COURT OF APPEALS
DECISION
DATED AND FILED

November 24, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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Appeal No. 2025AP1397 **Cir. Ct. No. 2022FA359**

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

IN RE THE MARRIAGE OF:

RYAN DAVID CHERNICK,

PETITIONER-RESPONDENT,

V.

TRACY MARIE CHERNICK,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: MARC A. HAMMER, Judge. *Reversed in part and cause remanded with directions.*

Before Stark, P.J., Hruz, and Gill, JJ.

¶1 GILL, J. This appeal concerns whether the circuit court erroneously exercised its discretion in its application of ***Button v. Button***, 131 Wis. 2d 84, 86,

388 N.W.2d 546 (1986), to determine whether the marital property agreement (MPA) executed by Ryan and Tracy Chernick prior to their marriage was equitable and enforceable. The court found that, under the third ***Button*** requirement, the MPA's provisions relating to maintenance were inequitable at the time of the divorce. However, the court also found that most of the agreement's provisions relating to property division—particularly, those provisions stating that any shareholder interest Ryan had in a family business would remain indivisible upon divorce—were equitable under ***Button***.

¶2 We conclude, under the first and third ***Button*** requirements, that the circuit court erroneously exercised its discretion by finding that any portion of the MPA was equitable. Under the first ***Button*** requirement, the record does not support the court's finding that Ryan made a fair and reasonable disclosure of his financial status to Tracy prior to the execution of the agreement. More specifically, Ryan failed to disclose reasonably foreseeable income and net worth. While the record demonstrates that Ryan disclosed his then-current shareholder interest in the family business, it remains undisputed that Ryan did not provide Tracy with information regarding the value of the business, his potential net worth upon taking over the business, which was planned and likely, or his potential income upon taking over the business. This information was reasonably foreseeable—and imperative for Tracy to have in order to decide whether to enter into the agreement—because Ryan was essentially guaranteed to have a large increase in income from the business once his father retired. To the extent the court found that Tracy had independent knowledge of Ryan's financial status based on his father's lifestyle, the record does not support that finding.

¶3 Furthermore, under the third ***Button*** requirement, the parties agree that the circuit court reasonably found that the economic circumstances of the

parties had significantly changed since the MPA was signed given that the family business had been sold and that Ryan now made approximately 16 times more than Tracy had believed that he made prior to entering into the agreement. The parties further do not contest the court's finding that Tracy could not have reasonably foreseen these changes. Given these findings, we conclude that the court erroneously exercised its discretion by finding that the parties' significantly changed economic circumstances, and the unforeseeable nature of those changes, applied only to the agreement's maintenance provisions.

¶4 Finally, we address the circuit court's maintenance award given that we reverse the divorce judgment in part and remand this matter to the court for reconsideration of a fair and equitable property division. We conclude that the court erroneously exercised its discretion in setting both the amount of maintenance and the length of the award because the award would leave Tracy destitute in seven years. Accordingly, we reverse the divorce judgment in part and remand for the court to fairly and equitably divide the parties' property—as the terms of the MPA are not binding—and to enter an order for maintenance consistent with this opinion.

BACKGROUND

¶5 Tracy and Ryan married on February 25, 2006.[1] Two days prior, on February 23, 2006, the parties signed an MPA, which included two attachments, referred to in the agreement as "Schedule A" and "Schedule B." Schedule A included Ryan's 2004 tax return along with a list of his assets, debts, and

[1] Neither Tracy nor Ryan had previously been married.

investments. Schedule B included Tracy's 2005 tax return and a list of her assets and debts.

¶6 According to Schedule A, Ryan's estimated net worth was over $2.25 million. Ryan's 2004 tax return showed that he made over $56,000 from his base salary working in sales for Camera Corner, Inc., a subchapter S corporation.[2] Ryan also reported on his 2004 tax return additional income, which included over $150,000 from Camera Corner. According to Ryan's later testimony, this income was gained through his percentage of the gross profit each month from the business that he earned as commission. Schedule A further showed that Ryan had a "10% ownership interest" in Camera Corner, and the document valued his interest at approximately $400,000. Ryan had additional investments not related to Camera Corner, which were also listed in Schedule A.[3] Schedule A further listed "Miscellaneous Partnerships and LLCs." This list included six companies and showed the potential value of Ryan's interest in five of those companies if they were sold. Schedule A did not include an estimated sale value for Camera Corner.

¶7 Tracy's 2005 tax return showed that she made just over $6,000 that year, and Schedule B estimated her net worth to be negative $5,700 at the time the MPA was executed.

[2] Ryan's father was the CEO of Camera Corner, which was founded by Ryan's grandfather.

[3] For example, according to Schedule A, Ryan had a Smith Barney account valued at $700,000 and an individual retirement account (IRA) with Associated Bank valued at $450,000.

¶8 In relevant part, the MPA stated that "[a]ny and all interest" that Ryan had in Camera Corner—and any of his other investments and monetary accounts held before the marriage—would remain his individual property, not subject to division upon divorce, including "[a]ny and all distributions, draws or Subchapter S distributions associated with [Ryan's] interest in Camera Corner." The agreement further provided that the value of Ryan's individual property would not be considered in dividing the parties' other property interests in the event of divorce. The agreement also stated that Tracy "expressly acknowledges that the value of [Ryan's] individual property may significantly increase in the future. Notwithstanding such potential increase, [Tracy] hereby knowingly waives the right to any property division of" Ryan's individual property.

¶9 Moreover, the MPA stated that any "earnings" of either party after the date of the marriage would be considered marital property. The term "earnings" was defined by the agreement as all income earned or accrued during the marriage, including all assets acquired or income derived therefrom, but earnings did not include "Subchapter S Corporation draws or distributions from" individual property. The agreement also stated that the appreciation in the fair market value of the parties' marital residence—which they agreed was $330,000 at the time of the signing of the agreement—would be divided equally between the parties. The agreement further stated that Tracy would, "as a full and complete property settlement between the Parties and in lieu of any and all property division and all other spousal support"—including maintenance—"receive the amount determined by reference to the number of full years between the date of the Parties' marriage and the date of the commencement" of divorce proceedings. In pertinent part, the agreement provided that Tracy would receive $350,000 if the parties were married for 15 years or more and had children together.

¶10 Ryan filed for divorce in 2022. Tracy filed a motion to invalidate the MPA, arguing that it was inequitable.

¶11 At an evidentiary hearing on Tracy's motion, Attorney Thomas Camilli testified that Tracy hired him to represent her in relation to the MPA in 2006.[4] Camilli stated that he received a copy of the first proposed agreement, which was drafted by Ryan's counsel, on February 7, 2006, which included "other documents like a proposed will" and a "trust document." Camilli testified that the schedules referenced in the agreement were not included in the copy he received. However, he received Schedule A on February 9, 2006. Camilli could not recall, and his notes did not reflect, precisely when he received Schedule B, but he stated that he received it at some point after he received Schedule A.

¶12 Attorney Camilli stated that he met in person with Tracy three times, and held three or four telephone calls with her, during his representation of her in relation to the MPA. The first in-person meeting took place on February 10, 2006. Camilli testified that the meeting lasted approximately two hours and that he "identified a number of issues" with the agreement, advised Tracy that the agreement was inequitable, and told her that she would be entitled to more assets and maintenance upon divorce if the agreement were not executed. Camilli also testified that he believed that Tracy knew that but for the agreement, she would be entitled to half of Ryan's assets and additional maintenance depending on the length of the marriage. Furthermore, Camilli testified that he viewed the agreement as "financially … disproportionate," "[p]articularly on the waiver of the

[4] Around the same time that Tracy hired Attorney Camilli in relation to the MPA, Tracy had also hired Camilli to represent her in an unrelated placement case "involving a grandparent of [Tracy's] child by a prior … relationship."

maintenance" and the distribution of assets upon divorce. During that meeting, Tracy also expressed "some discomfort with the provisions."

¶13 On February 15, 2006, Attorney Camilli sent a letter to Ryan's attorney. In that letter, Camilli suggested "certain modifications, deletions, and/or corrections" to the first proposed MPA, and he prefaced these changes with the following:

> In preparing my comments, I am aware that Ryan enters the marriage with significant assets and income which he seeks to protect in the event of death or divorce. He is particularly concerned about his interest in Camera Corner, Inc. He likewise seeks to limit his exposure for maintenance in the event of divorce.
>
> Tracy, for her part, acknowledges that Ryan has property interests he wishes to protect and the need for this type of agreement to accomplish that goal. Her concerns deal with property acquired during the marriage as well as the increase in value of property designated as Individual Property or non-marital property which occurs, in part, by virtue of her efforts. This would include the marital residence. At the same time she would like to be protected in the event of Ryan's untimely death, and to insure herself a proper level of support and/or compensation in the event of divorce.
>
> The following comments seek to address Tracy's concerns while at the same time acknowledging Ryan's interest in property to be protected[.]

