COURT OF APPEALS
DECISION
DATED AND FILED

June 15, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP395 **Cir. Ct. No. 2002FA153**

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

IN RE THE MARRIAGE OF:

DEBORAH K. DEFORTH,

PETITIONER-RESPONDENT,

V.

GARY L. DEFORTH,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Clark County: JON M. COUNSELL, Judge. *Affirmed*.

Before Lundsten, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Gary Deforth appeals his judgment of divorce from Deborah Deforth. He contends that the circuit court's division of property was an

erroneous exercise of its discretion. He also contends that the circuit court denied him his constitutional right to representation. We affirm.

¶2 The parties married in March 2001, separated after one year, and were divorced in December 2004. Gary brought substantial assets to the marriage in the form of financial investments and real estate. Deborah brought approximately $25,000 to the marriage.

¶3 The circuit court found that, once married, the parties merged their assets and jointly contributed to increasing them. The circuit court explained its decision to award Deborah $225,000 in marital property as follows:

> Factors c, e, f, g, h, j and L [of WIS. STAT. § 767.255] are relatively neutral in character and do not significantly affect the court's decision. While a 50/50 division is normally the presumptive starting point for division of assets, deviation is appropriate under some circumstances. Here, this is a marriage of relatively short duration and respondent brought considerably more assets to the marriage than petitioner. A 50/50 division would be inequitable to him. However, it would also be inequitable to petitioner for her to leave this marriage with $25,000. While the initial contributions to the marital estate were different in size, they were like in kind—each contributed 100%, nothing was held back. The court can infer that each was investing their all in a joint economic future. Each worked to improve the value of the joint marital estate. Each worked, perhaps in different ways, to improve the rental properties. Each would expect a future income stream from them. Petitioner should not be cut off from this joint expectation.
>
> Starting with a 50/50 distribution presumption, petitioner should receive less based on the short duration of the marriage and her lesser initial monetary contribution to the marital estate. However, this reduction should not be brought down to $25,000. Instead, the court needs to recognize the equal effort each brought to the marriage in improving and increasing the marital estate and that a property division award to petitioner will realize her expectation of a future income stream from the marital estate—recognizing the maintenance aspect a property division can sometimes have. In addition, the court

> concludes some recognition must be made of the increased costs and fees that petitioner incurred because of respondent's [obstructive] actions in this matter. The court concludes that a property award to petitioner of $225,000.00 will properly recognize these concerns and factors and fairly represents the expectations of the parties going into the marriage and the economic realities of the divorce.

¶4 Gary appeared earlier in the proceedings with counsel, but appeared at his trial without representation. He contends that the court had an obligation to affirmatively determine if Gary's waiver of counsel for the trial was knowing and voluntary. By not doing so, he contends, the court deprived him of his right to counsel. However, while the circuit court must affirmatively determine that a waiver of counsel is knowing and voluntary in criminal cases and commitment proceedings, Gary provides no authority for the proposition that the same rule applies in other civil cases, including divorce actions. The circuit court did nothing to prevent Gary from appearing with counsel and, therefore, Gary cannot meritoriously contend that the court deprived him of counsel.

¶5 Gary next argues that the circuit court erred by awarding additional assets to Deborah because Gary's obstructionist tactics caused her added legal expense. He contends that the court lacked authority to consider this a factor in the property division because the court may only award litigation expenses under WIS. STAT. § 767.262 (2003-04),[1] and only in a specific amount. However, by its express language § 767.262 applies only to litigation expense awards based on the parties' financial resources. Section 767.262 does not control or limit the court's authority to compensate a party for unnecessary litigation expenses. *See*

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Ondrasek v. Ondrasek, 126 Wis. 2d 469, 484, 377 N.W.2d 190 (Ct. App. 1985) (court may compensate overtrial victim without considering parties' financial resources).

¶6 Finally, Gary contends that Deborah's property award was invalid and excessive because the court never determined the total value of the marital assets before awarding Deborah's share. However, the total amount of the assets was never in dispute.[2] There was no need for the court to make an express finding on an undisputed matter. Implicit in its decision is the court's acceptance and use of the only valuations in evidence. *See* ***State v. Walstad***, 119 Wis. 2d 483, 515, 351 N.W.2d 469 (1984) (we may infer implicit findings from the circuit court's decision).

By the Court.—Judgment affirmed.

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

[2] Evidence Deborah introduced at trial indicated assets worth approximately $850,000. In a pretrial filing Gary provided a roughly similar valuation.