

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

February 15, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-2243-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**IN RE THE MARRIAGE OF:**

**HELEN MAE BROWN,**

**Petitioner-Respondent,**

**v.**

**ROBERT G. BROWN,**

**Respondent-Appellant.**

APPEAL from a judgment and an order of the circuit court for Rock County: PATRICK J. RUDE, Judge. *Judgment affirmed and cause remanded with directions; order affirmed.*

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

PER CURIAM. Robert Brown appeals from the judgment divorcing him from Helen Mae Brown, and an order finding him in contempt for violating its provisions. The issues concern the court's division of marital

property and Helen's maintenance award. We affirm the judgment and remand with directions. We also affirm the contempt order.<sup>1</sup>

Robert, then sixty-seven, and Helen, then sixty-one, divorced after forty-one years of marriage. Robert's income consisted of a \$999 per month pension from General Motors, and \$846 per month from social security. Helen received \$56 per month in SSI disability pay, and \$150 per month in rental income. After Helen commenced the divorce in 1991, Robert closed out four bank accounts totaling about \$223,000. He testified at trial that he spent some of the money on unspecified medical bills, and lost the rest gambling. In addition to that money, the parties owned real estate worth \$46,000, various cars and other property worth about \$15,000 and Robert's General Motors pension.

Part of the missing \$223,000 came from a CD purchased for \$100,000. Robert testified that he purchased it with money given to him by his mother. For that reason, he asked that it be excluded from the marital estate.

In the decision rendered from the bench, the trial court expressly disbelieved Robert's testimony that he had spent or lost the missing funds. As for the missing CD proceeds, the trial court found that the gifted money had, at some point, become commingled with marital funds. All of the missing amounts were therefore included in the marital estate, and Helen received a one-half share of them. She also received a one-half share in the General Motors pension. With the exception of Robert's car and other negligible property in his possession, Helen received all of the remaining property. However, the court declared that it would offset the value of the property against the cash assets, if found, after deducting the costs of finding those assets. The court also gave Robert a thirty-day option to purchase any of the several vehicles awarded to Helen.

Helen's maintenance award consisted, temporarily, of one-half of Robert's monthly social security check, less \$75 representing Robert's share of Helen's rental income, and one-half the pension check until entry of a Qualified Domestic Relations Order. The court ordered the maintenance award reduced

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

after Helen's sixty-second birthday, in three months, by one-half the amount Helen could then receive from her own social security pension.

Helen's counsel drafted the divorce judgment. By that time, Robert was no longer represented by counsel. The judgment as drafted and signed does not provide for reduced maintenance after Helen's sixty-second birthday, does not grant Robert the option to purchase the autos awarded Helen and does not recite the arrangement by which the court would offset the value of Helen's property against the missing money, if found. It was signed for the presiding judge by another judge of the court.

Four months after the trial and nine days after entry of the divorce judgment, the court entered a contempt order based on Robert's failure to provide titles and fees to the cars awarded to Helen, for removing property from Helen's premises awarded to her at trial, and for failing to pay any maintenance since the trial.

Property division is left to the trial court's discretion. *Haack v. Haack*, 149 Wis.2d 243, 247, 440 N.W.2d 794, 796 (Ct. App. 1989). Property that one party acquires by gift is exempt from the marital property division unless exempting it would create hardship for the other party. Section 767.255, STATS. However, gifted property may also be divided if it loses its character as one spouse's separate property. *Zirngibl v. Zirngibl*, 165 Wis.2d 130, 136, 477 N.W.2d 637, 639 (Ct. App. 1991). Income generated from gifted property is not exempt from the division. *Friebel v. Friebel*, 181 Wis.2d 285, 294, 510 N.W.2d 767, 771 (Ct. App. 1993).

The trial court properly determined that Robert's \$100,000 CD lost its character as separate gifted property. Robert testified that over forty years ago he bought a house in his name for his mother's benefit with some money from her. Later, but still "many years ago," he offered her the accumulated rent and \$25,000 sale proceeds from the house. The gift consisted of her refusal to accept the money. Robert offered no evidence as to the total amount involved, where it was kept or how it was invested until he purchased the \$100,000 CD in 1989. The only reasonable inference is that a substantial part of that sum accumulated during the marriage and was therefore marital property. The trial court reasonably inferred that the original gift amount was also divisible

because it had lost its character as individual property during the many years that Robert failed to account for it.

The trial court properly divided all of the other money that disappeared after the divorce commenced. Robert's own testimony and other evidence demonstrated that he was a very frugal man. He offered no evidence to support his claim of uninsured medical expenses or gambling losses. Having rejected Robert's unsupported testimony, the trial court reasonably inferred that the money still existed in hidden locations. Additionally, even if Robert had, in fact, lost the money gambling, the trial court could still properly consider it part of the marital estate. Section 767.275, STATS.

The trial court properly held Robert in contempt. At the time of trial, Robert's maintenance arrearage exceeded \$1,000. The trial court's order temporarily continued maintenance at \$797 per month. In the ensuing three months, Robert paid nothing, and also refused to turn over the titles and keys to the automobiles awarded to Helen. The record discloses that these facts were undisputed and that Robert offered no defense at the contempt hearing. He made no showing of inability to comply with the terms for purging the contempt.

Although we affirm the judgment, we remand to the trial court with directions to conform the judgment to the original decision. It appears probable that the substitute judge who signed the judgment failed to notice the substantial discrepancies between the oral decision rendered by the presiding judge and the judgment drafted by Helen's counsel.

*By the Court.*—Judgment affirmed and cause remanded with directions. Order affirmed. No costs to either party.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.