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DISTRICT IV

February 22, 2017

To:

Hon. Robert J. Shannon
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You are hereby notified that the Court has entered the following opinion and order:

2015AP2573

In re the marriage of: Jessica M. Awe v. Oluwagbenga B. Awe
(L.C. # 2014FA325)

Before Lundsten, Sherman and Blanchard, JJ.

Oluwagbenga Awe appeals a judgment of divorce, challenging the division of property. 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 (2015-16).¹ We summarily affirm.

Oluwagbenga Awe and Jessica Awe were married in February 2008. On June 20, 2014, the parties purchased a house, which was titled jointly in both of their names. Jessica's parents

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

gifted her \$45,458 on June 18, 2014, to use toward the purchase of the house. This divorce action was filed less than four months later, on October 10, 2014. Oluwagbenga and Jessica reached a marital settlement agreement as to legal custody, physical placement, and child support for their two minor children. Issues of property division were decided after a trial to the court on October 5, 2015. In dividing the parties' property, the circuit court treated the house as divisible property, but concluded that it would not be fair to equally divide the net equity in the house, based on a number of factors. The court awarded the house and the personal property within it to Jessica, without requiring her to make an equalization payment to Oluwagbenga. Oluwagbenga now challenges that decision on appeal.

Property division in a divorce generally rests within the sound discretion of the circuit court. *Schwegler v. Schwegler*, 142 Wis. 2d 362, 364, 417 N.W.2d 420 (Ct. App. 1987). WISCONSIN STAT. § 767.61(3) creates a rebuttable presumption that all divisible property is to be divided equally upon divorce, but the court may alter the distribution after considering the factors listed in § 767.61(3)(a) through (m). Here, the record reflects that the circuit court considered the applicable statutory factors and ultimately concluded that those factors supported a departure from the presumptive equal division of property. The court considered the seven-year duration of the marriage, the parties' respective contributions of monthly income, and the fact that the parties had waived maintenance. *See* § 767.61(3)(a), (d), and (i). The court noted that, at the time the judgment of divorce was entered, the fair market value of the house had not increased from the purchase price. The court also considered the desirability of awarding the family home to Jessica because she had primary placement of the children. *See* § 767.61(3)(h). The parties' testimony reflects that they both desired that Jessica retain the residence. The court also considered the fact that Jessica was assuming the debt on the house and had solely paid

\$6,678 to replace the rotting deck. In addition, the court noted that Jessica did not have sufficient assets to make an equalization payment to Oluwagbenga, nor could she obtain financing to do so. In light of all of the above, we are satisfied that the circuit court properly exercised its discretion in awarding the house and the personal property within it to Jessica, without requiring a payment to Oluwagbenga.

The judgment of divorce also reflects that, in awarding the house to Jessica, the court considered the fact that the down payment on the house was made possible by the gift of \$45,458 she received from her parents. The parties disagree as to whether the circuit court properly considered the gifted nature of the money as a factor in awarding the house to Jessica. We need not delve into the parties' disagreement on this issue. We would affirm the circuit court's decision with or without consideration of the source of the \$45,458.

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals