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DISTRICT IV

August 25, 2022

To:

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Circuit Court Judge
Electronic Notice

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

2021AP871 In re the marriage of: Pamela Dean Luttig v. Arthur William John Luttig (L.C. # 2019FA89)

Before Blanchard, P.J., Kloppenburg, and Graham, 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).

Arthur William John Luttig appeals a divorce judgment, arguing that the circuit court erred in determining that the parties' prenuptial Marital Property Agreement (MPA) is invalid. 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] Because the

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

circuit court properly exercised its discretion in determining that the MPA was entered into without an adequate disclosure of the parties' finances, we affirm.

Arthur met Pamela Dean Luttig when she began working at a chiropractic clinic in Louisiana that he owned.[2] They married in November 1997, when Pamela was pregnant with the first of three children born during the marriage.[3] Arthur, who had previously lived in Wisconsin, had a prenuptial MPA prepared by a Wisconsin attorney with whom he had a longstanding business relationship. Pamela signed the MPA five days before the wedding.

In 1998, Arthur retired as a chiropractor and the family moved to Wisconsin. Over time, they purchased millions of dollars' worth of real estate, including rental properties. In addition to caring for the parties' children, Pamela remodeled and advertised the rental properties, managed the lease paperwork, and interacted with the tenants.

Pamela petitioned for divorce in 2019. Three days prior to the scheduled court trial, Arthur filed with the court a copy of the 1997 MPA and asked that the property division and maintenance issues be resolved according to its terms. The MPA stated that the parties had each "made a full and complete disclosure of assets and liabilities" as set forth in a separate but attached "Memorandum of Income, Assets and Liabilities." Though frequently referenced by and expressly "incorporated into" the MPA, the memorandum of assets and liabilities was missing from the copy Arthur filed with the circuit court. Pamela objected, asserting that the MPA should not be enforced. The circuit court invalidated the MPA, determining that Pamela

[2] We use the first names of the parties because they share a last name.

[3] Pamela divorced her first husband earlier that year. She brought two children to the marriage with Arthur. Arthur is about fourteen years older than Pamela.

had "carried her burden of persuasion that there was not adequate disclosure of the parties' assets prior to the signing of the Marital Property Agreement." The court further ruled that, "even if there had been a proper disclosure of assets, the agreement is not fair to [Pamela] at the present day." Arthur appeals, challenging only the court's invalidation of the MPA.

When dividing property at divorce, the circuit court starts with a presumption of equal division. WIS. STAT. § 767.61(3). This presumption may be overcome after consideration of a number of factors, including a written agreement between the parties, as described in § 767.61(3)(L):

> Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.

A marital property agreement is considered "equitable," and therefore enforceable under WIS. STAT. § 767.61(3)(L), when all three of the following requirements are met: (1) each spouse has made a fair and reasonable disclosure of his or her financial status to the other spouse; (2) each spouse has entered into the agreement voluntarily and freely; and (3) the substantive provisions of the agreement dividing the property upon divorce are fair to each spouse. ***Button v. Button***, 131 Wis. 2d 84, 89, 388 N.W.2d 546 (1986). The first two requirements are assessed as of the time of the agreement's execution; the third requirement is assessed as of the time of execution but also, if circumstances change significantly during the marriage, as of the time of the divorce. *See* ***id.***

We review a circuit court's decision as to the enforceability of a marital property agreement for an erroneous exercise of discretion. *See* ***id.*** at 99. We will affirm the circuit

court's exercise of discretion "if it examined the relevant facts, applied the correct standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We will uphold the circuit court's factual findings unless those findings are clearly erroneous. ***Greene v. Hahn***, 2004 WI App 214, ¶9, 277 Wis. 2d 473, 689 N.W.2d 657.

Applying this deferential standard of review, we conclude that the circuit court properly exercised its discretion in determining that the MPA was entered into without a fair and reasonable disclosure of both parties' finances and should not be enforced under the first step of the ***Button*** test.[4] Central to the court's decision was the fact that the memorandum of assets and liabilities was missing from the MPA submitted to the court by Arthur. Without the document purporting to list each party's income, assets, and liabilities, the court was unable to determine that each party adequately disclosed his or her assets to the other prior to signing the MPA. Further, the court found Pamela to be more credible than Arthur in their respective testimony concerning the disclosure of financial information. This included her testimony that she had not seen the MPA since November 1997, she did not recall ever completing or reviewing the missing memorandum, and she had never disclosed her finances to Arthur. The court further found that the MPA was prepared at Arthur's request and that Pamela had no part in drafting it. These findings are not clearly erroneous and are supported by the record, including the court's

[4] The circuit court also invalidated the MPA under the third step of the ***Button*** test, which requires that substantive provisions of the agreement must be fair to each spouse at the time of the divorce. ***Button v. Button***, 131 Wis. 2d 84, 89, 388 N.W.2d 546 (1986). Here, the court cited the large increase in assets during the marriage and the fact that Pamela performed "a substantial amount of work on the properties" to increase their value. We need not address this issue because our conclusion that the court properly invalidated the MPA under the first step of the test is dispositive.

observation that Arthur never testified or introduced other evidence concerning what property he owned at the time of the marriage.[5]

Arthur argues that Pamela had adequate knowledge of his finances because she did billing work at his chiropractic office. However, the circuit court was free to view these billing tasks as not providing a complete and accurate financial picture of the business or its owner. The circuit court observed:

> In this case, knowing that one owns property in Wisconsin is not a substitute for knowing how many properties, where they are located or what they are worth. Doing deposits for a business is simply one aspect of a business. It tells one nothing about what assets the business has, what liabilities the business has, whether the back taxes are owed or many other relevant financial considerations.

Arthur also asserts that there was adequate disclosure because Pamela was shown information regarding his mutual funds. As with the billing evidence issue, however, the circuit court was not obligated to consider the specific evidence regarding her knowledge of mutual funds as meaningfully contributing to a complete and accurate picture of his finances. The court observed that if Pamela "was shown the books on Mr. Luttig's mutual funds, that sounds like a good disclosure except we don't know what she was shown, how detailed it was or whether it was complete."

Further, after Pamela makes these points on appeal, Arthur has not filed a reply brief and we deem this to be a tacit admission of Pamela's positions. *See* ***Schlieper v. DNR***, 188 Wis. 2d

[5] The circuit court's determination is supported by other irregularities in the MPA, including that it reflects the wrong date and erroneously states that the parties are "both of Wisconsin" even though both of them then lived in Louisiana.

318, 322, 525 N.W.2d 99 (Ct. App. 1994) (a proposition asserted by a respondent on appeal and not disputed in the appellant's reply may be taken as admitted).

In sum, based on the record and the arguments of the parties we conclude that the circuit court properly considered the evidence, reviewed the parties' briefs, and applied the correct standard of law to this issue, using a demonstrated rational process and reaching a conclusion that a reasonable judge could reach.

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