

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 15, 2012

Diane M. Fremgen
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. 2011AP1236

Cir. Ct. No. 2009FA559

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

MELISSA J. RANSOM,

PETITIONER-RESPONDENT,

V.

DUSTIN T. RANSOM,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County:
JAMES L. CARLSON, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. Dustin Ransom appeals from the property division portion of the judgment granting him and Melissa Ransom a divorce. He contends the trial court erred in determining that his interest in a family business was subject to division, rather than a gift, and then overvalued his interest. We disagree with Dustin and affirm the trial court.

¶2 Dustin and Melissa married in 2001 and divorced in 2011. Dustin's parents, Timothy and Kay Ransom, owned T-K Ag Works, an agricultural service business. Dustin joined the business in 1999. In July 2000, Timothy's lawyer drew up a Members' Agreement making Ag Works an LLC. According to a property schedule attached to the Agreement, Timothy and Kay each contributed twenty-five percent to the business and Dustin contributed fifty percent, although it is undisputed that Dustin made no monetary contribution. Dustin's pay reflected a fifty percent ownership interest.

¶3 Shortly after execution of the Members' Agreement, Timothy had his accountant, Stephen Nickols, set up a gifting schedule to annually transfer a percentage of the business to Dustin. The transfer amount was kept to less than the annual exclusion so that gift tax returns would not be needed.¹

¶4 At trial, Dustin testified that he paid no money to acquire or increase his interest in Ag Works. He also testified that the gifting schedule showed him as owning zero percent of the business in 2001 and just 26.4 percent at the end of 2007, in contrast to the fifty percent shown in the July 2000 Members' Agreement. Nickols also testified that Dustin owned 26.4 percent. Dustin had named the

¹ The record and the parties' briefs are silent as to whether Timothy and Kay filed a gift tax return after the LLC initially was formed.

attorney who drafted the Members' Agreement on his witness list but did not call him to testify.

¶5 The trial court found that Dustin's interest in Ag Works was a marital asset in which he had a fifty-percent interest and assigned a valuation to it of \$225,000. Dustin appeals both the gift characterization and the valuation.

¶6 Whether property is subject to division as part of the marital estate presents a mixed question of fact and law. *See Derr v. Derr*, 2005 WI App 63, ¶45, 280 Wis. 2d 681, 696 N.W.2d 170. We review findings of historical facts under the clearly erroneous standard; the characterization of an asset as either divisible or nondivisible is a question of law subject to de novo review. *Id.* The burden of showing that property should be excluded from the marital estate is on the party asserting the exclusion. *Brandt v. Brandt*, 145 Wis. 2d 394, 408, 427 N.W.2d 126 (Ct. App. 1988); *see also* WIS. STAT. § 767.61(2)(a)1. Whether Dustin met his burden is a question of law we decide de novo. *See Popp v. Popp*, 146 Wis. 2d 778, 787, 432 N.W.2d 600 (Ct. App. 1988).

¶7 Dustin contends that, while the Members' Agreement "purported" to create a new entity with him as a fifty percent owner, his interest in Ag Works was a gift. He essentially asserts that because Nickols was the only expert to testify and said that his interest was a gift, the trial court would have had to have found that testimony not credible for it to conclude otherwise.

¶8 The weight assigned to an expert's opinion is uniquely within the province of the trial court. *Schorer v. Schorer*, 177 Wis. 2d 387, 396, 501 N.W.2d 916 (Ct. App. 1993). The fact finder is not bound by an expert's opinion, even if uncontradicted. *Krueger v. Tappan Co.*, 104 Wis. 2d 199, 203, 311 N.W.2d 219 (Ct. App. 1981). The court explained that it did not feel bound to

accept the opinion of an accountant as to the legal effect of entering into a limited liability partnership.

¶9 The trial court also found that, if the gift theory were to be accepted, Dustin “got a \$50,000 gift every year” that he did not claim as a gift but as “salary and earnings like a partner.” Instead, Dustin’s pay structure coupled with the language of the Agreement amounted to compelling evidence that Dustin has a fifty percent interest in Ag Works, which the court found to be divisible property. These findings are not clearly erroneous.²

¶10 Finally, we cannot conclude that the trial court erred by not factoring into the valuation of Ag Works the business’s existing debt. Determining the value of assets subject to division is a finding of fact that we will not disturb unless it is clearly erroneous. *See Schorer*, 177 Wis. 2d at 396. The trial court is not required to accept any one method of valuation over another. *Id.* at 399.

¶11 The court valued Dustin’s interest in Ag Works using the valuation methodology Melissa proposed. Timothy testified that Ag Works was worth between \$500,000 and \$600,000 at the time of trial. The court took the midpoint value of \$550,000 and subtracted from that \$100,000, the amount Timothy had testified the business was approximately worth when Dustin joined Ag Works. Having found that Dustin was a fifty percent owner, the court halved the resulting \$450,000 and found Dustin’s interest to be \$225,000.

² We therefore need not reach the question of whether appreciation in the value of Dustin’s interest remains separate property.

¶12 Dustin complains that the court failed to consider Nickols' testimony about Ag Works' existing debt, which Nickols testified was about \$500,000. Nickols also testified that, when he last estimated Ag Works' fair market value in 2007, Ag Works' value less its debt was around \$200,000. Nickols acknowledged that he had not estimated the FMV since then but opined that it was "[p]robably about the same." Dustin concedes that he cannot fault the court for its "quandary in this regard" because no professional evaluation of Ag Works was done.

¶13 Dustin produced no loan documents or balance sheets to substantiate the claimed debt. He did not ask Nickols to present current valuation figures, or lay a foundation that Nickols was qualified to render business valuations. Nickols testified that he is an "enrolled agent," a person certified in tax matters by the Internal Revenue Service. It was for Dustin to have an alternative professional valuation of the business performed or to otherwise provide the court with credible evidence of Ag Works' value and/or debt. He has not met his burden of proof.

By the Court.—Judgment affirmed.

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

