa quitclaimed the property to James and his wife. Peter stated that the intent of the deed was to transfer all of his interest to his brother and his wife, Kathy, to avoid including it in his bankruptcy estate.

¶3 Peter testified that shortly thereafter James and his wife delivered a quitclaim deed conveying back to Peter and Theresa a one-half interest in the property. That deed, however, was never recorded. Peter explained that he believed he held "equitable title," explaining as follows:

> Q. [I]s it your position today that there is another deed signed, correct?
>
> A. Correct.
>
> ….

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

Q. And transferring your interest in that property?

A. Correct.

Q. To Theresa?

A. And me.

Q. And you?

A. [It] would have been a return of a half interest.

Q. So it would be a half interest of your brother and his wife to yourself and Theresa?

A. Correct.

Q. And you're indicating today that you would be willing to provide – to give Theresa your one-half interest in that property?

A. Yes.

¶4 Peter testified that the quitclaim deed from James and Kathy was in Theresa's possession in the parties' safe deposit box. He stated: "I don't have a key for the safety deposit box and that deed could be recorded at any time, so there's no—that's what the truth is. It's there." When Peter was asked, "You saw that?" he responded, "Oh, absolutely. I hand-carried it." He stated: "[T]he last time I saw it, it was at a safety deposit box at the Timberwood Bank."

¶5 Peter further testified that at the time of trial, Theresa was living on the property and had made some improvements. He testified that he did not want the house because "I have a house. I don't need two houses."

¶6 Theresa testified that she spent $6,800 improving the property. She stated that at Peter's direction, she made improvements to plumbing and other fixtures. On cross-examination, Theresa testified inconsistently. She stated that the property is deeded to James and Kathy, not her and Peter, but that James

acknowledged one-half of it is Peter's and that Theresa could stay there as long as she wanted. She also testified as follows:

> Q. Peter does not own that house?
>
> A. He owns half of it.
>
> ….
>
> A. [H]is brother says he does. I talked to him on the phone the other day.
>
> ….
>
> Q. You would agree Peter's brother could come throw you out of the house any day?
>
> A. No, he wrote me a note saying I could stay there as long as I want.
>
> Q. If he wanted to, he could come and throw you out of that house?
>
> A. If he wanted to, he could, but he's not like that.
>
> Q. He could have Peter thrown off the property; is that right?
>
> A. That's right.

¶7 The court stated that it "had a difficult time evaluating this marital estate because of the changing status of assets and liabilities." The court adopted Theresa's proposed property division because the information it was based upon "pre-dated a number of questionable transactions by Mr. Liptak" and the values were established "closer to the time when the parties had mutual control of the purse strings of the family finances and business." The court awarded the real estate in question to Peter. The court ordered that to equalize the property division, Peter was to pay Theresa $46,355.

Standard of Review

¶8 Generally, a property division is within the sound discretion of the trial court. ***Weiss v. Weiss***, 122 Wis. 2d 688, 694, 365 N.W.2d 608 (Ct. App. 1984). Consistent with these standards, an appellate court will generally look for reasons to sustain a discretionary determination, ***Steinbach v. Gustafson***, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993), and we may independently search the record to determine whether additional reasons exist to support the trial court's exercise of discretion. ***Stan's Lumber v. Fleming***, 196 Wis. 2d 554, 573, 538 N.W.2d 849 (Ct. App. 1995).

¶9 Underlying a discretionary decision may be questions of fact and law. A trial court's findings of fact will not be upset on appeal unless they are clearly erroneous. WIS. STAT. § 805.17(2). When the trial judge acts as the finder of fact and there is conflicting testimony, the trial judge is the ultimate arbiter of the witness' credibility. *See* ***id.*** When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact. ***Bank of Sun Prairie v. Opstein***, 86 Wis. 2d 669, 676, 273 N.W.2d 279 (1979).

¶10 Whether the property at issue in this case is marital property subject to division under WIS. STAT. § 767.255 involves the application of a statute to a found set of facts. *See* ***Weiss***, 122 Wis. 2d at 694. As such, it presents a question of law, and we owe no deference to the trial court's determination. ***Id.***

Discussion

1. Real estate

¶11 Peter argues that neither party has any legally recognized ownership of the real estate and therefore it is not property subject to division under WIS. STAT. § 767.255. He neglects his own testimony, and emphasizes Theresa's conflicting testimony that James could have thrown Peter out any time. We are unpersuaded.

¶12 It is the trial court's function, not this court's, to resolve conflicts in testimony. WIS. STAT. § 805.17(2). Peter testified that James and Kathy delivered to him a deed that conveyed to himself and Theresa a one-half interest in the realty. He further testified that the deed was kept in a safe deposit box and could be recorded any time. The trial court was entitled to accept Peter's testimony as the most coherent version of the facts. The court could have inferred that Theresa did not know about the quitclaim deed Peter hand carried and placed in the Timberwood Bank safe deposit box. Consequently, the record supports the court's finding that Peter and Theresa own a one-half interest in the property.

¶13 Peter further argues, however, that regardless of title, he inherited the property and therefore it is not subject to division under WIS. STAT. § 767.255(2). We reject this argument. Based on Peter's testimony, the court could find that the conveyance from Peter and Theresa and back again changed the character of the property by virtue of its conversion into a joint tenancy.

¶14 WISCONSIN STAT. § 767.255 exempts gifted and inherited property from the property division if it retains its identity *and* character. ***Trattles v. Trattles***, 126 Wis. 2d 219, 225, 376 N.W.2d 379 (Ct. App. 1985). However,

"[t]he transfer of separately owned property into joint tenancy changes the character of the ownership interest in the entire property into marital property which is subject to division." ***Id.*** "Other jurisdictions have alluded to this concept as the doctrine of transmutation." ***Id.*** at 225.

> The inheriting or donee spouse has made a conscious and presumably informed decision to alter the existing manner in which his or her solely owned exempt property is held. As a result of this decision, such property no longer retains its character as separate property but rather becomes part of the marital estate subject to division under sec. 767.255, Stats.

Id. at 227.

¶15 The property becomes marital property because each of the joint tenants has an equal interest in the entire property during the tenancy, regardless of unequal contributions at the time the joint tenancy is created. ***Id.*** at 226-27. *See* WIS. STAT. § 700.17(2)(a). "The property no longer retains its character as separate property but rather becomes part of the marital estate subject to division under [WIS. STAT.] § 767.255." ***Weiss***, 122 Wis. 2d at 692.

¶16 The mere fact that the property's identity can be traced does not entitle the property to exempt status if its character has been converted. ***Id.*** at 694. This is the factor Peter overlooks in his argument. The property Peter inherited is no longer inherited property because its character has been changed by virtue of deeding the property to James and subsequently converting it into a joint tenancy

in real estate. *See* ***id.*** The tracing feature does not apply because there is no longer any separate, inherited property to trace. *See* ***id***.[2]

¶17 Peter further relies on Theresa's testimony that James refuses to make out a new deed. Peter testified, however, that James "acknowledged that the 14-year-old deed was correct and refused to do a new deed." Also, Peter stated: "that deed could be recorded at any time, so there's no—that's what the truth is. It's there." Again, the trial court, not this court, resolves inconsistent testimony. *See* ***State v. Wyss***, 124 Wis. 2d 681, 694, 370 N.W.2d 745 (1985). Appellate courts search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court did not but could have reached. ***Estate of Dejmal***, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). Based on the record, the trial court was entitled to find that the quitclaim deed to Peter and Theresa was in the safe deposit box, that James acknowledged it to be correct, and therefore, no new deed is required.

¶18 Peter argues that neither party is able to produce the deed. Our review of the record fails to uncover any support for this statement. Peter fails to cite any part of the record that supports this factual allegation. WIS. STAT. RULE 809.19(1). Because this argument is made without record citation, it may be rejected on this ground alone. WIS. STAT. RULE 809.83(2).[3] Additionally, the

[2] Because we decide this case on the basis of the alteration of the character of the inherited property, "we are not required to address the identity/tracing issue." ***Trattles v. Trattles***, 126 Wis. 2d 219, 224-25 n.3, 376 N.W.2d 379 (Ct. App. 1985).

[3] Peter argues that Theresa makes arguments unsupported by the record. In reaching our decision in this case, we do not rely on matters outside the record. ***Jenkins v. Sabourin***, 104 Wis. 2d 309, 313-14, 311 N.W.2d 600 (1981).

court was entitled to believe Peter's testimony to that the deed was in a safe deposit box, and "that deed could be recorded at any time, so there's no—that's what the truth is. It's there." Consequently, this argument is rejected.

¶19 Peter further argues that a quitclaim deed "confers no benefit on the signatory" but "simply eliminates the possibility the signatory could ever make a claim against the property," citing WIS. STAT. § 706.10(4). Because Peter's argument fails to acknowledge his own testimony that he received a deed from James and Kathy conveying a one-half interest in the property, it is rejected.

¶20 Peter also emphasizes that the deed is unrecorded. Peter fails to cite any authority for his implicit proposition that the lack of recording invalidates the conveyance from James and Kathy. Propositions of law lacking legal authority are rejected. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980).

¶21 Next, Peter argues that the mere fact that Theresa maintained the property using marital funds is insufficient to transmute its character to marital property. Because this argument neglects the effect of the quitclaim deed to James and Kathy, and then back to Peter and Theresa, it must be rejected.

¶22 Peter argues that because there is no showing that the property is unencumbered, the court's valuation of it may be erroneous. We are unpersuaded. Because the court was entitled to rely on Peter's testimony as to value, we do not overturn its decision on appeal. *See* WIS. STAT. § 805.17(2).

¶23 Additionally, Peter argues that Theresa has failed to show that the property should be subject to division due to hardship under WIS. STAT. § 767.255. Because the record permits a finding that the character of the property

has not been preserved as inherited property, it would not be exempt from division. Therefore, Theresa is not required to show hardship.

2. Student Loan

¶24 Peter argues that the trial court erroneously included as a marital debt a student loan of his adult daughter. Peter relies on ***Weiss***, which held that a parent has no legal obligation to pay adult children's college expenses and, therefore, such payment on the child's behalf is not a marital debt. *See* ***id.*** at 699-700.

> As to the adult children's college expenses, the supreme court has held that there is no legal obligation to support a child beyond the age of eighteen years. *Miller v. Miller*, 67 Wis. 2d 435, 442, 447, 227 N.W.2d 626, 629-30, 632 (1975). Undertaking the support of his two adult children was solely Daniel's decision. While commendable, he had no legal obligation to do so. Such a liability is not a joint marital debt and should not have been deducted from the marital estate.

Id. at 699.

¶25 Here, Theresa testified: "Peter said that I should co-sign the loans with her because he had a bad credit rating and I should co-sign, and we told her we'd pay for half." Because Theresa co-signed the loan based upon an agreement between the parties, ***Weiss*** must be distinguished

¶26 Peter contends, nonetheless, that any actual liability is purely speculative, and there was no evidence the loan had come due or would come due for many years. He cites ***Popp v. Popp***, 146 Wis. 2d 778, 793, 432 N.W.2d 600 (Ct. App. 1988), stating that without evidence that contingent liability is imminent, its consideration is speculative and should be rejected.

> Our supreme court has held that contingent liabilities that may never be paid need not be deducted in determining net worth. Absent evidence that such liability is imminent or likely, its consideration strays into the realm of speculation and mere theory. *See Ondrasek v. Ondrasek*, 126 Wis.2d 469, 480, 377 N.W.2d 190, 194 (Ct. App. 1985) (holding that discounting the value of real estate for capital gains tax was improper where the evidence did not reveal that a sale was imminent and the judgment did not require a sale of the property).

Id. at 793 (citations omitted). We are unpersuaded that ***Popp*** controls. Theresa explained that both parties had agreed to pay for one-half of their daughter's student loan, and that she co-signed the loan based on that agreement. We conclude that under these circumstances, it was within the trial court's discretion to include one-half of the loan amount as a marital debt.

¶27 Alternatively, Peter argues that the court should have included the loan he co-signed for his son. We disagree. On the last day of trial, Peter claimed that he was responsible for an adult son's student loan. It had not been included on previous financial disclosure statements, and Theresa testified that she had not been aware of it before the trial. Absent a showing of the parties' agreement to be responsible for the son's loan, the court could reasonably conclude that Theresa should not share responsibility.

By the Court.—Judgment affirmed.

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