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DISTRICT IV

May 23, 2014

To:

Hon. James P. Czajkowski
Circuit Court Judge
Crawford County Courthouse
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Prairie du Chien, WI 53821

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

2012AP2370 In re the marriage of: Natalie Beth Erickson v. Chris Thomas Erickson (L.C. # 2012FA10)

Before Lundsten, Higginbotham and Sherman, JJ.

Chris Erickson appeals from a judgment of divorce from Natalie Erickson and challenges the valuation of the engagement and wedding rings. 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).[1] We affirm the judgment.

The circuit court ruled that under the parties' prenuptial property agreement, Chris was entitled to have the engagement and wedding rings he gave to Natalie returned to him in the

[1] Natalie Erickson is pro se in this appeal. She did not file a respondent's brief. We conclude that summary reversal as a sanction for the failure to file a respondent's brief is not appropriate in this appeal. All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

event of divorce. Natalie had sold the rings to Weber Brothers Jewelers for $5000 when she moved out of the marital residence. Chris presented an appraisal of the rings done by Weber Brothers Jewelers four years earlier valuing the rings at $16,750. The circuit court found that the fair market value of the rings was $5000 and ordered Natalie to reimburse Chris in that amount.[2]

The valuation of a particular asset "is a finding of fact which we will not upset unless clearly erroneous." ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987); WIS. STAT. § 805.17(2). "[E]ven though the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a reasonable person to make the finding." ***Sellers v. Sellers***, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996). Assets are to be valued at their fair market value. ***Schorer v. Schorer***, 177 Wis. 2d 387, 399, 501 N.W.2d 916 (Ct. App. 1993). "Fair market value is not a valuation method but a definition assuming a sale by one who desires, but is not obligated, to sell, and a purchase by one willing, but not obligated, to buy." ***Id.*** Further, "the appropriate valuation methodology is committed to the [circuit] court's discretion." ***Sharon v. Sharon***, 178 Wis. 2d 481, 489, 504 N.W.2d 415 (Ct. App. 1993). Thus, we determine if the circuit court examined the relevant facts and demonstrated a rational process to reach a reasonable conclusion. ***Id.***

[2] In his motion for reconsideration Chris argued that the rings had always belonged to him and, therefore, Natalie is guilty of tortious conversion of his personal property which entitles him to recover the value of the property at the time of the conversion. He also makes that argument on appeal. The circuit court did not make a finding that the rings were Chris's individual property. Rather, the circuit court found Chris was entitled to the rings under the section in the prenuptial property agreement setting forth the parties' property rights upon dissolution of the marriage. The circuit court specifically found that "the parties intended that both the wedding and engagement rings *given to* [Natalie] by [Chris] *were to be returned* to [Chris] in the event of the divorce." (Emphasis added.) The circuit court found the rings were given to Natalie. Chris does not challenge this finding on appeal. Absent a finding that the rings were Chris's individual personal property, Chris may not assert tortious conversion of property and we need not address his argument.

The circuit court heard Natalie's testimony that she sold the rings for $5000 because she needed cash for living expenses. It assumed that Natalie sought to maximize the sale price as it was in her best interest to do so. Chris contends that the assumption that $5000 was the maximum sale price is not supported by the record because there is no evidence that Natalie tried to sell the rings to any other buyer or tried to get a better price. However, Chris has not provided a transcript of the divorce trial. In the absence of a trial transcript, this court will assume that the facts necessary to sustain the circuit court's decision are supported by the record. ***Suburban State Bank v. Squires***, 145 Wis. 2d 445, 451, 427 N.W.2d 393 (Ct. App. 1988). Moreover, we may not reject a factual inference drawn by a fact finder when the inference drawn is reasonable. ***Onalaska Elec. Heating, Inc. v. Schaller***, 94 Wis. 2d 493, 501, 288 N.W.2d 829 (1980).

The circuit court rejected the appraised value as the fair market value because the appraisal indicated it was for the purpose of "insurance or other purpose at the current retail value." The court reasonably determined that insurance value was not the equivalent of fair market value. *See* ***Arneson v. Arneson***, 120 Wis. 2d 236, 252, 355 N.W.2d 16 (Ct. App. 1984) (error to use replacement value as valuation method). Even Chris, in his motion for reconsideration, referred to the appraised value as the *replacement value*.

We conclude that the circuit court properly exercised its discretion in relying on the most recent sale as the valuation methodology. The finding that the fair market value of the rings was $5000 is not clearly erroneous.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals