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DISTRICT IV

November 10, 2014

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

2013AP2799 In re the marriage of: James Allen Stotler v. Lynette Rae Stotler n/k/a Lynette Rae Witz (L.C. # 2012FA969)

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

Lynette Stotler appeals a divorce judgment that divided property between Lynette and James Stotler.[1] Lynette challenges the circuit court's division of property on grounds that the court: (1) failed to follow the statutory presumption of an equal property division; (2) made a subjective judgment about the quality of the marriage; and (3) relied on erroneous factual

[1] At the time of the divorce, the parties shared a surname. The briefs refer to the parties by their first names, and we do the same.

findings regarding the marriage.[2] 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).[3] We summarily affirm.

Lynette and James were married in February 2003. Lynette was fifty-one and worked full-time for the United States Postal Service; James was fifty-two and worked full-time for Alliant Energy. It was a second marriage for both. James petitioned for divorce in October 2012.

The only issue in dispute between the parties was the division of property. Lynette asked the court to deviate from an equal property division by awarding to each party the property that party brought to the marriage, but equally dividing the increase in value of that property. James asked the court to deviate from an equal property division by awarding to each party the property that party brought to the marriage as well as the increased value of that property. After trial, the circuit court awarded each party the property that party brought to the marriage and its increased value, but ordered James to make a payment to Lynette of $26,092, which was the amount of credit card debt in Lynette's name.

The division of property rests within the sound discretion of the circuit court. ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We sustain a court's exercise of

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[2] Lynette makes numerous overlapping arguments in her brief. We understand Lynette to make essentially the three arguments we have identified, and we address them in that manner. To the extent we do not specifically address any sub-arguments raised by Lynette, we deem those arguments rejected. *See* ***Roberts v. Manitowoc Cnty. Bd. of Adjustment***, 2006 WI App 169, ¶35, 295 Wis. 2d 522, 721 N.W.2d 499.

[3] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

discretion 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 v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987).

Lynette argues first that the circuit court erred by failing to follow the statutory presumption in favor of an equal property division under WIS. STAT. § 767.61(3). She argues that the court deviated from the presumption only because both parties requested the court do so, without determining whether either party had carried the burden to overcome the presumption. She also contends that the court failed to follow the statutory directive to consider each enumerated factor before deviating from an equal property division. Specifically, Lynette argues that the court failed to consider as factors the parties' contributions to the increased earning power of the other and the earning capacity of each party. *See* WIS. STAT. § 767.61(3)(f) and (g). She argues that the circuit court erroneously exercised its discretion by failing to explain its reasoning in deviating from an equal property division. We disagree.

The circuit court provided a lengthy explanation of why it decided to deviate from the presumption of an equal division of property, including a consideration of the relevant statutory factors. The court considered that the marriage was a short-term marriage, that each party brought property to the marriage, and that each had assets not subject to division. *See* WIS. STAT. § 767.61(3)(a), (b) and (c). The court then explained that it found subsection (d), the contribution of each party to the marriage, particularly significant, citing trial evidence that the parties maintained separate residences and financial matters throughout the marriage. The court also considered that the parties were of comparable age and generally in good health. *See* § 767.61(3)(e). And, contrary to Lynette's contention, the court considered its finding that the parties did not contribute to the increased earning power of the other and that each party was

self-supporting.[4] *See* § 767.61(3)(f) and (g). The court found that subsections (h) and (i) were inapplicable and considered the parties' relative pension benefits under subsection (j).[5] Finally, under subsection (m)—the catchall provision—the court considered that the marriage in this case was unique as to the separateness with which the parties lived their lives throughout the marriage, maintaining independent households and finances. The court explained that, based on the statutory factors and the highly unusual facts of the case, it was persuaded to deviate from the presumption of an equal division of marital property. Accordingly, we reject Lynette's argument that the court failed to follow § 767.61(3) in deviating from a presumption of an equal division of property.

Next, Lynette contends that the circuit court made a subjective judgment about the quality of the marriage as a basis for its property division. Lynette argues that the circuit court essentially punished her for maintaining independence during the marriage. We disagree. As set forth above, the circuit court relied on the relevant statutory factors and their greater independence from each other as compared with most marriages as justifying a deviation from an equal division of property. While Lynette characterizes the court as rebuking the parties for maintaining separate lives, we do not share that view. As Lynette points out, the court stated that it could not compare the parties' marriage to any other it had seen and that it could see no reason why the parties would choose to live that way. However, the court did not state or imply that it

[4] Lynette does not explain what relevant facts she believes the court should have considered under WIS. STAT. § 767.61(3)(f) and (g); rather, she asserts only that she believes the court erred by failing to consider those statutory factors.

[5] It is undisputed that WIS. STAT. § 767.61(3)(k) and (L)—tax consequences to the parties and any marital property agreement—were inapplicable.

viewed the marriage or the parties negatively or that it was dividing property as a punishment. Rather, the court explained that part of its reasoning for deviating from an equal property division was its recognition of the fact that the parties had chosen, throughout their marriage, to live with a high degree of financial independence.

Finally, Lynette contends that the court made erroneous factual findings in support of the property division. Lynette contends that the court's finding that neither party contributed anything of significance to the homemaking of the other was contrary to testimony by the parties as to work they did at each other's residences; that its finding that the parties maintained separate financial matters was contrary to evidence that Lynette made contributions to marital expenses such as vacations; and that its finding that the parties lived separate lives was contrary to evidence that the parties spent time together and made plans for their future. However, the circuit court recognized that there was differing testimony as to how much each party contributed to the homemaking duties of the other's household, how much money each party spent on marital expenses, and how much time the two spent together. The court then made credibility determinations in finding that any contribution to homemaking duties of the other was de minimus and insignificant over the course of the marriage; that, as a whole, the parties maintained separate financial affairs; and that the parties spent time together but maintained independent households. We conclude that the court's factual findings are supported by the record, and we therefore will not disturb them. *See* ***Royster-Clark, Inc. v. Olsen's Mill, Inc.***, 2006 WI 46, ¶12, 290 Wis. 2d 264, 714 N.W.2d 530 (we uphold findings of fact if supported by the record, even if the evidence also supports contrary findings).

Therefore,

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

Diane M. Fremgen
Clerk of Court of Appeals