

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 18, 2012

A. John Voelker
Acting 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. 2011AP1329-FT

Cir. Ct. No. 2008FA67

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JEAN M. IVERSON,

PETITIONER-APPELLANT,

V.

LOWELL R. IVERSON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County:
HOWARD W. CAMERON, JR., Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM.¹ Jean Iverson appeals a postdivorce order regarding a marital settlement agreement (“MSA”) and the division of sale proceeds from a business known as Lavender Thymes. The principal issue concerns whether Jean was responsible for the business’s debt. We conclude the MSA was ambiguous and the court reasonably interpreted the parties’ intent to hold Jean responsible for the debt. We therefore affirm.

¶2 Jean and Lowell Iverson were married in 1982 and divorced in 2009. The parties resolved issues of child support, maintenance and property division. A marital settlement agreement was incorporated into the divorce judgment. Jean operated Lavender Thymes. The MSA’s property division provision required that the business be sold and the net proceeds divided equally. Jean agreed to “maintain average inventory in the store” and further agreed that “she will not increase the credit card debt against the business beyond \$50,000.” Lowell agreed to pay Jean a \$40,000 cash equalization payment from his share of the net sale proceeds of Lavender Thymes or a Mexican timeshare that Lowell was directed to sell, whichever occurred first.

¶3 The MSA further provided under the heading “Debts and Obligations”:

[Jean] shall be responsible for the following debts and liabilities incurred by the parties as disclosed in the course of these proceedings, and she shall hold [Lowell] harmless thereon:

....

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

-Any and all debt related to the business known as Lavender Thymes.

¶4 The parties disputed who would be allowed to claim Lavender Thymes' 2009 business losses on their tax returns. In an order dated May 6, 2010, the circuit court determined that "the business losses and gains of Lavender Thymes, LLC have been assigned to Ms. Jean Iverson."

¶5 Subsequently, Lavender Thymes sold for \$60,942. The broker was paid a 9% commission of \$5,484 and Jean brought \$11,677 to the closing to satisfy debts that exceeded the sale price.² Jean paid the remainder of the business debt from the sale proceeds, leaving no sale proceeds to divide with Lowell.

¶6 The Mexican timeshare was sold for \$92,533.34, after expenses. Jean filed a contempt motion because she had "received no sale proceeds nor has she received her \$40,000 property division equalization payment that was to be paid to her"³ Lowell subsequently filed a motion for contempt regarding the sale of Lavender Thymes and the lack of disbursement of sale proceeds.

¶7 The circuit court found Lowell in contempt for wrongfully withholding funds from the timeshare sale. The court also concluded the MSA was ambiguous regarding whether Jean should have paid the business debt before

² The record is unclear as to the amount of Lavender Thymes' debt on the date of sale. Lowell claims the debt "had increased to \$67,000 despite the MSA provision" However, Lowell's citation is unsupported by the record. Jean argues her financial disclosure statement indicated the "business debt total is \$57,244." It appears the debt increased after the filing of the financial disclosure statement. It is undisputed, however, that the debt exceeded the sale price of the business, thus necessitating the \$11,067 Jean brought to the closing to satisfy the deficiency.

³ A hearing was held on October 7, 2010, and at that time the circuit court ordered Lowell to pay Jean \$46,290.67 for her share of the timeshare proceeds. The court reserved ruling on the issues of contempt, attorney fees and sanctions.

calculating the division of the sale proceeds of Lavender Thymes. The court therefore considered extrinsic evidence to determine the parties' intent regarding the responsibility for the Lavender Thymes debt. The court found that the parties intended Jean would be responsible for all of the debt.

¶8 The circuit court held that Lowell's one-half share of the business, after deduction of the sale commission, was \$27,786.45. The court then augmented Lowell's \$27,786.45 share of the business with the costs of selling the timeshare, and offset that amount by an award to Jean for Lowell's contempt. This resulted in an award to Lowell of \$24,960.03 from the sale of the business, which the court then deducted from the \$40,000 equalization payment Jean was owed. Jean now appeals.

¶9 Rules of contract construction apply to a divorce judgment, even when the divorce judgment is based on the parties' stipulation. *See Waters v. Waters*, 2007 WI App 40, ¶6, 300 Wis. 2d 224, 730 N.W.2d 655. 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.*, ¶8. The court will consider the whole record in construing a divorce judgment where the judgment is ambiguous. *Id.*

¶10 The circuit court correctly determined the MSA was ambiguous regarding the responsibility for Lavender Thymes' debts. The MSA indicated the "net" sale proceeds of Lavender Thymes were to be divided equally. However, the MSA also specified that Jean was responsible for "any and all debt related to the business known as Lavender Thymes." This could be reasonably interpreted to mean that "net" sale proceeds would include a deduction for all expenses, including business debt, with Jean then being responsible for any business debt

remaining in the event of a deficiency sale. Another reasonable interpretation would be that Jean was exclusively responsible for the business debt, and “net” sale proceeds subject to division would be defined simply as sale price minus commission or other costs related to the sale.

¶11 The circuit court therefore took evidence to resolve the ambiguity over the parties’ intent concerning the business debt.⁴ It concluded, based on the evidence, that Jean was responsible for all of Lavender Thymes’ debt. Although a different judge may have come to another conclusion, an adequate factual basis exists in the evidence to support the court’s determination. *See* WIS. STAT. § 805.17(2).

¶12 Here, the MSA specifically provided that Jean would be responsible for “[a]ny and all debt related to the business known as Lavender Thymes.” The MSA also provided that Jean “shall hold [Lowell] harmless thereon” The circuit court found “notable” the May 6, 2010 order in which it determined that the “business losses and gains of Lavender Thymes, LLC have been assigned to Ms. Jean Iverson.” The court emphasized it had issued this decision “after an argument arose regarding credit for a business loss deduction on tax returns.” The court also found that Jean improperly increased the credit card debt beyond the \$50,000 limit imposed by the court. Based on the whole record, the court

⁴ Contrary to Jean’s perception, the circuit court did not modify the MSA. We recognize the \$40,000 equalization payment was a fixed sum, and the circuit court could have paid Jean \$40,000 first and then ordered her to pay Lowell \$24,960.03. The result would have been the same under either scenario and we fail to see error in this regard.

reasonably interpreted the parties' intent to hold Jean responsible for the debt of the business.⁵

By the Court.—Order affirmed.

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

⁵ The court's conclusion also acknowledges the common sense result of discouraging Jean from increasing the business debt in an effort to decrease the possibility of Lowell receiving anything from the sale of the business after she received the equalization payment from the sale of the timeshare.

