COURT OF APPEALS
DECISION
DATED AND FILED

December 15, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2905 **Cir. Ct. No. 2013FA66**

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

IN RE THE MARRIAGE OF:

ANN ELLEN GENZLER,

PETITIONER-RESPONDENT,

V.

CLIFFORD CHARLES GENZLER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dunn County: ROD W. SMELTZER, Judge. *Affirmed*.

Before Hruz, Seidl, and Reilly, JJ.

¶1 PER CURIAM. Clifford Genzler challenges the circuit court's division of property and maintenance determination in his divorce proceeding. We affirm.

¶2 Clifford and Ann Genzler were married twenty-six years. At the time of their divorce, Ann was a sixty-one-year-old registered nurse earning approximately $85,000 annually. Clifford was sixty-four years old and self-employed, with a reported income from investments, including management of apartment buildings, of $59,000 annually.

¶3 The parties had no children together, but Clifford had three daughters from a previous marriage, and Ann had one daughter from a previous marriage. During the marriage, Clifford and Ann provided Clifford's three daughters sums totaling approximately $750,000 for the purchase of their respective residences. The circuit court found these money transfers to be loans, treated them in the aggregate as a divisible asset valued at $747,934.72, and awarded the loans to Clifford in the property division. The court declined to award maintenance to either party. Clifford now appeals.

¶4 The division of property and the awarding of maintenance rest within the sound discretion of the circuit court. ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will sustain a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and reached a conclusion that a reasonable judge could reach using a demonstrated rational process. ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). Findings of fact will be affirmed unless clearly erroneous. WIS.

STAT. § 805.17(2).[1] Where there is conflicting testimony, the circuit court is the ultimate arbiter of the credibility of witnesses. ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶5 In the circuit court, Clifford argued the monetary transfers to his daughters were gifts rather than loans. Clifford concedes on appeal the validity of the circuit court's factual finding that the monetary transfers were loans.[2] However, Clifford argues the loans have no value or legally enforceable payment terms, and therefore could not be considered divisible assets—awarded either to him or to Ann. Clifford insists the circuit court was required to consider the loans as a source of potential future income, as part of its maintenance analysis.[3]

¶6 Clifford's argument is largely conclusory, summarily relying on the undisputed facts that the loans are undocumented and unsecured as somehow establishing those loans as being without value and unenforceable. But Clifford fails to advance facts or legal authority to support his contention that he is unable to enforce the loans (undocumented and unsecured as they may be), including, if need be, through legal action. The circuit court acknowledged that Clifford was likely better positioned to collect sums owed under the loans, as opposed to Ann. This consideration was a reasonable factor in its awarding the loans to Clifford.

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

[2] We note in this regard that Clifford's daughters claimed an interest deduction on their tax returns for interest paid relative to their respective loans. The circuit court also found the monetary transfers were classified as loans on Clifford's tax return.

[3] Clifford also argues, "Alternatively, the court perhaps could have considered the loans as a factor favoring an unequal property division, though that option makes less sense given the nature of the loans." This argument is undeveloped and we shall not further address it. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

The circuit court found Clifford's daughters made principal and interest payments on the loans, and it is not self-evident that Clifford could not compel additional payments. In addition, the values of the outstanding loans were ascertainable based on Clifford's own records. Clifford testified he prepared a "General Ledger Report," which recorded the amount of funds transferred to each daughter and any payments his daughters made that reduced the balances on the loans.

¶7 Clifford insists our decision in ***Preiss v. Preiss***, 2000 WI App 185, 238 Wis. 2d 368, 617 N.W.2d 514, precluded the circuit court from "treating the loans as a $747,934.72 divisible asset and then awarding them to Cliff." In ***Preiss***, we concluded that a spouse's sick leave account through an employer was not a marital asset because it had no cash value, could not be sold or transferred, and therefore had no fair market value. ***Id.***, ¶14.

¶8 ***Preiss*** is not determinative. The present case does not involve a sick leave or similar account. Rather, this case involves a loan, which the circuit court, acting within its discretion, properly assigned as a receivable. *See* ***Sharon v. Sharon***, 178 Wis. 2d 481, 493-94, 504 N.W.2d 381 (Ct. App. 1993); ***Schinner v. Schinner***, 143 Wis. 2d 81, 102, 420 N.W.2d 381 (Ct. App. 1988) (treating loan to brother as account receivable). As mentioned, the values of the outstanding principal amounts were ascertainable, and the daughters testified they paid 6% interest on the loans. The circuit court's inclusion of the loans' values in the net worth calculation was an appropriate exercise of discretion.

¶9 Alternatively, Clifford argues "[t]he solution is to consider the loans an asset and split them *equally*." (Emphasis in original.) Clifford reasons that by splitting the loans equally, "their fair market value … becomes irrelevant." However, we do not search the record for reasons to sustain an exercise of

discretion the circuit court could have made but did not. *See* ***Steiner v. Steiner***, 2004 WI App 169, ¶18, 276 Wis. 2d 290, 687 N.W.2d 740. Clifford may not agree with the court's property division determination, but the record supports the court's discretion in determining the loans had ascertainable values, were collectible, and should be included in the divisible estate.

¶10 The circuit court also properly exercised its discretion in denying maintenance to both parties. An examination of the court's decision reveals fairness was a primary consideration in denying maintenance to both parties. The court properly considered the length of the marriage, the parties' incomes, and the property each would be receiving. *See* WIS. STAT. § 767.56. The court, having reviewed all the evidence submitted, concluded both parties would have sufficient income to support themselves in a lifestyle similar to that enjoyed during the marriage. In this regard, the court specifically noted its decision was supported by Ann's employment at Regions Hospital, her retirement accounts, and the property she received in the divorce. The court similarly noted Clifford's rental properties, investment income, and property that he received in the property division, which included the couple's residence. Clifford admits his income is "somewhat more difficult" to calculate than Ann's income.

¶11 Clifford suggests the circuit court improperly double counted the loans as "both a $747,934.72 asset … and again as a source of income when determining maintenance …." Clifford relies upon ***McReath v. McReath***, 2011 WI 66, ¶52, 335 Wis. 2d 643, 800 N.W.2d 399, but that case critically undercuts his argument. ***McReath*** discussed the rule against double counting in a property division case involving a pension, where the circuit court may determine the present value of the pension based on projected future benefit payments. ***Id.***, ¶¶52-53. The court stated, "[I]t would be double counting to count the present

value of the pension as a divisible asset and also count the future payments as income [when determining maintenance,] since the income, up to the valuation placed on the pension at the time of the division, are one and the same." ***Id.***

¶12 The present case does not involve a pension or the double-counting considerations at play in ***McReath***. Clifford received the value of the principal amount of the loans at the time of the property division. The principal amount that was included in the divisible estate did not include any accrued interest on the loans. Clifford will be repaid the principal balance owed on the loans and will also be earning interest on the loans until repaid in full. Stated otherwise, Clifford was awarded the principal amount of the loan and he will also earn interest income on it. As he earns interest income, he does not lose the value of the principal amount. Therefore, the interest income and the principal amount are not "one and the same," and no improper double counting occurred when the court considered the interest income in deciding whether to award maintenance. *See* ***id.***, ¶¶52-54. In all, the record supports the circuit court's fairness determination and its exercise of discretion in not awarding maintenance.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.