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**DISTRICT IV**

March 7, 2024

To:

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Circuit Court Judge  
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Clerk of Circuit Court  
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You are hereby notified that the Court has entered the following opinion and order:

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2023AP1718-FT

In re the marriage of: Barbara E. Schickel v. John C. Morton  
(L.C. # 2021FA65)

Before Blanchard, Graham, and Taylor, 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).**

Appellant John C. Morton, by counsel, appeals a circuit court order concerning the division of a parcel of real property following his divorce from the respondent, Barbara E. Schickel. The parties submitted memorandum briefs pursuant to this court's order of October 19, 2023. *See* WIS. STAT. RULE 809.17(1) (2021-22).<sup>1</sup> Based upon our review of the memoranda and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version.

### *Background*

In 1972, Schickel and her first husband purchased a farm property known as “Doc’s Summit,” located in Mineral Point, Wisconsin. They owned the Doc’s Summit property as joint tenants, and Schickel acquired her first husband’s one-half interest in the property after he died.

Morton and Schickel were married in 1994. In 2021, Schickel initiated divorce proceedings. In March 2023, following a two-day trial, the circuit court granted a judgment of divorce, which included an addendum containing the court’s findings. Relevant to this appeal are the court’s findings regarding the Doc’s Summit property. The court found that one-half of Doc’s Summit was marital property subject to division, while the other one-half remained Schickel’s individual property. The court also found, based upon an appraisal, that Doc’s Summit had an overall value of \$1.9 million. Accordingly, the court found that Morton was entitled “to the value of one-fourth of the total property value ... by virtue of his equal share of the one-half marital interest in the property.” The court also assigned to Morton one-quarter of the value of the remaining outstanding balance on the mortgage for Doc’s Summit, as well as one-quarter of any passive rental income from the property going forward. The court awarded the home on the Doc’s Summit property to Schickel because it was her primary residence.

The circuit court granted the parties sixty days “to agree on a plan to equitably distribute or partition the remaining portions of Doc’s Summit” consistent with the distribution ratio of one-quarter to Morton and three-quarters to Schickel. The court ordered that, if the parties were unable to reach an agreement, it would set the matter for oral argument and issue a subsequent order for distribution of the property.

The parties did not reach an agreement, and in July 2023 the circuit court held oral argument regarding the division of the Doc's Summit property. At oral argument, Morton's counsel explained that a sale of the property was Morton's first choice, and a partition of the property was his second choice. Schickel asked the court to award the Doc's Summit property to her, with the understanding that she make an equalization payment to Morton for his one-fourth interest in the property.

The circuit court entered a written order on July 28, 2023, awarding the Doc's Summit property to Schickel, and further ordering that Schickel make an equalization payment of \$424,694 to Morton in exchange for the termination of his interest in the property. Morton seeks review of the circuit court's property division order.

### *Discussion*

Morton presents two issues on appeal. He argues that the circuit court erred by not ordering a partition of the Doc's Summit property. He also argues that the court erroneously exercised its discretion by not accounting for an alleged increase in the value of the property between the time of the divorce judgment and the time the court rendered its decision regarding division of the property in July 2023.

We begin our discussion with the standard of review. It is well established that "property division determinations in divorce proceedings are within the sound discretion of the circuit court, and we will uphold such determinations unless the court erroneously exercised its discretion." *Steinmann v. Steinmann*, 2008 WI 43, ¶20, 309 Wis. 2d 29, 46, 749 N.W.2d 145. "An erroneous exercise of discretion occurs if the circuit court makes an error in law, or fails to base its decision on the facts of record." *Id.*

Morton acknowledges that the standard of review is discretionary. However, he fails to engage with that standard in any meaningful way to support his argument that the circuit court should have granted his request to partition the Doc's Summit property.

We conclude that the circuit court did not erroneously exercise its discretion when it ordered a cash equalization payment rather than a partition of the property. A court properly exercises its discretion when it employs "a logical rationale based on the correct legal principles and the facts of record." *Kohl v. DeWitt Ross & Stevens*, 2005 WI App 196, ¶28, 287 Wis. 2d 289, 704 N.W.2d 586. The record establishes that the court did so here. Although the court acknowledged at oral argument that it had the authority to partition the property, it was not bound to do so. Instead, the court determined that Schickel's proposal for an equalization payment was the "more reasonable" option under the circumstances. The court stated its rationale on the record for reaching that decision, including the legal authority and the record facts it considered.

We turn to Morton's argument regarding the valuation of the Doc's Summit property. Generally, the assets of a marriage are valued and divided as of the date of the divorce. *Schinner v. Schinner*, 143 Wis. 2d 81, 98, 420 N.W.2d 381 (Ct. App. 1988). Here, the divorce judgment was entered on March 17, 2023. Morton argues that the Doc's Summit property increased in value between the time of the divorce trial in December 2022, at which valuation testimony was given, and the time the circuit court entered its order dividing the property in July 2023. However, Morton fails to support his argument with any facts from the record that would demonstrate a significant appreciation of the Doc's Summit property during that time, relying instead on speculation. Without any facts to support a significant difference in value, we cannot

conclude that the court erroneously exercised its discretion in failing to account for an alleged increase in the property value.

Schickel moves for an award of costs, fees, and attorney fees pursuant to WIS. STAT. RULE 809.25(3) and WIS. STAT. § 895.044(5), alleging that the appeal is frivolous. Morton has filed a response opposing the motion. In order for this court to award sanctions under RULE 809.25(3) or § 895.044(5), the entire appeal must be frivolous. *Thompson v. Ouellette*, 2023 WI App 7, ¶¶20, 59, 406 Wis. 2d 99, 986 N.W.2d 338. Although we reject Morton’s arguments for the reasons discussed above, we are not persuaded that the entire appeal is frivolous. We therefore deny the motion for costs, fees, and attorney fees under RULE 809.25(3) and § 895.044(5).

Therefore,

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the respondent’s motion for costs, fees, and attorney fees is denied.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*