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DISTRICT II

August 28, 2024

To:

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Circuit Court Judge
Electronic Notice

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Fond du Lac County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2022AP1858 Randy James Leppla v. Jodi Lynn Leppla (L.C. #2020FA298)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jodi Lynn Leppla appeals from the property division portion of a judgment dissolving her marriage to Randy James Leppla. Jodi[1] argues that the circuit court erred by: (1) ordering an unequal property division; (2) determining that Jodi failed to establish marital waste by Randy; (3) determining the value of the marital residence; (4) determining the value of Randy's business; (5) determining that a constructive trust was not warranted; and (6) failing to perform

[1] We refer to the parties by their first names because they share a surname.

its duties promptly and efficiently.[2] Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[3] For the reasons discussed below, we summarily affirm the judgment of the circuit court.

BACKGROUND

Jodi and Randy were married in 2018, first separated in 2020, and were divorced effective December 22, 2021. Both parties had previously been divorced. The parties had no children together. After conducting a two-day trial in December 2021 and February 2022, the circuit court entered findings of fact, conclusions of law, and a judgment of divorce on March 3, 2022, addressing all issues except for property division.

In April 2022, while the circuit court's decision on property division was pending, Jodi filed a motion to reopen the hearing on property division. Jodi also sought an order allowing her to occupy the marital residence, perjury and contempt findings against Randy for filing an allegedly false financial disclosure statement, and a constructive trust on funds Randy withdrew from life insurance policies for down payments on real estate purchases. Following a hearing, the court denied Jodi's motion in its entirety.

The circuit court entered a final decision and order, supplemental findings of fact, conclusions of law, and judgment of divorce on September 21, 2022. Among other things, the court awarded the marital residence to Randy and generally ordered the return of property each

[2] Jodi raises eight issues in her brief-in-chief on appeal, but combines and narrows them down to these six issues in her reply brief.

[3] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

party brought to the marriage. The court also ordered Randy to make an equalization payment to Jodi of over $45,000, less the amount the court found attributable to Jodi's overtrial of the case. Jodi now appeals, challenging several aspects of the court's division of property.

STANDARD OF REVIEW

Property division is within the circuit court's discretion. ***Noble v. Noble***, 2005 WI App 227, ¶15, 287 Wis. 2d 699, 706 N.W.2d 166. We will uphold the court's division of property "if the court gave rational reasons for its decision and based its decision on facts in the record." ***Id.***

DISCUSSION

1. Unequal Property Division

Jodi first argues that the circuit court failed to properly apply the factors set forth in WIS. STAT. § 767.61 in dividing the property of the parties. She takes issue with the court's decision to return to Randy the nearly $62,000 down payment that he made on the marital residence, and argues that the court "erred" by returning to the parties portions of his or her premarital property. Although conceding that property division is at the court's discretion, Jodi asserts that the court erroneously began with a presumption of an unequal division. We reject Jodi's arguments as unsupported by the record.

The record reflects that, in support of an unequal division of property, the circuit court considered all of the statutory factors under WIS. STAT. § 767.61(3)(a)-(m) and applied them to the relevant facts. The court cited to governing case law and reached a reasoned decision. It explained that "[w]hile a [c]ourt normally starts with an equal division of property, that is not the required end result." *See* ***Settipalli v. Settipalli***, 2005 WI App. 8, ¶12, 278 Wis. 2d 339, 692 N.W.2d 279 (directing that "[t]he trial court must begin the property division analysis with the

presumption that the marital estate will be divided equally, but may deviate from that presumption after considering the relevant factors" in the statute).

We conclude that the circuit court properly considered the statutory factors in light of the evidence presented, including the short term of the marriage and the property each party brought to the marriage. Jodi does not point to any pertinent facts to the contrary and, therefore, has failed to show that the court erroneously exercised its discretion in ordering an unequal property division.

2. Marital Waste

Next, Jodi argues that that the circuit court erroneously determined that Randy had not committed marital waste or defrauded the court with his management of several life insurance policies that Randy brought to the marriage. Jodi asserts that all proceeds that were used from the policies should be included on the balance sheet as divisible marital property. We reject this argument because the court made an explicit finding that: "Jodi has proffered insufficient evidence that the loan proceeds were 'wasted' or that Randy acted inappropriately in requesting and using the life insurance loans." As stated above, the record supports the court's finding and Jodi has failed to demonstrate an erroneous exercise of discretion with regard to the court's application of the WIS. STAT. § 767.61(3) factors to the evidence before it.

