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DISTRICT I

March 11, 2019

To:

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

2017AP1833

In re the marriage of: GiGi Y. Boone v. Iran L. Shuttlesworth
(L.C. # 2016FA6832)

Before Brennan, Brash and Dugan, 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).

Iran L. Shuttlesworth, *pro se*, appeals from a divorce judgment that awarded a military pension solely to GiGi Y. Boone. 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 (2017-18).¹ The judgment is summarily affirmed.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Shuttlesworth and Boone married on November 9, 1996, while Shuttlesworth was out on bail after being charged with two counts of kidnapping and four counts of first-degree sexual assault. The bail was revoked, and Shuttlesworth returned to prison, where he has remained; he was convicted of the charges in 1997 and will first be eligible for parole in 2036. Boone raised the parties' child, essentially as a single parent.

Boone petitioned for divorce in October 2016. The parties represented themselves at trial. Ultimately, the trial court determined, among other things, that Shuttlesworth “made no financial contribution to the marriage. It’s not literally zero, but it is practically zero[.]” It calculated that the debts of the marital estate exceeded its assets and concluded that each party would be awarded their own property. The trial court also noted that the marital estate had “insufficient assets” to make Boone whole for her contributions to the marriage. Among the property Boone retained as part of the divorce judgment was her pension earned from service in the United States Army Reserves, half of which was earned prior to the marriage and which was, at the time of the divorce, not yet in an active pay status. The trial court also ordered Boone to pay maintenance to Shuttlesworth at the rate of \$352 per month for six years and eight months, or one-third the length of the marriage.

Shuttlesworth appeals, complaining there is “no legal ground” to deny him “military retirement benefits nor community property equity.” In other words, he challenges the trial court’s decision to award Boone’s military pension solely to her.

Shuttlesworth first appears to be arguing that, under *McCarty v. McCarty*, 453 U.S. 210 (1981), and 10 U.S.C. § 1408 (the Uniformed Services Former Spouses Protection Act), a military pension must be divided between spouses. In fact, the United States Supreme Court said

in *McCarty* that the Supremacy Clause precludes states from dividing a military pension as a marital asset. *See id.*, 453 U.S. at 232-36. While the Uniformed Services Former Spouses Protection Act reversed the effects of *McCarty*, that reversal merely allows states to treat military retirement payments as property subject to division upon divorce. *See Cook v. Cook*, 208 Wis. 2d 166, 172-73, 560 N.W.2d 246 (1997). Neither *McCarty* nor the Act, however, requires a state court to divide the pension in any particular way.

We therefore need only consider Wisconsin law regarding division of the marital estate. The division of marital property is generally left to the trial court's discretion. *See Cook*, 208 Wis. 2d at 171. Absent an erroneous exercise of discretion, we uphold the division. *See Settipalli v. Settipalli*, 2005 WI App 8, ¶10, 278 Wis. 2d 339, 692 N.W.2d 279. "A trial court engages in an erroneous exercise of discretion when it 'fails to consider relevant factors, bases its award on factual errors, makes an error of law, or grants an excessive or inadequate award.'" *Id.*, ¶11 (citation omitted). The trial court must presume an equal property division, but may deviate from the presumption after considering relevant factors. *See id.*, ¶12; WIS. STAT. § 767.61(3). The trial court's findings of fact are also upheld unless clearly erroneous. *See* WIS. STAT. § 805.17(2).

The only other basis on which Shuttlesworth challenges the trial court's failure to award him any part of the military pension is his assertion that he and Boone had an agreement under which she would support him. Specifically, he contends that she said, "I don't care how much time they give you. I'm gonna be with you no matter what. I'm gonna support you. I'm gonna be there for you." Shuttlesworth testified that he understood "support" to mean Boone would "[m]ake sure I get everything I need while I'm in [prison] and make sure I have a place to go to when I get out." He admitted, however, that there was no such agreement in writing.

First, the trial court found that there was no agreement. Shuttlesworth does not directly challenge this finding. Thus, the trial court did not err in refusing to base the property division on a non-existent agreement. Second, the only agreement the trial court should consider when deciding whether to deviate from a presumption of equal property division is a written one. *See* WIS. STAT. § 767.61(3)(L). As noted, Shuttlesworth admitted that he had no written agreement with Boone.

We acknowledge that the trial court’s division of the marital estate appears to heavily favor Boone. But while she was awarded most of the parties’ assets, she was also made responsible for all of the parties’ debts. Further, we have reviewed the circuit court’s written order and its comments regarding property division. The property division by the trial court, including the award of the military pension solely to Boone, while unequal, is clearly “the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.” *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). We discern no erroneous exercise of discretion.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals