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DISTRICT II

November 24, 2021

To:

Hon. David M. Reddy
Circuit Court Judge
Electronic Notice

Stephen M. Compton
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County
Electronic Notice

Jeffrey L. Hahn
Electronic Notice

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

2020AP40

In re the marriage of: Kevin Akey v. Teresa Akey
(L.C. #2018FA27)

Before Gundrum, P.J., Neubauer and Reilly, 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).

Teresa Akey appeals from a judgment of divorce from Kevin Akey. She contends that the circuit court violated her right to due process. She also complains that the court failed to consider and divide the intangible value of Kevin's pool business. 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 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Teresa and Kevin were married in 1983, and this divorce action was commenced in January 2018. Both parties were self-employed with Kevin having operated a pool business for most of the marriage.

Teresa retained an attorney to represent her in the case. However, that attorney later moved to withdraw, citing Teresa's failure to fulfill an obligation regarding legal services. Teresa did not object to the motion. Accordingly, the circuit court granted it.

Approximately one month later, on November 14, 2019, the circuit court held a pretrial conference. Teresa appeared pro se and said that she was not ready to go to trial, which was scheduled for the following week. She indicated that Kevin's recently completed bankruptcy case² was under investigation and accused him of hiding money and misrepresenting the value of his pool business. The court asked Teresa whether she would be able to prove her allegations. When she said that she could, the court replied, "Then we'll go to trial on Monday and you can prove it."

The circuit court subsequently held a court trial on November 18, 2019. It heard testimony from both parties before making its findings and entering judgment. This appeal follows.

On appeal, Teresa first contends that the circuit court violated her right to due process. Her argument is largely based on the court's decision to keep its trial date despite the fact that

² Kevin had filed for bankruptcy during the divorce proceedings.

she was unrepresented and said that she was not ready to go to trial. According to Teresa, this resulted in her being unable to adequately present her case.

Under Wisconsin law, “a continuance is not a matter of right,” and “the decision to grant or deny a continuance lies within the discretion of the [circuit] court.” *Robertson-Ryan & Assocs., Inc. v. Pohlhammer*, 112 Wis. 2d 583, 586-87, 334 N.W.2d 246 (1983). We generally look for reasons to sustain a court’s discretionary decision. See *Steiner v. Steiner*, 2004 WI App 169, ¶18, 276 Wis. 2d 290, 687 N.W.2d 740.

Here, the circuit court’s decision to keep its trial date came at a time when the case was over twenty-two months old. Kevin’s bankruptcy had been discharged, and there were few assets left to divide. Moreover, Teresa had not retained new counsel and indicated that she could prove her allegations against Kevin. Under these circumstances, the court reasonably denied a continuance. At trial, Teresa was able to present her case through both her own testimony and her cross-examination of Kevin. Because she was given a meaningful opportunity to be heard, we perceive no due process violation.

Teresa next complains that the circuit court failed to consider and divide the intangible value of Kevin’s pool business. Although Kevin was no longer operating the pool business,³ Teresa insists that its intangible value was the largest remaining asset that the parties jointly owned.

³ Because of Kevin’s bankruptcy, the pool business’s equipment and materials were repossessed by the bank.

The problem with Teresa's second argument is its lack of support. At trial, she offered no evidence as to the intangible value of Kevin's pool business. Although she suggested that the parties' accountant could provide this information, she failed to call him as a witness. On this record, we cannot fault the circuit court for failing to address the issue.⁴

Upon the foregoing reasons,

IT IS ORDERED that the judgment 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.

Sheila T. Reiff
Clerk of Court of Appeals

⁴ To the extent we have not addressed an argument raised by Teresa on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).