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DISTRICT I

June 7, 2022

To:

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Circuit Court Judge
Electronic Notice

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

2020AP1172

Radwa Soliman v. Tarek Elawa (L.C. # 2017FA8531)

Before Brash, C.J., Donald, P.J., and White, J.

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).

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). Tarek Elawa appeals from a judgment of the circuit court that required him to make a property division equalization payment of \$109,393 to his former wife, Radwa Soliman. 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 The judgment is summarily affirmed.

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

Soliman petitioned for divorce on November 13, 2017. Most of the issues in the divorce were resolved by the parties' agreement. A "Partial Marital Settlement Agreement Regarding Custody, Placement and Child Support" detailed the parties' rights and obligations with respect to the couple's two minor children and is not at issue on appeal. The parties also entered a "Marital Settlement Agreement" that included a section regarding property division. As relevant to this appeal, the agreement awarded Soliman as petitioner a "Cash settlement payment of \$TBD from Respondent [Elawa] payable within sixty days of the date of the final hearing."

At a hearing on August 30, 2019, the parties agreed to "proceed to a divorce" while holding open the final property division and any equalization payment. The circuit court directed the parties to file simultaneous memoranda regarding property division. As part of their memos, Soliman and Elawa each included a spreadsheet showing their proposed property division and any resulting equalization payment necessary. Soliman's spreadsheet showed how she arrived at her request for a \$109,393 equalization payment from Elawa, who was employed as a pharmacist. Elawa's spreadsheet reflected a property division scenario under which Soliman, the stay-at-home mother to the couple's special needs children, would owe him a \$72,701.50 equalization payment, although he formally requested "that no equalization payment be due to either party."

Despite the parties' memoranda, the circuit court had lingering questions about certain disputed financial transactions and informed the parties it would like to hear testimony. The circuit court scheduled an evidentiary hearing, at which Elawa and a man named Tamar Kuloti testified. The circuit court subsequently entered written findings based on that hearing and ultimately entered a judgment of divorce that incorporated Soliman's proposed property division, including the \$109,393 equalization payment from Elawa. Elawa appeals.

The division of property at divorce is entrusted to the circuit court's direction and will not be disturbed on appeal absent an erroneous exercise of discretion. *See LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. As part of its discretionary decision, the circuit court may also need to make underlying factual determinations or decide legal issues. *See Wright v. Wright*, 2008 WI App 21, ¶9, 307 Wis. 2d 156, 747 N.W.2d 690. We uphold the property division if the circuit court gave rational reasons for its decision, which was based on the facts of record. *See Noble v. Noble*, 2005 WI App 227, ¶15, 287 Wis. 2d 699, 706 N.W.2d 166. In reviewing the circuit court's factual decision, we search for evidence to support the findings actually made, not findings that could have been made by were not. *See id.*

Elawa's appeal focuses on five items: a \$37,000 payment for Elawa's interest in a pharmacy using the name Welltopia; an approximate \$89,000 reimbursement Elawa said was for purchases made for Welltopia before he had to sell his interest; stock investments; \$225,000 from Kuloti for his purchase of Elawa's interest in or shares of a pharmacy using the name Hayat;² and a \$200,000 loan to Elawa's brother, secured by a promissory note. Elawa argues that the stock investments were part of his Fidelity account listed on Soliman's spreadsheet, and that the cash payments were part of his checking account that was also listed on Soliman's spreadsheet.³ Consequently, Elawa believes the amounts were double counted.

² In its findings of fact, the circuit court incorrectly stated that Elawa sold his interest in Welltopia to Kuloti, when the interest in Welltopia was actually sold to Elawa's brother. This appears to be a scrivener's error, as the transaction with Kuloti was correctly identified by its amount.

³ We observe that the checking account was valued at \$3,279 on Soliman's spreadsheet, and Elawa did not include the checking account on his spreadsheet.

We decline to address the \$37,000 or the \$89,000 amounts, because Elawa, at the evidentiary hearing, waived further argument about those payments. His attorney told the court:

But the easiest way [to proceed] would be to just stipulate that 37,000 and the 89,000 go on his side of the balance sheet and that the real dispute is the 225 and the 200. ... If it would simplify things, I would stipulate that those can go on his side of the balance sheet.

Assuming without deciding that the circuit court otherwise erred in including those two assets on Elawa's side of the ledger, we decline to review invited error. *See State ex rel. Robinson v. Town of Bristol*, 2003 WI App 97, ¶44, 264 Wis. 2d 318, 667 N.W.2d 14.

With respect to the stocks, Elawa states that he owned a Fidelity brokerage account that consisted of both stocks and cash. He testified in a deposition that he had withdrawn the cash portion during the divorce to pay expenses, but the stock portion was intact. For property division purposes, he added the cash withdrawal back and listed the Fidelity account value at \$10,113. Elawa complains that Soliman's attorney "listed both the total value of the brokerage account (stocks and cash) and the value of the stock portion of the Fidelity account as two separate assets on [Soliman's] ... spreadsheet, resulting in the assets being double counted."

We observe that while valuation of the stocks was raised in Elawa's memorandum, there was no testimony regarding the Fidelity account at the evidentiary hearing. There was also no express discussion of it in the circuit court's findings of fact, but Elawa did not seek clarification from the circuit court. In the memorandum, Elawa had argued that Soliman's attorney was "continuing to make an error that goes back to the beginning of the case by separating out the stocks[.]" However, Elawa's own financial disclosure statement, filed on March 5, 2018, also listed the stocks separately from the Fidelity account. Moreover, we note that on Soliman's

spreadsheet, the “Fidelity IRA” is listed with a value of \$5,301, while the stocks are valued at \$6,926, for a total of \$12,227. If the “Fidelity IRA” balance included the stocks, then it would have to equal or exceed the value of the stocks. Finally, we note that the difference between Elawa’s valuation of the Fidelity account as a whole and the total of Soliman’s separately listed values is \$2,114. In short, we are not persuaded that a double-counting error of Soliman’s stock assets has occurred.

We turn now to the \$225,000 payment from Kuloti for the Hayat Pharmacy and the \$200,000 receivable from Elawa’s brother. In his appellate brief, Elawa asserts that if the court had reviewed his bank statements, the court “should have been able to observe that the ... deposits from the sale of the Hayat Pharmacy” were deposited into his Chase Bank checking account. Further, “if the court had examined the objective evidence ... with regard to the loan to Elawa’s brother,” the court would “have realized that the funds on deposit in Elawa’s Chase checking account were the source of the funds for the loan to Elawa’s brother.” He contends that “[b]ecause the same bank account was used for both the deposit of the proceeds from the first transaction and the loan of funds from that same bank account in the second transaction, the transactions are linked” and work out to be “a wash.”

The circuit court rejected Elawa’s argument, concluding that there was no “recognizable nexus” between the transactions so as to consider them a wash. The payment for Hayat was divided into three payments, the first was which was made in November 2016, more than a year before the November 2017 loan, which was made a week after Soliman filed for divorce. The circuit court also noted that the sale of Hayat was an arm’s length sale, while the loan was a cash transaction with a family member. Thus, the circuit court concluded that although Elawa linked the transactions in his own mind, they were legally distinct and were required to be split.

We are unpersuaded that the circuit court erred. While Elawa claims that the documentary evidence speaks for itself, that evidence is nothing more than bank statements showing deposits and withdrawals; the statements do not identify the reasons for the transactions. For that, we rely on testimony, but the circuit court implied that Elawa's testimony was less than credible, noting that his explanations were "not always helpful." Thus, it was not required to accept Elawa's explanations for the flow of funds in and out of his accounts.

Elawa's unhelpfulness carried over into this appeal. For instance, Elawa tells us that after he received the final Hayat payment, he "deposited it into his bank account ... then entered into a promissory note with his brother for \$200,000, withdrew the \$200,000 from the same bank account that he had deposited the sale proceeds into, and gave it to his brother." The structure of this sentence implies that Elawa is describing a precise series of events occurring in a very short, almost immediate span of time. However, there was approximately one month between the final Hayat payment and the loan to Elawa's brother. In addition, the promissory note was signed the day *after* Elawa transferred funds to his brother, with terms including zero percent interest and no payments until 2021.

Further, while Elawa tells us that "the deposits received for the sale of the Hayat Pharmacy interest ... were deposited into the Chase checking account," his bank statements show that the final payment of \$62,500 was put in his savings account. At the time of the evidentiary hearing, the balance of the savings account was \$18,432, even though Elawa testified he was not making withdrawals from that account. And, while Elawa tells us that the source of the loan funds was his checking account, he tells us *in the same paragraph* that only \$120,000 came from the checking account; the remaining \$80,000 came from his savings account.

Consequently, we are unpersuaded that the circuit court erred when it adopted Soliman's proposed property division and ordered Elawa to make an equalization payment.

Upon the foregoing, 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