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DISTRICT IV

November 17, 2015

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

2015AP550

In re the marriage of: Calvin Herman Sibert v. Colleen Rose Sibert
(L.C. # 2013FA98)

Before Lundsten, Higginbotham and Blanchard, JJ.

Colleen Sibert appeals a judgment of divorce. 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 (2013-14).¹ We affirm.

In the circuit court's written decision, the property division part of the order contains a two-paragraph conclusion. In the first paragraph, the court wrote that, based on its analysis of the statutory factors, "the marital estate of Calvin and Colleen shall be divided equally." The

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

court wrote that this “finding” is supported by the statutory factors and the presumption of equal division.

However, in the second paragraph, the court wrote: “Under normal circumstances, I would order the marital estate be divided equally” The court noted the amount of the equalization payment that would be required by Calvin in an equal division and the difficulties Calvin would have making such a payment due to his disability, inability to work, stagnant earning capacity, and lack of financial liquidity. The court then finished: “Accordingly, I order an unequal property division in favor of Calvin.”

Colleen argues that the circuit court erred because its legal conclusion of an equal division was correct, and the court was not permitted to change that later in the order, once it was made. We disagree.

While it is true that the above paragraphs are inconsistent, when the order is read as a whole it is obvious that the second of the two paragraphs is the controlling one. That is because the second paragraph, unlike the first, expressed a specific evaluation of the facts of this case and then unambiguously stated that, based on the factors related to Calvin that it described, it was making an unequal property division. Furthermore, later in the order, when discussing maintenance, the court mentioned the unequal property division several times, which further reinforces our conclusion that the second paragraph is the controlling one in the court’s discussion of property division.

Although a further explanation is not necessary to support the conclusion that we have just reached, we surmise that the first paragraph was likely a drafting error. Other than the names of the parties, that paragraph contains only language that could be used without alteration

in many divorce orders. Many lawyers and judges have standard language available in such situations, which is commonly referred to as “boilerplate.” One hazard of boilerplate is that it may, on occasion, be used in situations where it does not apply. Possibly that is what happened here.

Colleen appears to argue separately that there is a problem with the equalization payment. Whatever her precise argument in this regard, her underlying premise is that the circuit court ordered an equal property division. We have rejected that premise and, it follows, we reject Colleen’s equalization payment argument.

Once viewed in that light, we note that Colleen does not argue that this unequal property division was itself an erroneous exercise of discretion, in light of Calvin’s situation and based on consideration of appropriate factors. Instead, she makes only formalistic arguments based on the structure of the court’s order.

IT IS ORDERED that the judgment appealed is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals