COURT OF APPEALS
DECISION
DATED AND FILED

April 23, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1423 **Cir. Ct. No. 2012CV82**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

HELEN E. KEITH,

PLAINTIFF-APPELLANT,

V.

KATHLEEN A. KEITH-HANSEN AND LACHLAN A. KEITH,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Wood County: GREGORY J. POTTER, Judge. *Affirmed*.

Before Lundsten, Sherman and Kloppenburg, JJ.

¶1 SHERMAN, J. Helen Keith appeals the circuit court's grant of summary judgment in favor of Kathleen Keith-Hansen and Lachlan Keith.[1] Helen

[1] Because the parties in this case have the same or similar last name, we refer to the parties by their first names.

brought an action for declaratory judgment against Kathleen and Lachlan seeking to recover from them a portion of the proceeds distributed to them from transfer on death (TOD) accounts, which were titled solely in the name Ian Keith, Helen's deceased husband and Kathleen and Lachlan's deceased father. The circuit court determined that Helen was entitled to only fifty percent of the total amount held in the TOD accounts. For the reasons discussed below, we affirm.

BACKGROUND

¶2 Helen and Ian Keith were married in 1981. At the time of their marriage, Helen and Ian both had grown children from prior marriages. Kathleen and Lachlan are Ian's children from his prior marriage.

¶3 In 2006, Ian executed his last will and testament in which he indicated that Helen would retain her share of the marital property and that Ian's share of the marital property and any individual property belonging to him would be divided between Kathleen and Lachlan. Prior to his death, Ian had four TOD accounts that were titled solely in his name: a Marshfield Clinic Employees' Retirement Plan; a Northwestern Mutual insurance policy; a Hartford Life policy; and a brokerage account administered by Associated Bank.[2] We refer to these accounts collectively as Ian's TOD accounts. For the Marshfield Clinic, Northwestern Mutual, and Hartford Life accounts, Ian designated Helen as 50%

[2] Kathleen and Lachlan assert in their brief on appeal that it is undisputed that the Hartford Life policy and the Associated Bank account are marital property, but that whether the Marshfield Clinic and Northwestern Mutual accounts are marital or non-marital property remains disputed. Whether those two accounts are marital or non-marital property was not decided in the proceeding below in light of the circuit court's summary judgment ruling. Consistent with the parties' briefing on appeal, we will assume without deciding that all of the accounts are marital property.

beneficiary, Kathleen as 25% beneficiary, and Lachlan as 25% beneficiary. With regard to the Associated Bank account, Ian designated Helen, Kathleen, and Lachlan as his beneficiaries, the effect of which was that each party was to receive a one-third share of the account.

¶4 Ian died in March 2011, and his will was probated without dispute. A dispute arose, however, over the distribution of the four TOD accounts. At the time of Ian's death, the TOD accounts had a collective value of approximately $1,300,000. The Marshfield Clinic, Hartford Life, and Northwestern Mutual accounts were distributed as follows:

Account:	Helen	Lachlan	Kathleen
Marshfield:	$444,264.98	$222,132.49	$222,132.49
Northwestern:	$25,532.55	$12,763.86	$12,763.86
Hartford:	$15,541.34	$7,770.67	$7,770.67

The Associated Bank account had a value of approximately $355,529 at the time of Ian's death and has not yet been disbursed.

¶5 In February 2012, Helen brought suit against Kathleen and Lachlan seeking a declaratory judgment that, pursuant to WIS. STAT. § 766.70(6)(b) (2013-14),[3] she is entitled to one-half the amounts distributed to Kathleen and Lachlan

[3] WISCONSIN STAT. § 766.70(6)(b) (2013-14) provides:

(continued)

from the Marshfield Clinic, Northwestern Mutual, and Hartford Life, for a total amount of seventy-five percent of those accounts, and one-half the amounts designated to Kathleen and Lachlan in the Associated Bank account, for a total of approximately sixty-seven percent of that account.

¶6 Both sides moved for summary judgment. Helen asserted in her motion for summary judgment that pursuant to WIS. STAT. § 766.70(6)(b)1., she is entitled to fifty percent of those amounts of the TODs that were gifted to Kathleen and Lachlan, in addition to the portions of the TODs that were separately gifted to her.

¶7 Kathleen and Lachlan argued in their motion for summary judgment that Helen is not entitled to receive any portion of the amounts they received as beneficiaries of the Marshfield Clinic, Northwestern Mutual, and Hartford Life accounts, and that Helen is entitled to receive only fifty percent of the Associated Bank account, not one-half of the two-thirds apportioned to them. Kathleen and Lachlan argued that there is no genuine dispute that it was Ian's intent that Helen receive, in total, her fifty percent marital share of the TOD accounts. Kathleen and Lachlan argued that Helen's position leads to absurd results.

> 1. If a transfer of marital property to a 3rd person during marriage by a spouse acting alone becomes a completed gift upon the death of the spouse or if an arrangement during marriage involving marital property by a spouse acting alone is intended to be and becomes a gift to a 3rd person upon the death of the spouse, the surviving spouse may bring an action against the gift recipient to recover one-half of the gift of marital property. The surviving spouse may not commence an action under this paragraph later than one year after the death of the decedent spouse.

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶8 The circuit court granted summary judgment in favor of Kathleen and Lachlan. The court determined that under WIS. STAT. § 766.31(10), Ian was entitled to distribute his "one-half interest in [his and Helen's] marital property to a third person by nonprobate means," which was the effect of his beneficiary designations for three of the TOD accounts. As to the Associated Bank Account, the court determined that because Helen was apportioned only thirty-three percent of that account, Helen's share would be increased to 50% of the total account to protect her marital share. Helen appeals.

DISCUSSION

¶9 Helen contends that the circuit court erred in entering summary judgment in favor of Kathleen and Lachlan. Helen argues that WIS. STAT. § 766.70(6)(b)1. "unambiguously applies to *all* gifts of marital property, regardless of any interest retained by the surviving spouse" and that, as a matter of law, she is entitled to receive one-half the amounts Kathleen and Lachlan received, or are set to receive, as beneficiaries of Ian's TOD accounts, "regardless of the amount [she] received pursuant to the beneficiary designation." (Emphasis added).

¶10 We review summary judgment de novo, applying the summary judgment methodology outlined in WIS. STAT. § 802.08. ***Apple Valley Gardens Ass'n, Inc. v. MacHutta***, 2009 WI 28, ¶12, 316 Wis. 2d 85, 763 N.W.2d 126. A party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Section 802.08(2). To the extent that this case calls

for statutory interpretation, which is a question of law, our review is likewise de novo. ***State v. Cole***, 2000 WI App 52, ¶3, 233 Wis. 2d 577, 608 N.W.2d 432.

¶11 WISCONSIN STAT. § 766.70(6)(b)1. provides in relevant part that:

> if an arrangement during marriage involving marital property by a spouse acting alone is intended to be and becomes a gift to a 3rd person upon the death of the spouse, the surviving spouse may bring an action against the gift recipient to recover one-half of the gift of marital property.

¶12 Helen argues that WIS. STAT. § 766.70(6)(b)1. entitles a surviving spouse to claim one-half of "every possible gift of marital property at death" to a third person. In Helen's view, this includes those scenarios in which a decedent spouse transfers marital property in its entirety to a third person, those scenarios in which a decedent spouse transfers more than fifty percent of the value of marital property to a third person, and those scenarios like the present case where a decedent spouse transfers the decedent spouse's fifty percent of the value of the marital property to a third person. Helen acknowledges that in the latter gift scenario, a surviving spouse is entitled to recover more than the spouse's marital property share because the spouse receives not only his or her one-half interest in the marital property, *see* WIS. STAT. § 861.01(1), but also one-half of that portion of the decedent's share of the marital property that the decedent spouse gifted to a third party. Helen argues, however, that this result "was expressly anticipated by the legislature" when the legislature drafted Wisconsin's Marital Property Act, *see* WIS. STAT. ch. 766, and "is the only result consistent with [] that Act." We are not persuaded.

¶13 The goal of statutory interpretation is to ascertain the intent of the legislature. ***Town of Burke v. City of Madison***, 225 Wis. 2d 615, 619, 593 N.W.2d 822 (Ct. App. 1999). We begin our inquiry with the language of the

statute. *See* ***State ex rel. Kalal v. Circuit Court of Dane Cnty.,*** 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. The context of the statutory language is important, as is the structure of the statute in which the operative language appears. ***Id.***, ¶46. Accordingly, we interpret statutory language "in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results." ***Id.*** "'If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.'" ***Id.*** (quoted source omitted). If the language of the statute is unambiguous on its face, we have no need to consult extrinsic sources of information to ascertain its meaning. ***Id.***

¶14 We acknowledge that the language of WIS. STAT. § 766.70(6)(b)1. set forth above in paragraph 11 might be read in isolation as saying that a surviving spouse is entitled to bring an action to recover one-half of *any* gift by a decedent spouse of marital property to a third party. However, when § 766.70(6)(b)1. is considered in the context of WIS. STAT. ch. 766, which governs marital property, *and* WIS. STAT. ch. 861, which governs property rights of a surviving spouse, it is clear that the legislature did not intend for § 766.70(6)(b)1. to give to a party like Helen a cause of action to recover fifty percent of a gift to a third party of the decedent spouse's fifty-percent share. Instead, it is clear, at least as applied to the facts of this case, that the legislature intended to limit the surviving spouse to the right to recover the surviving spouse's fifty percent of the marital property.

¶15 WISCONSIN STAT. § 861.01(1) provides that a surviving spouse has an "undivided one-half interest in each item of marital property." The enforcement of a surviving spouse's marital property rights in nonprobate assets is

governed by WIS. STAT. § 861.01(4), which states that "[WIS. STAT. §] 766.70 applies to [the] enforcement of a surviving spouse's marital property rights in nonprobate assets." Section 766.70 delineates various remedies for spouses with respect to marital property. Relevant to the present appeal is § 766.70(6)(b)1., which, as previously indicated, sets forth a spouse's remedy with regard to marital property that has been gifted to a third party. Taking into consideration the relevant statutory framework, it is apparent that protection of the surviving spouse's one-half interest in marital property is the legislative concern.[4]

¶16 Furthermore, interpreting WIS. STAT. § 766.70(6)(b)1. as Helen suggests, would lead to unreasonable and absurd results, contrary to the canon of statutory construction that, whenever possible, statutes should be interpreted to avoid unreasonable or absurd results. *See* ***Hines v. Resnick***, 2011 WI App 163, ¶12, 338 Wis. 2d 190, 807 N.W.2d 687. Each spouse has an undivided one-half interest in marital property, subject to exclusions not applicable here. WIS. STAT. § 766.31(3). If Helen were correct that a surviving spouse may recover fifty percent of *any* gift of marital property by a decedent spouse to a third party, the decedent spouse's ability to dispose of his or her fifty percent interest in the marital property would be needlessly hindered. This is so because under Helen's interpretation of § 766.31(3), a surviving spouse would always have a claim against a gift of marital property by the surviving spouse, even if that gift was

[4] Helen supports her argument with citation to WIS. STAT. §§ 766.70(6)(a) and 766.53, which apply to gifts by a spouse during the spouse's lifetime. However, Helen does not persuade us that these statutes inform our interpretation of § 766.70(6)(b)1., which applies to gifts that occur after the spouse's death. *Cf., Marital Property In Wisconsin,* § 12.9 ("the first spouse to die may effectively give his [other] one-half interest in marital property to a third person by nonprobate means. Such a gift of a one-half interest that severs the spouse's interests is not possible during the marriage.")

solely comprised of the decedent spouse's fifty percent share in that property. So far as we can tell, based on the briefing and authority brought to our attention, in order to effectuate a gift of the entirety of his or her fifty percent share in the marital estate to someone other than the surviving spouse, a decedent spouse would be required to gift away to a third party *the entire value of the marital property*, thus forcing the surviving spouse to bring an action under § 766.70(6)(b)1. to recover his or her fifty percent share. This is absurd.[5]

¶17 What Helen is arguing, in effect, is that because Ian attempted to make it easier for her to realize her fifty percent marital share in the accounts, she should be entitled to seventy-five percent of those accounts. Helen's interpretation leads to the absurd result that if Ian had made no provision for her, she would be entitled to her fifty percent of the accounts; however, if he left her that fifty percent outright, she should be entitled to seventy-five percent. This is both unreasonable and absurd.

¶18 In sum, WIS. STAT. § 766.70(6)(b)1. plainly authorizes a surviving spouse to recover his or her one-half share of marital property if any portion of that share has been gifted to a third party by the decedent spouse. *See Marital Property Law in Wisconsin*, Christiansen, Keith, et al., §§ 8.51, 8.54 (4th Ed., vol. II) (under § 766.70(6)(b)1., "[i]f someone other than the spouse of the insured is the beneficiary of more than one-half the proceeds [of a life insurance policy] classified as marital property, the surviving spouse may recover his or her marital

[5] We acknowledge there might be other options, but so far as we can tell, all would entail complexity. For example, it might be that when, as here, the decedent spouse's intended non-spouse beneficiaries are decedent spouse's children, the same end could be accomplished by allowing the property to pass through the decedent's estate. But of course this is something many estate plans attempt to avoid for reasons that need not be discussed here.

property interest in the proceeds from the beneficiary," and "§ 766.70(6)(b) allows a surviving spouse to recover his or her former marital property interest in a deferred-employment-benefit plan of the deceased employee if someone other than the surviving spouse is named as beneficiary of more than 50 [percent] of the marital property component.") However, at least as applied to the facts before us, § 766.70(6)(b)1. does not authorize a claim for sums above the surviving spouse's one-half share in the marital property.

¶19 Accordingly, we conclude that the circuit court was correct in its determination that because Helen was the beneficiary of fifty percent of the Marshfield Clinic, Northwestern Mutual, and Hartford Life accounts, she did not have a right to recover any portion of the amounts distributed to Kathleen and Lachlan. We also agree with the circuit court that Helen was entitled to receive more than one-third of the Associated Bank account. Consistent with our discussion above, the circuit court correctly concluded that Helen must receive fifty percent of that account, leaving Kathleen and Lachlan to split the remainder.[6]

CONCLUSION

¶20 For the reasons discussed above, we affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports

[6] Because our conclusion on this matter is dispositive, we do not reach other arguments raised by the parties. *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (when a decision on one issue is dispositive, we need not reach other issues raised).