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**DISTRICT IV**

April 15, 2014

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

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2012AP2757

In re the marriage of: Alan Steinhauser v. Leslie Weil-Steinhauser  
(L.C. # 2012FA26)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Leslie Weil-Steinhauser appeals the property division in a divorce judgment. Leslie contends that the circuit court erroneously exercised its discretion by excluding testimony as to Leslie's father's donative intent in paying the balance of a mortgage on the house owned by Leslie and her then-husband, Alan Steinhauser.<sup>1</sup> Leslie argues that the exclusion of the testimony as to her father's intent led the court to conclude that the mortgage payment was a gift

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<sup>1</sup> The parties' briefs refer to the parties by their first names. We do the same.

to both parties as opposed to a gift to her alone. 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 (2011-12).<sup>2</sup> We summarily affirm.

Leslie and Alan were married in 2001. During the marriage, Leslie and Alan purchased a house. The house went into foreclosure, and Leslie's father paid the balance of the mortgage on the house.

Alan petitioned for divorce in January 2012. The only issue at trial was property division.

The parties agreed that they were bound by a prenuptial agreement that provided that each party would be entitled to any separate property that that party contributed to joint property, and that the remaining joint property would then be equally divided between them. They disputed, however, whether Leslie's father's payment of the mortgage on Leslie and Alan's house was separate property that Leslie contributed.

Leslie presented testimony by her father's attorney, Alan Ferrara, to support her argument that her father intended the money for payment of the mortgage as a gift to Leslie only.<sup>3</sup> Attorney Ferrara testified that he was Leslie's father's attorney, and that he facilitated Leslie's father's payment of the mortgage on Leslie and Alan's house.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>3</sup> At the time of the trial, Leslie's father was suffering from Alzheimer's and thus not able to testify as to his intent.

The court sustained multiple hearsay objections by Alan's counsel while Leslie's counsel attempted to elicit testimony as to Leslie's father's intent. Ultimately, Attorney Ferrara testified as follows:

Q. Why did you do what you did?

A. I was given funds by [Leslie's father] to pay to the [mortgage holder] on behalf of his daughter, Leslie.

Q. And only Leslie?

A. Yes.

The circuit court found that Leslie's father did not intend the mortgage payment as a gift to Leslie only. The court stated:

And frankly, insofar as the attorney was clearly struggling to say that it was a gift only to [Leslie], I don't believe him. He's apparently a lawyer who is well-versed in gifts and trusts and apparently does that kind of work and has done a great deal of it for [Leslie's father]. And if he was correct, if somebody told him that this is to be a gift and it's a gift only to my daughter, I can't imagine any competent lawyer, particularly one with his experience, who would not have documented that somehow.

The parties agree that the issue of whether the mortgage payment from Leslie's father was a contribution from Leslie to joint property turns on whether Leslie's father intended the payment as a gift to Leslie only or as a gift to Leslie and Alan.<sup>4</sup> See *Wierman v. Wierman*, 130 Wis. 2d 425, 429 & n.3, 387 N.W.2d 744 (1986) (explaining that one of the essential elements to establish a gift is donative intent on the part of the donor). The parties dispute whether the

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<sup>4</sup> Alan also argues, in the alternative, that Leslie's father's mortgage payment does not qualify, under the prenuptial agreement, as a contribution by a party. Because we agree with Alan's argument that the circuit court relied on its credibility determination to find, as a factual matter, that Leslie's father intended the mortgage payment as a gift to Leslie and Alan, we need not reach this alternative argument.

circuit court erroneously excluded evidence of Leslie's father's donative intent and whether any error in excluding the evidence was harmless.

Leslie argues that the circuit court erred by excluding Attorney Ferrara's testimony as to Leslie's father's intent on hearsay grounds. We will assume without deciding that the circuit court erred by sustaining hearsay objections to Attorney Ferrara's testimony. We conclude, however, that the error, if any, was harmless. *See* WIS. STAT. § 805.18.

Leslie contends that the circuit court's erroneous rulings to exclude Attorney Ferrara's testimony resulted in the court's determination that Leslie's father did not intend the mortgage payment as a gift to Leslie only. However, we do not agree with Leslie's interpretation of the circuit court's decision. The circuit court did not say that it did not consider Attorney Ferrara's testimony as to Leslie's father's intent. Rather, despite the court's repeated decisions sustaining hearsay objections to Attorney Ferrara's testimony, Attorney Ferrara ultimately testified that it was Leslie's father's intent to pay Leslie and Alan's mortgage on behalf of Leslie only. The circuit court expressly considered that testimony and found that it was not credible. We discern no basis to disturb the circuit court's credibility determination. *See State v. Young*, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736 (WI App 2008) (credibility of witnesses is a determination made by the trier of fact).

In sum, we conclude that the circuit court expressly considered the testimony Leslie complains the circuit court erroneously excluded, and determined that the testimony was not credible. Accordingly, we reject Leslie's argument that the exclusion of that testimony affected the circuit court's decision. Rather, the circuit court considered the evidence, including Attorney Ferrara's testimony as to Leslie's father's intent, and found that Leslie's father intended the

mortgage payment as a gift to Leslie and Alan. Because that finding was not clearly erroneous, we will not disturb it. *See Wierman*, 130 Wis. 2d at 429 (“Intent is a fact, and the circuit court’s findings of fact concerning the transferor’s intent will be sustained unless clearly erroneous.”).

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*