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DISTRICT II

July 30, 2014

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

2013AP2449

Julie A. Reichert v. Jan D. Binder (L.C. #2012FA291)

Before Brown, C.J., Reilly and Gundrum, JJ.

Jan D. Binder appeals the maintenance and property division portions of a divorce judgment. The trial court unequally divided the parties' marital property in favor of Binder's former wife, Julie Reichert, and denied Binder maintenance and his attorney's request for a contribution to attorney fees. Based upon our review of the briefs and the record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We reverse and remand for a reconsideration of the maintenance, property division and attorney fees determinations.

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

Binder and Reichert married in 1991. Reichert had two children from a prior marriage but no children were born to or adopted during this marriage. Both were employed full time, Reichert as a pension and savings plan coordinator at the Kohler Company earning about \$51,000 annually and Binder as an accountant. In 1999, Binder sustained a severe traumatic brain injury in a fall from a ladder. After five months in a coma, he required substantial therapy to relearn nearly all basic skills. He made significant progress—he can do dishes and laundry, prepare simple meals, and play with the dog, and has held modest jobs—but still has impaired executive function, behavioral problems, a seizure disorder, and cognitive deficits.

Binder was placed in a home for disabled adults in April 2005. All of his cares have been covered by Social Security Disability Insurance and Medicaid. Until 2005, the SSDI was deposited in the couple's joint account and was used for household expenses and a family vacation. In October 2005, Reichert swapped the couple's home with her son for his smaller home to lessen her upkeep responsibilities. The swap resulted in a \$66,000 gift to her son.

Reichert filed for divorce in 2012. The trial court equally divided the value of the marital property held as of the date Binder was injured but awarded all marital property acquired between the date of his injury and the date of divorce solely to Reichert. It reasoned that Binder's "contributions to the marriage ... effectively ended at the time of the accident" and that Reichert's "heroic" efforts to care for him while maintaining full-time employment satisfied her spousal, moral, and legal duties. The court also denied Binder's request for "appropriate" maintenance and any contribution toward his attorney fees. Binder appeals.

The division of the marital estate and determining the amount and duration of maintenance are within the discretion of the trial court. *Liddle v. Liddle*, 140 Wis. 2d 132, 136,

410 N.W.2d 196 (Ct. App. 1987) (property division); *King v. King*, 224 Wis. 2d 235, 247, 590 N.W.2d 480 (1999) (maintenance). Equal division of the marital estate is presumed, but the court may make an unequal division after considering various factors. WIS. STAT. § 767.61(3). Likewise, an equal division of total income is a reasonable starting point in determining maintenance in a long-term marriage, *LaRocque v. LaRocque*, 139 Wis. 2d 23, 39, 406 N.W.2d 736 (1987), but the court must consider the relevant statutory factors under WIS. STAT. § 767.56 and the “twin goals” of support and fairness, *LaRocque*, 139 Wis. 2d at 33. Requiring a contribution to one party’s attorney fees also is a matter of discretion. WIS. STAT. § 767.241; *Wright v. Wright*, 2008 WI App 21, ¶45, 307 Wis. 2d 156, 747 N.W.2d 690 (2007). We will sustain discretionary determinations if the court “examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Liddle*, 140 Wis. 2d at 136.

The trial court deviated from the presumed equal division of the marital estate and post-divorce income because “[b]asically, this marriage, as we understand the normal give-and-take where both parties contribute some way, not always financially, maybe emotionally to the marriage, that that effectively ended at the time of the accident.” While the court acknowledged at one point that financial support from SSDI and Medicaid was “substantial,” it went on to reiterate that “contributions to the marriage since the accident were almost exclusively in all regards by Ms. Reichert,” that “[s]he provided the financial support,” that there were “12 years of basically her contributing exclusively,” that, in addition to financial support, “all of the emotional support, the activities, the household management have been by Ms. Reichert,” and that any contributions Binder did make to the household “were more for his rehabilitation than

actually contributions to the household” and were “for his own benefit ... not something that were benefiting to Ms. Reichert.”

We may be misconstruing the court’s comments, but as we understand marriage, it is a partnership in sickness and in health, not a tally sheet of tasks and who benefits in a circumstance such as this. We acknowledge that the court articulated its consideration of the statutory factors and that the result may be reasonable. We are so troubled by the premise that the marriage effectively ended on the date Binder suffered his debilitating injury, however, that we cannot say with confidence that the outcome reflects a proper exercise of discretion. We therefore reverse the judgment and remand the matter to the circuit court to reconsider the division of the marital estate, maintenance, and whether Reichert should contribute to Binder’s attorney fees.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily reversed and remanded, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals