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August 9, 2017

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

2015AP2648

In re the marriage of: Teri S. Jendusa-Nicolai v. David M. Larsen
(L.C. #1999FA1626)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

David M. Larsen appeals an order approving the sale of real estate from the assets in a trust receivership. Upon review of the briefs and the record, we conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm.

Larsen and his then wife, n/k/a Teri Jendusa-Nicolai, divorced in 2001. In 2004, he savagely beat her and left her for dead. We need not recount the horrific details; she somehow survived. Larsen is serving a life sentence for attempted first-degree intentional homicide.

During the pendency of the divorce, Jendusa-Nicolai alleged that Larsen unilaterally transferred marital assets into a partnership and a fraudulently created trust in violation of a court order precluding transfers/disposal of marital property without either spousal consent or court approval. In 2004, after the attack, the court ordered that the assets be placed in a receivership. Included was a vacant ten-acre parcel of land titled to the partnership but put into the trust.

Jendusa-Nicolai, her new husband, David Nicolai, and her two daughters later were awarded \$3.6 million in damages for her permanent injuries and her husband's and daughters' loss of consortium. On March 2, 2009, the circuit court ordered that receivership funds be used to pay the daughters' judgments and to satisfy, as much as able, Nicolai's judgment, and that the parcel of land be sold to help satisfy the civil judgments.

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

Due to a slump in the real estate market and few sales comparables, the receiver did not locate a buyer for the land until 2015. Jendusa-Nicolai and her family approved the \$10,000 cash sale and, on November 16, 2015, the court ordered it sold. Larsen objected. He appeals.

A circuit court's approval of a receiver's actions is reviewed as a discretionary decision. *Community Nat'l Bank v. Medical Benefit Adm'rs, LLC*, 2001 WI App 98, ¶5, 242 Wis. 2d 626, 626 N.W.2d 340. Our review of a discretionary decision is highly deferential. *Tralmer Sales & Serv., Inc. v. Erickson*, 186 Wis. 2d 549, 572, 521 N.W.2d 182 (Ct. App. 1994). "The record need only reflect the court's reasoned application of the appropriate legal standard to the relevant facts in the case." *Id.* at 572-73 (citation omitted).

Larsen first argues that the circuit court lacked jurisdiction over assets in the trust because although held in the trust, the land was titled to the partnership, which was organized under and subject to South Dakota law; and WIS. STAT. § 767.01 applies only to "actions affecting the family," not the distribution of assets held in receivership.

The South Dakota issue was mooted by Larsen's transfer of his partnership interest in the land to the trust upon its creation in 2000. This court conclusively settled the second jurisdictional issue years ago. See *Jendusa-Nicolai v. Larsen*, Nos. 2009AP392 and 2009AP2017, unpublished slip op. ¶¶2, 8-9 (WI App Dec. 29, 2010). As our decision established the law of the case, it must be followed in subsequent proceedings whether in the circuit court or on a later appeal. See *State v. CGIP Lake Partners, LLP*, 2013 WI App 122, ¶32, 351 Wis. 2d 100, 839 N.W.2d 136.

Larsen also challenges the merits of the March 2, 2009 order requiring the receiver to satisfy the civil judgments with the funds in the trust receivership. We concluded in his prior

appeal from that order that the circuit court did not err when it allowed receivership funds to be used to pay the civil judgments obtained against him. *Jendus-Nicolai*, Nos. 2009AP392 and 2009AP2017, ¶¶12-13. He cannot now relitigate that argument. See *Lindas v. Cady*, 183 Wis. 2d 547, 558, 515 N.W.2d 458 (1994) (final judgment conclusive in subsequent actions between same parties as to all matters that were or might have been litigated in former proceeding).

Larsen next complains that the land's sale price is "insulting" and "unconscionably undervalued." He asserts that twenty-three or -four years ago, he rejected a \$1.5 million offer, and something over a decade ago the land was valued "well in excess of \$2.4 million."² He cites nothing in support of these claims, nor does he explain why he did not act on such astonishing sums. Larsen's additional intimation that the buyer-receiver connection may be less than arm's-length also is without support.

Beyond that, Larsen ignores that the beneficiaries of the sale, the Jendus-Nicolai family, approved the \$10,000 offer, the only one received since the property was ordered sold in 2009. The main purpose of a receivership is to preserve the debtor's property for the benefit of the judgment creditors whose claims the receiver represents, not to protect the debtor's own interest in the property. *Candee v. Egan*, 84 Wis. 2d 348, 360, 267 N.W.2d 890 (1978). The circuit court properly exercised its discretion in this regard.

² Oddly, we note, at the time of the divorce in 2001, the court valued the parcel at just \$1,500.

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals