COURT OF APPEALS
DECISION
DATED AND FILED

February 15, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-2394-FT

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

ROBERT WALTER STRONG,

PETITIONER-RESPONDENT,

V.

MARYANN STRONG,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Langlade County: JAMES P. JANSEN, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Maryann Strong appeals an order denying her motion to reopen her divorce judgment and argues that the trial court erroneously exercised its discretion when it denied her motion made pursuant to WIS. STAT.

§ 806.07(1)(h).[1] Because the record reflects a reasonable exercise of discretion, we affirm the order.

¶2 Maryann and her former husband, Robert Strong, were divorced in January 1998 after approximately seventeen years of marriage. Maryann was not represented by counsel at the time of the divorce. The parties had four minor children. By stipulation, the divorce judgment awarded the parties joint legal custody, with Robert receiving primary physical placement. The stipulation provided that child support was to be held open.

¶3 The parties also stipulated to the property division. The stipulation provided that Robert was to receive the marital home, where he resided with the four children. A family business was sold, and the net assets were divided between the parties. The net effect of the property stipulation was to award Robert more assets than Maryann.

¶4 The record reflects that Maryann and Robert discussed the stipulation approximately seven months before the divorce hearing. At the hearing, Maryann was asked: "And do you understand that at any time throughout this divorce action, as well as today, you could say, 'I don't want to proceed and I would like an attorney to represent me'?" to which Maryann replied, "Correct." Maryann testified that she understood that once accepted by the court, the stipulation "is not subject to change down the road." She was also asked:

> Q. And in spite of the fact that it is not 50/50 do you believe it is fair and reasonable under the circumstances?
>
> A. Yes.

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

> Q. And no one is promising you anything or coercing you to enter into this?
>
> A. No.
>
> Q. And as I indicated before you had more than ample opportunity to retain counsel, correct?
>
> A. Right.
>
> Q. And in fact you have over $3,000 in your bank accounts which would be more than enough to at least retain, initially retain counsel, correct?
>
> A. Correct.

¶5 In October 1998, Maryann moved to reopen the divorce judgment alleging that the settlement agreement was obtained under duress and was unconscionable. At the motion hearing, Maryann testified that the time surrounding her divorce was stressful and that she was "[n]ot thinking straight." She testified that at the time of her divorce, she was pregnant by a man who was married to someone else. The trial court denied her motion.

¶6 Maryann contends that the trial court erroneously exercised its discretion when it denied her motion to reopen. We disagree. A trial court may relieve a party from a stipulation or judgment for the reasons stated in WIS. STAT. § 806.07(1).[2] Maryann relies on para. (h). Although para. (h) is to be liberally

[2] WISCONSIN STAT. 806.07(1) provides:

> **(1)** On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);
>
> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
>
> (d) The judgment is void;
>
> (e) The judgment has been satisfied, released or discharged;
>
> (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;

(continued)

construed to allow relief from judgments whenever appropriate to accomplish justice, *see* ***Conrad v. Conrad***, 92 Wis. 2d 407, 414, 284 N.W.2d 674 (1979), it is appropriately used "only when the circumstances are such that the sanctity of the final judgment is outweighed by 'the incessant command of the court's conscience that justice be done in light of all the facts.'" ***State ex. rel. M.L.B. v. D.G.H.***, 122 Wis. 2d 536, 550, 363 N.W.2d 419 (1985) (citations omitted).

¶7 "Because [para.] (h) invokes the sensibilities of the court, the court must consider a wide range of factors." ***Id***. at 552. These factors include

> whether the judgment was the result of the conscientious, deliberate and well-informed choice of the claimant; whether the claimant received the effective assistance of counsel; whether relief is sought from a judgment in which there has been no judicial consideration of the merits and the interest of deciding the particular case on the merits outweighs the finality of judgments; whether there is a meritorious defense to the claim; and whether there are intervening circumstances making it inequitable to grant relief.

Id. at 552-53.

¶8 Even if the court finds grounds to reopen a judgment, the court in the exercise of its discretion may determine there are factors militating against reopening it. *See* ***Johnson v. Johnson***, 157 Wis. 2d 490, 497-98, 460 N.W.2d 166 (Ct. App. 1990). A circuit court erroneously exercises its discretion if it fails "to exhibit a reasoned, illuminative mental process with which to logically connect its decision, findings and conclusions." ***Steinke v. Steinke***, 126 Wis. 2d 372, 388-89,

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> (g) It is no longer equitable that the judgment should have prospective application; or
>
> (h) Any other reasons justifying relief from the operation of the judgment.

376 N.W.2d 839 (1985). We conclude that the record supports the trial court's determination to deny Maryann relief.

¶9 The court acknowledged that the property division was "lopsided" in favor of Robert. However, it determined that the stipulated property division was fair for three reasons. First, it provided an equal division of the net assets from the sale of the business. Second, Mary and Robert received a "windfall" from the sale of the business because Robert's parents had sold it to them at a substantially reduced price.

> And, third, and most importantly to me, it took into account the fact that there was no child support being paid, because the children were going to be able to live in their home residence and have the use of that home residence. And I have strong feeling that was a major consideration of the parties at that time.

¶10 The record supports the trial court's rationale. Maryann concedes that she and Robert originally purchased the family business at a reduced price. The record shows that Robert received approximately $38,600 from the sale of the business and was responsible for over $10,000 in capital gains taxes and $3,000 in survey costs. Maryann received approximately $24,000. Thus, the parties received an approximately equal division of net sale proceeds.

¶11 Maryann does not challenge the trial court's observation that a major consideration in reaching the property division stipulation was that the children would remain living in the family home. *See* WIS. STAT. § 767.255(3)(h). Also, she does not dispute that she was not required to pay Robert any support for their four minor children. In addition, other than the stress surrounding the divorce, Maryann did not testify to any duress or coercion relating to entering into the

marital settlement agreement. The record further discloses that Maryann was aware of her right to obtain legal counsel and knowingly chose not to do so.

¶12 Because Robert was awarded primary physical placement but received no support, and because the children benefited from being able to remain in the family home, the court was entitled to find that the parties' stipulation was fair and reasonable under the circumstances. Also, the court could reasonably conclude that most litigants suffer from stress at the time of divorce, but that Maryann's testimony failed to support a finding of duress or coercion. As a result, we uphold the trial court's determination that Maryann has failed to show a right to relief under WIS. STAT. § 806.07(1)(h).

By the Court.—Order affirmed.

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