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**DISTRICT II**

May 17, 2017

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

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2016AP1274

In re the estate of Janet P. White-Moon: Thomas W. Moon v.  
Nicholas J. White Provenzano (L.C. # 2015PR20)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

In this estate case, Thomas W. Moon appeals from an order denying his petition to claim homestead rights to certain property. The respondents, Nicolas J. White Provenzano and David Shaub, did not file a responsive brief. We conclude at conference that this matter is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> Based on the respondents' failure to file a responsive brief, we reverse the order of the circuit court and remand the matter for further proceedings consistent with this opinion.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version.

In 2004, Janet White purchased a home in Green Lake, Wisconsin. She owned the property as an individual and lived alone there for approximately eight years.

In 2012, White and Moon were married. Moon moved in with White, and the two resided together at the Green Lake property until White's death in 2015. During this time, Moon either paid or helped pay the property's mortgage, utility bills, and taxes. He also maintained the property. When White and Moon contemplated a sale of the property, they listed it as jointly owned by them.

After White's death, Moon petitioned to claim the Green Lake property as his homestead and thus as survivorship marital property under WIS. STAT. § 766.605.<sup>2</sup> The probate court acknowledged that Moon and White had held the property exclusively between them with no third party. However, it concluded that they did not "acquire" the property as a homestead within the meaning of § 766.605 because White had already done so before their marriage. Accordingly, it denied the petition. This appeal follows.

On appeal, Moon contends that the circuit court erred in denying his petition. He asserts that he and White acquired the Green Lake property as a homestead within the meaning of WIS. STAT. § 766.605, notwithstanding White's prior purchase of it as an individual. In support of this position, he cites the affirmative actions that he and White took after their marriage. Together, they shared possession and control of the property, and Moon's contributions reflect that. Moon

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<sup>2</sup> WISCONSIN STAT. § 766.605 provides in relevant part, "A homestead acquired after the determination date which, when acquired, is held exclusively between spouses with no 3rd party is survivorship marital property if no intent to the contrary is expressed on the instrument of transfer or in a marital property agreement." Here, the determination date refers to the date that White and Moon were married. *See* § 766.01(5).

also cites the fact that he was found to have held the property exclusively with White. The act of holding property exclusively between spouses suggests that, at one point or another, the spouses must both have both acquired the property.

As noted, the respondents do not respond to any of Moon's arguments. *See Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). On October 6, 2016, we informed them that their responsive brief was delinquent. On October 28, 2016, we warned that if they failed to file a responsive brief, we could exercise our discretion and summarily reverse the circuit court provided that we determine that they have abandoned the appeal. *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 660 N.W.2d 647; *see also State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 259-60, 500 N.W.2d 339 (Ct. App. 1993) (summary reversal is appropriate sanction for respondent's violation of briefing requirements). Despite this admonition, the respondents failed to file a responsive brief.

We decline to address the merits of the appeal under these circumstances. We conclude only that the respondents have abandoned the appeal and that summary reversal is appropriate. Accordingly, we reverse the order of the circuit court and remand the matter for further proceedings consistent with this opinion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and the cause remanded for further proceedings consistent with this opinion, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*