Moreover, Jodi takes issue with the court's valuation of the life insurance policies. She primarily bases her argument regarding the policies on the fact that the court found credible Randy's testimony that the value of the policies declined because he withdrew funds from them to cover marital expenses such as a down payment and remodel on the marital residence and taxes. "When two parties to a divorce present conflicting testimony concerning the value of

property, the trial court's job is to determine the credibility of the witnesses, weigh the evidence, and resolve the dispute." ***Noble***, 287 Wis. 2d 699, ¶16 (citation omitted). In such a case, "the [circuit] court is the ultimate arbiter of the credibility of the witnesses." ***Id.***

Because the circuit court is in a better position than this court to judge the credibility of witness testimony, we defer to the court's findings regarding the value of the life insurance policies and reject Jodi's arguments on this issue.

3. Business Valuation

Jodi next challenges the circuit court's decision to award Randy's business to Randy at no value. The court's decision presents a clear rationale supporting its determination; namely that "Randy's business was not appraised and there is no value advanced in the divorce that meets the ***Daubert***[4] standard for an opinion on value." The court accepted Randy's testimony that the business has no assets and, as the sole "employee" of his business, it would have no value without Randy.

"A value determination is a finding of fact which will not be set aside unless clearly erroneous." ***Rodak v. Rodak***, 150 Wis. 2d 624, 633, 442 N.W.2d 489 (Ct. App. 1989). Here, no expert witness testimony was presented regarding the value of the business. Randy testified as described above. Jodi argued that the business had increased in value during the marriage and should be included in the balance sheet at a higher value, although the court found that Jodi offered no credible evidence to support any particular valuation. The record reflects that the

[4] ***Daubert v. Merrell Dow Pharm. Inc.***, 509 U.S. 579 (1993).

circuit court based its valuation of the business largely on credibility assessments of the witnesses.

As stated in the discussion above, this court will not overturn credibility determinations on appeal unless the testimony upon which they are based is "inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts." ***Global Steel Prods. Corp. v. Ecklund Carriers, Inc.***, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. Given that the circuit court's valuation of the business here relied heavily on credibility findings, and those findings are supported by the record, we will not disturb the valuation on appeal.

4. Valuation of Marital Residence

Jodi next argues that the circuit court erred in valuing the marital residence at $375,000 rather than at $400,000. Both parties had the home valued by appraisers in January 2021, and both appraisals came back at $375,000. Jodi later had the home reappraised without informing Randy. Jodi's second appraisal came back at a value of $400,000, but the appraiser did not conduct a walk-through of the property upon reappraisal. The court, after hearing the arguments from both parties, concluded that "[t]he admissible evidence suggests that the appraised value is $375,000."

The valuation of a given asset is a factual determination. ***Siker v. Siker***, 225 Wis. 2d 522, 527-29, 593 N.W.2d 830 (Ct. App. 1999). As a result, this court reviews a circuit court's valuation under the clearly erroneous standard. ***Id.*** at 532. When reviewing issues of fact, appellate courts search the record for evidence to support findings reached by the circuit court, not for evidence to support findings the court did not but could have reached. ***Johnson v. Merta***,

95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). Because evidence in the record supports the court's valuation, we are bound to uphold it. *See* ***id.*** at 154.

5. Constructive Trust

Jodi also takes issue with the circuit court's failure to impose a constructive trust to hold the proceeds from Randy's life insurance policies, arguing that the court's decision "is reversible error." She asserts that a constructive trust is warranted, alleging that Randy failed to disclose his use of proceeds from his life insurance policies while the divorce was pending.

A constructive trust may be imposed where a party "intentionally or negligently fails to disclose information required by sub. (1) and as a result any asset with a fair market value of $500 or more is omitted from the final distribution of property." WIS. STAT. § 767.127(5). Imposition of a constructive trust under § 767.127(5) requires both a failure to disclose and that such failure result in the asset's "omi[ssion] from the final distribution of property."

The circuit court found that the conditions for a constructive trust were not satisfied here. It concluded that such a remedy was not warranted because it specifically found that Randy had not failed to disclose any assets. The court had already rejected Jodi's marital waste argument regarding the life insurance policies "for lack of proof." It further determined, based on the evidence presented at the constructive-trust hearing, that Randy "put forward a plausible explanation" regarding his use of the funds at issue. Jodi has failed to point to credible evidence in the record from which we can conclude that the circuit court erroneously exercised its discretion in denying her motion to impose a constructive trust. We therefore reject Jodi's constructive-trust arguments.

6. Prompt and Efficient Performance of Duties

Jodi's final argument on appeal is an apparent request for some form of relief because the circuit court purportedly should have made determinations on these issues more promptly. She argues that the court's decision "was tainted" by the length of time it took for the court to issue its order regarding property division. However, Jodi fails to develop an argument supported by authority that the court was obligated to act in any particular manner at any particular time before it made its pertinent rulings. Jodi references our supreme court rules requiring judges to "dispose of all judicial matters promptly and efficiently" and to avoid unnecessary delay, but she fails to show how the circuit court here violated these rules, particularly given the many requests and overlapping issues with which the court was presented in this heavily litigated case. *See* SCR 60.04(1)(h). Jodi also fails to identify what remedy she seeks for the court's alleged violation of SCR 60.04(1)(h). We conclude that the court did not violate the supreme court rules—it issued a decision as promptly and efficiently as was appropriate given the complexity of the issues and the unnecessary delays throughout the process.[5]

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

[5] In his brief to this court, Randy requests that we impose sanction on Jodi and/or her appellate counsel for making an argument regarding the business valuation that is wholly unsupported by facts in the record and for citing to information outside of the record that post-dates the circuit court's final judgment. Randy asks that we sanction Jodi by striking the business valuation discussion in her briefs, and by imposing any other sanction we deem appropriate under WIS. STAT. § 809.83(2). While we agree that Jodi is precluded from relying on documents outside the record and remind counsel that it is a violation of this court's rules to cite to facts that were not before the circuit court, we conclude that sanctions are not warranted.

GROGAN, J. (concurring in part; dissenting in part). Property division in a divorce action is "entrusted to the discretion of the circuit court," and we will not disturb that court's decision on appeal "unless there has been an erroneous exercise of discretion." ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. "[T]he exercise of discretion is not the equivalent of unfettered decision-making." ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). Rather, "a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." ***Id.*** "A circuit court erroneously exercises its discretion if it makes an error of law or neglects to base its decision upon facts in the record." ***LeMere***, 262 Wis. 2d 426, ¶14 (quoted source omitted).

The sole dispute in this short-term marriage was in regard to the division of the parties' property. Having reviewed the circuit court's written Decision and Order (Order) and corresponding Supplemental Findings of Fact, Conclusions of Law, and Judgment of Divorce (Judgment), it is clear that the court's goal was to return Randy's and Jodi's premarital property and to equally divide the property they accumulated during the course of the marriage. While this premise was reasonable to an extent, the court failed to reasonably exercise its discretion in multiple respects,[6] which is evident from comparing the trial transcripts, Randy's post-trial brief, and Randy's proposed supplemental findings of fact, conclusions of law, and judgment of

[6] I concur with the Majority in part because the circuit court's property division decisions not specifically discussed herein were reasonable and therefore did not amount to an erroneous exercise of discretion.

divorce ("proposed supplemental findings") to the court's final Order and Judgment—neither of which it issued until *nine months* after it declared the parties divorced in December 2021.[7]

From reviewing and comparing these documents, it appears that the circuit court simply cut and pasted significant passages directly from Randy's post-trial brief and proposed supplemental findings, both of which naturally had zealously advocated on his behalf, rather than independently applying the pertinent law to the full panoply of facts presented at trial. The court's clear reliance on, and incorporation of, Randy's post-trial brief and proposed supplemental findings—which is clear from the court's verbatim incorporation of large portions of those documents into its written Order and Judgment—casts doubt on whether the court fairly and objectively considered the actual testimony and evidence submitted during the trial, which leads me to conclude that it erroneously exercised its discretion in many respects.[8]

[7] The circuit court's unexplained delay particularly impacted Jodi, who was ordered to leave the marital home in early 2021 but remained tied to the marital home because the mortgage was solely in her name, which was the result of Jodi having qualified for a $315,000 mortgage whereas Randy did not qualify. When the court finally ruled in September 2022, it stated in the Judgment that Randy had "at least" *another* 120 days from that date to refinance the mortgage, which meant Randy had "at least" until January 2023. Specifically, the court said: "Randy shall have *at least* 120 days to refinance the mortgage." (Emphasis added.) This language came word-for-word from Randy's proposed supplemental findings and post-trial brief—the court did not even bother to remove the "at least[.]" Aside from the fact that copying and pasting directly from Randy's submissions gives the impression that the court was not acting objectively, incorporating the "at least 120 days" language from Randy's brief in its Judgment resulted in the court issuing conflicting language in its Order—issued the same day—where it said that Randy "has 120 days to refinance the debt[.]"

[8] While courts regularly rely on parties' arguments, briefs, and other written submissions, the extent to which the circuit court clearly *copied and pasted directly from* Randy's post-trial brief and proposed supplemental findings is troubling.

First, the parties disputed whether Randy should be awarded the full amount of the approximately $62,000[9] he borrowed from a whole life insurance policy to make a down payment on the marital home. Jodi asserted that the full value of the loan had been paid back with marital funds during the course of the marriage and that Randy should therefore not be awarded the full amount. Randy, to the contrary, testified that they did not repay that loan at all during the course of the marriage, saying Jodi's assertion that they had paid off that loan was "[d]efinitely not true." According to Randy, although the payment records for the whole life insurance policy from which he took the loan reflected that loan repayments had been made during the course of the marriage, those repayments went toward pre-existing loans on that policy rather than the amount he took out for the down payment "because [they] still had other expenses going on with the house."

Having reviewed the payment history for the specific policy from which Randy withdrew the loan for the down payment, it appears that Randy had taken out numerous loans against that policy prior to the marriage. That payment history also reflects that multiple loan payments were made throughout the course of the marriage—which the parties' testimony confirmed was paid with marital funds—and that the repayment amount far exceeds the amount of the loan Randy took out for the down payment.[10] Although the circuit court referenced the payment history for that life insurance policy in its Order—noting that the payment history for the policy from which Randy withdrew the loan for the down payment reflected "repayments during the marriage of

[9] The whole life insurance policy reflects a loan in the amount of $65,000, but the parties' testimony clarifies that the amount attributed to the down payment was approximately $62,000.

[10] It also appears that the amounts repaid exceeded the amount of the loan that existed at the time Randy withdrew the loan for the down payment.

$87,937 until filing this action and over $104,802 since the divorce filing"—it nevertheless determined that despite marital funds having been used to repay the loans on that policy, Randy was entitled to the full amount of the down payment in the context of the marital home's equity. Given these circumstances, such a decision cannot be considered to be the result of "a rational mental process," and I would therefore conclude that this aspect of the court's decision was erroneous. *See* ***Hartung***, 102 Wis. 2d at 66.

Second, the circuit court also erred when it cut in half the value assigned to the new cabinets and appliances purchased when Randy and Jodi were remodeling the marital home, as it is undisputed that they purchased the cabinets and appliances during the marriage with joint funds. The court nevertheless assigned a value of 50% of the purchase price solely because it was Randy's opinion that these new cabinets[11] and appliances should not be valued at the purchase price and that they should instead be valued at "about half the value" of the purchase price. However, Randy had no expertise or basis for his opinion that the court should simply assign half of the purchase amount, and the only *actual* evidence as to the value of these cabinets was the purchase price itself. Even if valuing the cabinets at less than their purchase price was reasonable, it was pure speculation on the part of the court to simply conclude that the cabinets and appliances—which had not yet been installed in the home at the time of the home's appraisal—should be valued at half the purchase price. The court's decision was therefore clearly an erroneous exercise of discretion.

[11] The cabinets were showroom floor models. They had been installed in a showroom but never used in a home.

Likewise, the court similarly erred in assigning no value at all to a dock Randy and Jodi purchased with joint funds for approximately $10,000 because: (1) the only evidence introduced as to the dock's value was, as with the cabinets and appliances, the purchase price; and (2) it does not appear that the home appraisal actually included the dock's value in valuing the home. The court's conclusion that the dock was simply "a fixed asset [that] goes with the house at no additional value" was therefore an erroneous exercise of discretion.

Aside from the circuit court's decisions specifically addressed above, I generally agree with the Majority opinion; however, I do so with some reservations. Specifically, the circuit court's conclusion that the $15,000 Jodi gifted to her daughter for a wedding (which Jodi disclosed on her financial disclosure) amounted to marital waste while it simultaneously excused Randy's loan and cash withdrawals that appear to have approached, in total, almost $400,000 appears quite inequitable. This is particularly troubling given that Randy could not fully account with specificity what he had done with such large amounts over a relatively short time period, and the circuit court itself noted that it had "some question[s] as to Randy's withdrawals and loans from the insurance policies[.]" However, the circuit court further noted that despite its "question[s]" as to Randy's conduct, it nevertheless "ha[d] insufficient proof to conclude that the actions constitute marital waste."

It appears that the circuit court's conclusion as to whether Randy had engaged in marital waste was dependent at least in part on its credibility determinations, and as the trier of fact, the court was "in a far better position … to make this determination, because it ha[d] the opportunity to observe" Randy's and Jodi's respective demeanors. *See* ***Lessor v. Wangelin***, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998). Accordingly, I cannot conclude that the court's

credibility determinations were clearly erroneous, and therefore its determination as to whether Randy engaged in marital waste cannot be disturbed on this Record. *See* ***id.*** at 665-66.

Next, the circuit court's decision to value Randy's business as having no monetary value based solely on Randy's claim that his business—which apparently generated an annual income in the ballpark of $300,000—was worth $0 simply because he was the sole employee is absurd. A business that generates hundreds of thousands of dollars annually is not worth $0.[12] Nonetheless, the only individuals who offered testimony as to the business's value were Randy and Jodi themselves. While Jodi asserted that the business's profits increased during their marriage and that that growth was attributable at least in part to her attempts to shift Randy's business from paper to electronic records, her having created a business Facebook page, and her referrals of friends and family to Randy for insurance sales (most of whom transferred their policies during or after the divorce), it appears that the circuit court did not find Jodi's testimony credible and instead found Randy's testimony to be the more credible testimony.

Consequently, while it is simply unbelievable that Randy's business is truly worth nothing, Jodi failed to provide credible evidence as to its value and left the circuit court with only Randy's testimony that the business should be valued at $0 for purposes of property division. For the court to have reached any other valuation would have been mere speculation. I therefore agree with the Majority that the court did not err in assigning this valuation based on the evidence it had before it.

[12] Randy initially listed the business as having a $1,000 value, but at trial he testified it had no value.

In conclusion, although circuit courts are afforded great discretion in resolving family law disputes, that discretion must be exercised reasonably based on the evidence in the Record. Many of the court's decisions here were unreasonable or were purely speculative, and those decisions appear to be based on Randy's one-sided post-trial brief and proposed supplemental findings rather than evidence presented at trial. Further, I also note that the court's lengthy delay[13] in rendering a decision also adversely impacted Jodi, who was displaced from the marital home despite carrying a mortgage that was solely in her name. Accordingly, I concur in part and dissent in part.

Samuel A. Christensen
Clerk of Court of Appeals

[13] In his appellate brief, Randy attempts to minimize this lengthy delay and points in part to Jodi's motion seeking to reopen evidence in the matter: "[P]art of the delay was caused by Jodi asking the Court to reopen the evidence in her Motion." Randy's attempt to blame Jodi for the delay is unwarranted and without merit. Jodi filed her motion seeking to reopen this matter on April 6, 2022—less than two months after the February 9, 2022 final hearing—and the circuit court denied that motion at a June 28, 2022 hearing. Given that the court denied the motion and therefore did not accept any additional evidence or testimony, there is no basis for suggesting that Jodi's April 2022 motion somehow justified the additional three months it took the court to render its September 2022 Order and Judgment. Moreover, regardless of the complexities of this matter, which related primarily to *Randy's* practice of taking out loans and cash withdrawals from the whole life insurance policies, the court's seven-month delay in issuing the respective Order and Judgment in this matter is troubling.