

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 25, 2004

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. 03-0730
STATE OF WISCONSIN**

Cir. Ct. No. 91FA000240

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

HELEN L. ROGERS F/K/A HELEN LOUISE GRUNEWALD,

PETITIONER-RESPONDENT,

V.

REXFORD G. GRUNEWALD,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
ROBERT DE CHAMBEAU, Judge. *Reversed and cause remanded with
directions.*

Before Deininger, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Rexford Grunewald appeals from an order calculating the amount he still owes for the property settlement with his former

wife, Helen Rogers. The issue is whether the circuit court erred in concluding that Grunewald's payments toward the property settlement commenced in December 1993. We reverse and remand for further proceedings consistent with this opinion.

¶2 Rogers and Grunewald were divorced on January 12, 1993. The circuit court entered a postjudgment order on December 21, 1993. Over eight years later, on March 18, 2002, Rogers moved the court to calculate the exact amount still due her from Grunewald. On May 24, 2002, the family court commissioner issued a decision concluding that Grunewald had begun making payments toward the property division as of the date of the judgment of divorce, January 12, 1993. On de novo review, the circuit court concluded that the property settlement payments did not commence until after its postjudgment order entered December 21, 1993.

¶3 The crux of the dispute is whether the payments made by Grunewald to Rogers between entry of the divorce judgment in January and entry of the postjudgment order in December were made toward the property settlement or were made for some other reason. Grunewald paid Rogers a total of \$14,300 during that period, which he contends should have been credited against the property settlement. Rogers concedes that she received these payments, but contends the payments did not count against the property settlement because the December order stated that she was still owed the entire amount originally awarded her. She suggests that the circuit court thus implicitly awarded her the

payments between January and December as a type of penalty for Grunewald's misconduct.¹

¶4 Resolution of this question requires that we interpret the circuit court's judgment of divorce and its postjudgment order. "A court interprets a judgment in the same manner as other written instruments." *Schultz v. Schultz*, 194 Wis. 2d 799, 805, 535 N.W.2d 116 (Ct. App. 1995). "Whether a judgment is ambiguous is a question of law to which we owe no deference." *Id.* "Ambiguity exists where the language of the written instrument is subject to two or more reasonable interpretations, either on its face or as applied to the extrinsic facts to which it refers." *Id.* at 805-06. If the judgment is ambiguous, we give deference to the trial judge's interpretation of his or her own prior judgment. *Id.* at 808. This is because "resolution of the ambiguity is made based upon the judge's experience of trial or prior experience with the record." *Id.*

¶5 Here, the circuit court freely admitted that it had little recollection of the specifics of this case due to the passage of time. We adjust the deference we give the circuit court's decision accordingly. And, doing so, we conclude that the circuit court's construction of its prior judgment and order is unreasonable. Retroactively interpreting its actions, the circuit court stated that it must have excluded the payments made prior to the December order based on Grunewald's bad conduct in the proceedings and other equitable concerns. However, the circuit court did not find Grunewald in contempt when it entered the December order and

¹ Rogers had been awarded temporary maintenance while the divorce proceedings were pending. Neither party suggests that the payments were for maintenance, which was denied in the judgment of divorce.

it did not provide any reason for disregarding Grunewald's payments over the prior eleven months.

¶6 Turning to the language of the documents, the judgment of divorce entered in January provided that Grunewald pay Rogers \$155,601.40 as a property equalization payment. The court directed Grunewald to give Rogers "within sixty days after the date of this decision a note for that amount at 8% interest" amortized over ten years. The court's postjudgment order made minor adjustments to the award, and then provided that "the balance ... due is \$157,161.40." This is the same amount as the January judgment, but for the adjustments to reflect the postjudgment ruling.²

¶7 Despite the use of the present tense "is" in the December order, this sentence must be read in the context of the original judgment of divorce, which required Grunewald to promptly begin making payments. The only reasonable reading of the December order is that the circuit court did nothing more than make adjustments to the original judgment in response to the parties' postjudgment motions. The court did not intentionally disregard Grunewald's interim payments, but simply failed to note that those payments were being made in satisfaction of the original judgment while postjudgment proceedings were pending. Therefore, we reverse and remand with directions that Grunewald be given credit for the property settlement payments he made between January and December, 1993.

² Specifically, the postjudgment order excluded \$15,600 from the marital estate to credit Rogers for stock that was a gift to her and gave Grunewald credit for \$7,800 in temporary maintenance he paid from the time of the trial until the date the court entered the judgment of divorce. Taking into account the 60/40 split of the marital property, this provided a balance due Rogers of \$157,161.40.

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

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

