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DISTRICT IV

March 4, 2014

To:

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You are hereby notified that the Court has entered the following opinion and order:

2013AP547

In re the marriage of: Debra Lynn Powell v. James Ross Powell
(L.C. # 2011FA734)

Before Lundsten, Sherman and Kloppenburg, JJ.

Debra Powell appeals the property division component of her judgment of divorce from James Powell. Specifically, Debra challenges the valuation of the marital estate based upon a determination that she had wasted marital assets and an adjustment to the property division to reimburse James for support payments he made while the temporary order was in effect. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Valuation of the Marital Estate

The term “marital waste” generally refers to one spouse’s destruction of marital property, dissipation or mismanagement of marital assets, failure to pay marital obligations resulting in penalties, or incurring liabilities unrelated to the welfare of the family such as gambling debts. *See generally Covelli v. Covelli*, 2006 WI App 121, ¶¶28-31, 293 Wis. 2d 707, 718 N.W.2d 260. “To require a party to share in the debts created by a spouse’s unjustified depletion of marital assets would constitute a failure to consider the total contribution of each of the parties to the marital estate,” as required by WIS. STAT. § 767.61(3)(d). *Id.*, ¶29 (citing *Anstutz v. Anstutz*, 112 Wis. 2d 10, 13, 331 N.W.2d 844 (Ct. App. 1983)). Therefore, a determination that marital waste has occurred may be used to overcome the presumption in favor of an equal property division, which in turn may be accomplished by treating the dissipated assets as if they were still part of the marital estate and assigning them to the culpable party. *See id.*

Here, the circuit court determined that Debra had wasted marital assets by failing to make mortgage payments during the marriage—despite having the responsibility and ability to do so—and by then cashing in an IRA account worth \$7,452.57 and using a five-year-old power of attorney to refinance the mortgage without James’ knowledge. The modified loan added \$83,216.24 to the amount of principal and placed the parties underwater on their mortgage. Based upon its determination of marital waste, the court added \$90,668.99 to the value of the marital estate before dividing it between the parties.

Debra makes a conclusory assertion that the circuit court applied the wrong legal standard when it added the amounts of the refinanced mortgage and the liquidated IRA to the value of the marital estate, but the discussion section of her brief focuses solely on the factual

findings underlying the circuit court's determination. For instance, Debra asserts that the loan modification was necessary because she was having difficulty making mortgage payments while she was paying all of the marital debts and children's expenses; that she did not receive any cash payout from the loan modification—it merely added accrued interest to the balance; and that “[a]lthough it was unfortunately not made part of the record, a document certainly exists that Mr. Powell had to have signed acknowledging awareness of the [IRA] withdrawal.” However, Debra has not provided this court with a transcript of the divorce hearing to support any of her factual claims. Moreover, even if a transcript would show that Debra testified consistent with her current assertions, we note that the circuit court explicitly found that James' testimony was more credible than hers. In sum, this court will not set aside credibility determinations, and Debra has provided no basis to conclude that any of the circuit court's factual findings were clearly erroneous. The circuit court's factual findings plainly supported its determination of marital waste and its exercise of discretion to include the dissipated assets in the value of the marital estate.

Adjustment to Equalization Payment

In addition to its determination that Debra failed to make mortgage payments during the marriage, leading to the loan modification and liquidation of the IRA, the court further determined that Debra had failed to make mortgage payments after obtaining the loan modification, while the temporary order was in effect. The court deemed it fundamentally unfair that James had fulfilled his obligation under the temporary order to make support payments of \$700 a month to Debra while Debra had failed to make the \$1,600 monthly mortgage payments. Accordingly, the circuit court ordered Debra to reimburse James \$8,400 for the payments made

while the temporary order was in effect, and adjusted the equalization payment to reflect the equitable reimbursement.

Debra argues that the reimbursement was improper because James' payment was for child support, not a contribution to the mortgage. However, Debra's single paragraph on this issue does not cite to any authority that would preclude the court from offsetting one spouse's child support obligations against the other spouse's property obligations. This court need not consider arguments that are undeveloped or inadequately supported by references to relevant legal authority and record citations, and we will not do so here. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992); *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463, *abrogated on other grounds by Wiley v. M.M.N. Laufer Family Ltd. P'ship*, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236; *see also* WIS. STAT. RULE 809.19(1)(d) and (e) (setting forth the requirements for briefs).

IT IS ORDERED that the judgment of divorce is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals