COURT OF APPEALS
DECISION
DATED AND FILED

April 11, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP380 **Cir. Ct. No. 2009FA235**

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

IN RE THE MARRIAGE OF:

LORI A. SKUTT,

JOINT-PETITIONER-RESPONDENT,

V.

JASON A. SKUTT,

JOINT-PETITIONER-APPELLANT.

APPEAL from an order of the circuit court for St. Croix County: SCOTT R. NEEDHAM, Judge. *Affirmed*.

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Jason Skutt appeals, pro se, an order denying in part his motion to reconsider the property division in a judgment of divorce.[1] He argues that the "Skeeter" boat should have been excluded from the property division and that he was not guilty of committing waste of the boat during the pending divorce. He also recites a long list of items allegedly mistreated in the division of property, but fails to develop any legal argument that error occurred. We affirm the order denying reconsideration.

¶2 Jason and Lori Skutt were married for about nine years before the action for divorce was started. After two days of evidence, the parties submitted post-trial memoranda. The court found that the Skeeter boat was jointly titled in both Jason's and Lori's names and that, during the divorce, Jason traded the boat in and titled the newly acquired boat in his father's name. The trade-in value of the boat was counted as an asset awarded to Jason. The final judgment of divorce required Jason to make a $5,323.97 payment to Lori to equalize the property division. On Jason's motion for reconsideration, the court added to Lori's asset total the value of jewelry, and the equalization payment was reduced to $2,772.18.

¶3 Jason first argues that the Skeeter boat was not divisible property because it had been gifted to him by his father and purchased with money his

[1] Jason did not timely appeal the judgment of divorce entered August 15, 2011. Jason's October 12, 2011 motion for reconsideration was not timely so as to alter the time to appeal the judgment of divorce under WIS. STAT. § 805.17(3) (2011-12). *See* ***Wainwright v. Wainwright***, 176 Wis. 2d 246, 249-50, 500 N.W.2d 343 (Ct. App. 1993). This court's May 24, 2012 order informed the parties that the appeal is limited to matters raised in Jason's motion for reconsideration to the extent such matters raised new issues not determined by the judgment of divorce. *See* ***Silverton Enters., Inc. v. General Cas. Co.***, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). This opinion addresses issues which satisfy the new issues test.

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

father inherited. This argument is raised for the first time on appeal; Jason's motion for reconsideration only argued that the parties mutually gifted the value of the boat to Jason's father before the divorce was started. Although we generally do not address issues raised for the first time on appeal, we do so here because this argument is intertwined with Jason's other arguments and is quickly disposed of. *See* ***Allen v. Allen***, 78 Wis. 2d 263, 270-71, 254 N.W.2d 244 (1977).

¶4 "When a party to a divorce asserts that property, or some part of the value of property, is not subject to division, that party has the burden of showing that the property is non-divisible at the time of the divorce." ***Derr v. Derr***, 2005 WI App 63, ¶11, 280 Wis. 2d 681, 696 N.W.2d 170. "Whether a party has met the burden of proof is a question of law which we examine without deference to the trial court's conclusions." ***Spindler v. Spindler***, 207 Wis. 2d 327, 338, 558 N.W.2d 645 (Ct. App. 1996).

¶5 Jason testified that his father bought the Skeeter boat for Jason from funds his father inherited. Lori acknowledged that the boat was purchased by Jason's father with inherited funds. Jason also testified that the boat was titled in both his and Lori's names. His testimony supports the circuit court's finding that the boat was titled in both Jason's and Lori's names.[2] Even if, as Jason contends, the boat was gifted only to him, the act of titling the boat in both of their names shows it was converted to divisible property. *See* ***Steinmann v. Steinmann***, 2008 WI 43, ¶35, 309 Wis. 2d 29, 749 N.W.2d 145 (joint title changed the character of

[2] Although not presented as part of the evidence at trial and the circuit court refused to consider evidence submitted with his motion for reconsideration because it was not newly discovered evidence, the boat title which Jason submitted with his motion for reconsideration reflected both Jason and Lori as owners of the boat. Lori's name is listed on the title in a section titled "Owners' Names Other Than Above Owner."

the ownership interest into property subject to division). Jason has failed to meet his burden of proving that the Skeeter boat was not divisible property.

¶6 Next, Jason contends that the Skeeter boat was traded in for a boat titled in his father's name before the divorce was filed and with Lori's consent. Thus, he contends he is not guilty of dissipating that marital asset under WIS. STAT. § 767.117(1). It is unclear when the Skeeter boat was traded in, but the date of the transaction is not important because the circuit court made no mention of and did not apply § 767.117(1), which prohibits a party from disposing of any property jointly owned while the action is pending. The circuit court's decision to include the value of the boat as divisible property was proper under the one-year look-back provision in WIS. STAT. § 767.63.[3]

¶7 Whether Jason rebutted the presumption that the value of the boat was not property subject to division is a question of law. *See* ***Spindler***, 207 Wis. 2d at 338. The circuit court's factual finding that Jason alone gifted the value of the boat to his father will be upheld unless clearly erroneous. *See* WIS. STAT. § 805.17(2). "It is for the trial court, not the appellate court, to resolve conflicts in the testimony. It is not within our province to reject an inference drawn by a fact finder when the inference drawn is reasonable." ***Global Steel Prods. Corp. v.***

[3] WISCONSIN STAT. § 767.63 provides, in part:

> In an action affecting the family, … any asset with a fair market value of $500 or more that would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action and that was transferred for inadequate consideration, wasted, given away, or otherwise unaccounted for by one of the parties within one year prior to the filing of the petition … is rebuttably presumed to be property subject to division under s. 767.61 and is subject to the disclosure requirement of s. 767.127.

Ecklund Carriers, Inc., 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269 (citation omitted).

¶8 Although Lori testified that she was aware that Jason and his father had taken the Skeeter boat to trade it in for a new boat, there was no evidence that she agreed to make a gift of the boat's value to Jason's father. Lori indicated that she was not part of the purchase of the new boat. She acknowledged that the new boat was supposed to be titled in the father's name but was mistakenly titled in Jason's name. She saw that the title for the new boat was in Jason's name and the invoice listed Jason as a co-owner. She indicated that Jason took the title and transferred the title to his father. The evidence permits the reasonable inference that Lori's acquiescence, if any, was to a transaction which made Jason a co-owner of the new boat. When Jason unilaterally retitled the new boat in his father's name, he made a gift Lori did not participate in. The evidence supports the circuit court's finding that the gift was from Jason alone. Again, Jason did not meet his burden of proof to rebut the presumption that the value of the boat was divisible property.

¶9 Jason provides a list of eight items of personal property which the circuit court revalued or removed from the appraisal of divisible property, thirteen items that Lori indicated were in Jason's possession but not included on the appraisal and some portion of the value of which was included in the marital estate, and six items included as marital property that he testified were inherited or gifted to him, property brought to the marriage,[4] or not his. He separately argues

[4] Property brought to the marriage that is not acquired by gift is divisible property. ***Lang v. Lang***, 161 Wis. 2d 210, 229, 467 N.W.2d 772 (1991).

that there was no evidence that, at the time of the divorce, he had an ownership interest in hunting land referred to as "Double-Nickel," and that this property should not have been included as divisible property. Jason indicates that he sought reconsideration of the removal and inclusion of all of these items and the Double-Nickel property, but he fails to develop any argument as to why the circuit court's decision as to those items was error. We do not address undeveloped arguments. *See* ***Fryer v. Conant***, 159 Wis. 2d 739, 746 n.4, 465 N.W.2d 517 (Ct. App. 1990).

¶10 It is sufficient to observe that Jason's complaint about the treatment of these items is nothing more than disagreement with the circuit court's credibility determinations. Jason identifies testimony that supports the circuit court's decision as to each item. We defer to the circuit court's reliance on that testimony as credible. *See* ***Hughes v. Hughes***, 148 Wis. 2d 167, 171, 434 N.W.2d 813 (Ct. App. 1988) (we are required to give due regard to the opportunity of the circuit court to resolve conflicts in the testimony which requires assessing the credibility of the witnesses). The same is true even in instances in which Jason contends that Lori contradicted her own testimony. *See* ***O'Connell v. Schrader***, 145 Wis. 2d 554, 557, 427 N.W.2d 152 (Ct. App. 1988) (the trier of fact, as the arbiter of credibility, has the power to accept one portion of a witness's testimony, reject another portion, and assign historical facts based upon both portions). As to items that Jason testified lacked value, were inherited, gifted, or did not belong to him, the circuit court could reject his testimony. *See* ***State v. Kimbrough***, 2001 WI App 138, ¶¶28, 29, 246 Wis. 2d 648, 630 N.W.2d 752 (a witness's statement need not be contradicted by other evidence as a condition precedent to the circuit court's rejection of the testimony; the circuit court may choose to believe some assertions of the witness and disbelieve others).

¶11 In her pro se respondent's brief, Lori asks that we declare Jason's appeal to be frivolous and award her costs and attorney's fees under WIS. STAT. RULE 809.25(3). A request to declare an appeal frivolous cannot be included in the respondent's brief; a separate motion is necessary to provide notice and an opportunity to be heard. ***Howell v. Denomie***, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621. Therefore, we do not address Lori's request. She is not, however, precluded from seeking costs under RULE 809.25(1).

By the Court.—Order affirmed.

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