¶14 In the letter, Attorney Camilli stated that "no information was contained on the schedules" relating to Ryan's "income, assets, debts, and liabilities." While Ryan had provided Camilli "with a summary of his investments and primary liabilities" prior to Camilli's drafting of the letter, Camilli requested that this information be incorporated into Schedule A. Camilli further requested that the MPA be amended so that Tracy and Ryan would share their home's increased value in the event of a divorce, rather than the entire house being

awarded to Ryan upon divorce, and that the agreement's provision relating to Tracy's waiver of maintenance be deleted.

¶15 On February 20, 2006, Attorney Camilli received a response from Ryan's attorney with a second proposed MPA, which included "some, but not all," of Tracy's proposed changes. Ryan's attorney sent a third draft of the agreement to Camilli on February 22, 2006.[5]

¶16 Attorney Camilli held another two-hour meeting with Tracy on February 22, 2006, to discuss the third draft of the MPA. At this meeting, Camilli provided Tracy with Ryan's summary of investments and primary liabilities. In addition, Tracy informed Camilli that she and Ryan had held "a conference and agreed to some changes" to the agreement, including an increase to "the amount of the buyouts" upon divorce and a division of the equity in the house upon divorce. Camilli's impression after his meeting with Tracy was that Tracy's concerns with the agreement had been alleviated after her conference with Ryan, but Camilli still advised Tracy that there were "shortcomings in the agreement."

¶17 The record is silent as to when the final MPA was agreed upon between the parties, or if additional changes were made based on the third draft agreement sent to Attorney Camilli by Ryan's counsel on February 22, 2006. Regardless, on February 23, 2006—two days before the wedding—Tracy met with Camilli at his office for a third time to sign the final agreement. According to Camilli, "[a] little more than half of" the proposed changes from his February 15, 2006 letter were ultimately incorporated into the final agreement. Before Tracy

[5] Neither the second nor the third proposed MPA appears in the record.

signed the document, Camilli noticed that one provision, relating to Tracy's affirmation that the agreement was fair and equitable, should be deleted. Tracy called Ryan, and Ryan came to Camilli's office. The parties agreed to strike this provision. Tracy signed the agreement following this revision.

¶18 Attorney Camilli stated that during his representation of Tracy, he did not know the value of Ryan's net worth. Furthermore, Camilli testified that he did not discuss with Tracy "the impact that a potential sale of [Camera Corner] might have," the possibility of Ryan's income increasing over time, or the possibility of Ryan inheriting additional shares in Camera Corner. Likewise, Camilli testified that he did not discuss with Tracy Ryan's investments. However, Camilli stated that he did discuss with Tracy the possibility of Camera Corner's value and "Ryan's interest in the business" increasing. He could not recall whether he reviewed Schedule B or any other part of Schedule A with Tracy. Camilli further stated that while "[t]here was some urgency" in getting the agreement signed, he did not get the impression that the process was "rushed."

¶19 Tracy also testified at the hearing. Tracy stated that she met Ryan in June 2005 when she was bartending and that she and her daughter moved in with Ryan approximately three months later. Previously, Tracy and her daughter lived in a duplex with "renters' assistance." Tracy's daughter switched schools when she and Tracy moved in with Ryan, and Tracy "gave all [of her] stuff away," including her household furnishings from her duplex rental. At that time, Tracy knew that Ryan was working in sales for his father's business, and she believed that Ryan made around $65,000 per year. Tracy also understood that Ryan had shares in the company, but she could not recall whether she knew that Ryan earned income from those shares. She testified that she did not know that Ryan's estimated net worth was over $2.25 million prior to the marriage.

¶20 Approximately two months before the wedding, Ryan informed Tracy that she would need to sign an MPA "to protect the company." Before this conversation, Tracy had learned from Ryan that his father had rejected multiple third-party offers to purchase Camera Corner. Ryan told Tracy that his father would not sell Camera Corner and, importantly, that Ryan would eventually take his father's place in the business.

¶21 According to Tracy, Ryan provided her a copy of the first draft of the MPA "a few weeks before" the wedding. Tracy testified that she was surprised that the agreement covered more than an understanding that the business was to stay with Ryan's family. Tracy further testified that she and Ryan had an argument on the day she received the agreement because she "didn't want to sign it." Tracy and Ryan had "many" other conversations about the MPA prior to Tracy signing the agreement, and Tracy stated that the agreement was "an ongoing fight." On one occasion, during an argument over the agreement, Ryan threw a framed photograph of him and Tracy onto the ground. In addition, approximately four days before the wedding and before Tracy signed the agreement, an intoxicated Ryan ripped Tracy's shirt off because he was upset that she was wearing a "V-neck sweater."

¶22 Tracy felt that she had to sign the MPA because she "had already moved in with" Ryan, she did not possess the financial resources to move back out, she had no personal property, and there were not any rental options near her daughter's new school. Tracy further testified that even after meeting with Attorney Camilli, she still did not understand the terms of the agreement. Tracy stated that Camilli never explained to her what she would be entitled to upon divorce if the agreement were not executed. Further, Tracy stated that she did not review Schedule A or B prior to signing the agreement. Immediately before she

signed the agreement, testified Tracy, Camilli became upset, telling her, "Just sign it. This will never stand up in court anyway."

¶23 Ryan was the last witness to testify at the hearing. Ryan testified that he and Tracy became engaged in October 2005. At the time of the engagement, according to Ryan, he was making a base salary of $55,000 from Camera Corner in addition to "a percentage of the gross profit at the end of each month." However, Ryan stated that, during this period, he would reinvest the distribution he received back into the business. Ryan testified that he was unsure if Tracy knew that he was receiving and sending back distributions. Moreover, Ryan stated that he believed he would run the business one day as the sole owner after his father retired, and he knew that his father was making over $1 million a year through the company. Ryan did not think that he ever shared with Tracy how much his father made, but he testified that his parents' lifestyle would have demonstrated to Tracy that his father had a substantial income.

¶24 Ryan stated that the purpose of the MPA was to protect his "assets" and Camera Corner. According to Ryan, he first met with his attorney in regard to the agreement in November 2005, and he reviewed the first draft of the agreement the following month. Ryan recalled throwing the photograph on the ground during an argument with Tracy about the agreement. Ryan testified that he told Tracy, prior to her signing the agreement, "Either you sign[] this, or we're not getting married."

¶25 Ryan stated that by 2016, he was taking and not reinvesting the distributions he received from Camera Corner. Ryan further testified that Camera Corner merged with a much larger company around 2019, the larger company purchased his shares, and he became president of the Camera Corner portion of the

merged business. Furthermore, Ryan stated that the merged company purchased two additional companies prior to the divorce.

¶26 Ryan also testified that his total percent ownership in the merged company was approximately 3.5%, he earned a base salary of $200,000, he received a "4 percent override," and he received 5% commission on any of his sales. Ryan's adjusted gross income was nearly $1.2 million in 2019,[6] over $450,000 in 2020, over $800,000 in 2021, over $1 million in 2022, and around $1.3 million in 2023. Ryan estimated that his 2024 adjusted gross income would be about $1 million. Ryan testified that his percent ownership in the merged company is worth around $800,000. Furthermore, Ryan valued his Smith Barney account between $1.5 and $1.6 million and his IRA at $650,000.

¶27 Applying ***Button*** to the MPA and the other evidence, the circuit court made the following findings of fact and conclusions of law. The court found that both Ryan and Tracy had made fair and reasonable disclosures of their respective financial statuses to each other prior to the execution of the agreement. The court stated that there was "no suggestion or inference that either party failed to accurately disclose what assets they believed existed on the date of [the] marriage," and the court found that "both parties were credible" "as to that issue."

¶28 The circuit court further found that Tracy freely and voluntarily entered into the MPA. The court noted that Tracy met with Attorney Camilli on multiple occasions, that Camilli did not believe that the negotiations and signing of the agreement were rushed, and that Camilli and Tracy raised concerns with

[6] Ryan's 2019 adjusted gross income included approximately $570,000 from the merger.

Ryan and his attorney about the agreement. Furthermore, the court found that based on Camilli's February 15, 2006 letter, Tracy's concerns with the first draft of the agreement "dealt with property acquired during the marriage as well as an increase" in the value of the marital residence and that these concerns were addressed through revisions.

¶29 Additionally, the circuit court found, as evidenced by Attorney Camilli's letter and Ryan's counsel's responses, that "the parties clearly knew and clearly understood the division of assets was inequitable." The court stated that it was "very hard to believe that Tracy wasn't aware of Ryan's long-term goals and objectives. They're logical. They're reasonable. They're consistent with his family history. They're consistent with all of his behaviors prior to, during, and after the execution" of the MPA. Further, the court stated that assuming the domestic violence "allegations are true," the court was "not satisfied they're directly related to the execution of" the agreement, given the "lengthy period of negotiation" and "extensive revisions."

¶30 The circuit court found incredible Tracy's statements that Attorney Camilli never explained to her what she would be entitled to upon divorce if the MPA were not executed and that Camilli told her to "[j]ust sign" the agreement. Given Camilli's "clear recollection" of his representation of Tracy, "his past practice as a divorce lawyer," and his knowledge that premarital agreements are entitled to a presumption of reasonableness, the court found Camilli more credible on these points. Furthermore, the court found incredible Tracy's testimony that she never reviewed Schedules A and B because the schedules were attached to "most of these documents" and were "the basis upon which the … agreement was drafted." The court further stated that it was "not satisfied that Tracy didn't understand" the agreement, including the maintenance waiver provisions.

¶31 Finally, regarding whether the substantive terms of the MPA were fair to each spouse, the circuit court concluded that the agreement "in and of itself is not fair.… [I]t is inequitable and substantially weighs the property division in favor of one party." However, the court stated that "[t]hat's the purpose of a prenup," and the appropriate question was "whether or not it's fair today."

¶32 On this question, the circuit court found that it was "reasonable for Tracy to have an understanding that these parties would have a very comfortable lifestyle" and that "Ryan's income would increase over the course of their marriage, particularly given what he was doing … with Camera Corner[] and what his objective was." The court stated that "it didn't appear by any stretch of the imagination that there [was] reason to think that that objective would not be met" by Ryan because Camera Corner was a family-maintained business and Ryan had no "roadblocks" in his way to replacing his father in the business.

¶33 With that said, the circuit court concluded that Tracy could not "have reasonably foreseen the entire scope of that income stream as it sits today." In particular, the court was not convinced that a reasonable person could have foreseen just how much Ryan would be making 16 or 17 years after he had reported only $60,000 on his income taxes. The court found that while Tracy could have foreseen living a "comfortable lifestyle," "this is not just a comfortable lifestyle. In Green Bay, Wisconsin, this is an extraordinary lifestyle …." The court further concluded that it would be unfair to apply the MPA's maintenance provisions because those provisions did not consider Ryan's increased income.

¶34 Accordingly, the circuit court concluded that "certain substantive provisions" in the MPA were "fair and enforceable" but that "other provisions, particularly those related to maintenance (spousal support) and division of certain

assets, [were] unfair at the time of the divorce." Importantly, the court concluded that any interest Ryan owned in the merged company would be considered his individual property not subject to property division.[7]

¶35 Thereafter, the matter was set for a contested divorce hearing to address maintenance and property division.[8] Following the hearing, the circuit court entered a judgment of divorce and ordered Ryan to pay Tracy $9,500 per month in child support until June 2028. As to maintenance, the court ordered that Ryan pay Tracy $4,000 per month until June 2028. The court further ordered that once child support terminates, Ryan will pay Tracy $12,000 per month in maintenance until June 2030, and $10,000 per month until June 2032 (for a total of 7 years of maintenance). After accounting for the parties' respective assets, the court ordered Ryan to make a $239,799.17 equalization payment to Tracy.

¶36 Tracy now appeals.

DISCUSSION

¶37 On appeal, Tracy argues that the circuit court erred as a matter of law, and erroneously exercised its discretion, by enforcing some of the MPA's property division provisions after concluding that other provisions were

[7] The circuit court further found that any funds in the Smith Barney account and the IRA that were accrued during the marriage would be considered marital property but that any funds in the accounts from before the marriage would be Ryan's individual property not subject to property division.

[8] The parties had two minor children together at the time Ryan filed his petition for divorce. Prior to the contested proceedings, the parties reached a partial marital settlement agreement, wherein they agreed to equally share placement of the children and have joint legal custody. The circuit court approved the settlement agreement and ordered it incorporated into the final judgment.

inequitable.[9] According to Tracy, the entire agreement is unenforceable under WIS. STAT. § 767.61 (2023-24)[10] and ***Button***. Tracy also argues that the court erred as a matter of law, and erroneously exercised its discretion, by awarding her an "unjustly low" maintenance payment for an "unjustly short" period.

I. The MPA and its equitableness as to property division

¶38 We review the circuit court's determination of the equitableness of the MPA under the erroneous exercise of discretion standard.[11] *See* ***Button***, 131 Wis. 2d at 99. "A circuit court's discretionary decision is upheld as long as the court 'examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'" ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (citation omitted). Our review of a discretionary decision may involve underlying questions of law and fact. ***Covelli v. Covelli***, 2006 WI App 121, ¶13, 293 Wis. 2d 707, 718 N.W.2d 260. We review any questions of law independently, but we will not disturb the circuit court's factual findings unless they are clearly erroneous. ***Id.***

[9] Ryan did not appeal from the circuit court's determination that the MPA was inequitable as it applied to the maintenance provisions, and, therefore, this issue is not before this court. In addition, Tracy does not challenge the court's child support determination, and we do not address that issue further.

[10] All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

[11] Ryan uses the term "abuse[d] its discretion" when referring to the standard of review in this case. In 1992, our supreme court replaced the phrase "abuse of discretion" with "erroneous exercise of discretion." *See, e.g.*, ***Shirk v. Bowling, Inc.***, 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

¶39 A "written agreement made by the parties before or during the marriage concerning any arrangement for property distribution … shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party." WIS. STAT. § 767.61(3)(L). "The court shall presume any such agreement to be equitable as to both parties." ***Id.*** An agreement is inequitable under § 767.61(3)(L) if it fails to satisfy any one of the following requirements: (1) each spouse made fair and reasonable disclosures to the other about his or her financial status at the time the parties entered into the agreement; (2) each spouse entered into the agreement freely and voluntarily; and (3) the substantive terms of the agreement are fair to each spouse both at the time the parties entered into the agreement and at the time of the divorce.[12] ***Button***, 131 Wis. 2d at 89.

¶40 Tracy challenges the circuit court's determination that the MPA was equitable and enforceable as it applied to certain provisions relating to Ryan's assets, including his interest in the merged company. Tracy argues that the court was required to invalidate the entire agreement after finding that certain provisions were inequitable. We need not address whether a court is required to invalidate an entire MPA after concluding that parts of it are inequitable because we conclude that the court in this case erroneously exercised its discretion by finding that the

[12] The ***Button*** court interpreted WIS. STAT. § 767.255(11) (1983-84), ***Button v. Button***, 131 Wis. 2d 84, 86, 388 N.W.2d 546 (1986), which has since been renumbered to WIS. STAT. § 767.61(3)(L), *see* 2005 Wis. Act 443, § 109. The text of § 767.61(3)(L) is identical to the version interpreted in ***Button***. *Compare* § 767.255(11) (1983-84), *with* § 767.61(3)(L).

agreement, as it related to any of Ryan's assets, was equitable. We reach this conclusion under the first and third ***Button*** requirements.[13]

¶41 Under the first requirement, an agreement is inequitable if either spouse has not made a fair and reasonable disclosure to the other of his or her financial status, including assets, because a "party might not have entered into the agreement had she or he known the facts." ***Id.*** at 95. However, "[w]here it can be shown that a spouse had independent knowledge of the opposing spouse's financial status, this independent knowledge serves as a substitute for disclosure." ***Id.*** The first requirement is "determined as of the date of the execution of the contract." ***Id.***

¶42 We conclude that, under the facts of this case, the record does not support the circuit court's finding that Ryan made a fair and reasonable disclosure of his financial status to Tracy prior to the execution of the agreement. To the extent that the court found that Tracy had independent knowledge of Ryan's full financial status prior to the execution of the agreement, we conclude that the court's finding in that regard is clearly erroneous.

¶43 While Ryan disclosed some specific information about his then-existing assets—for example, his shareholder interest in Camera Corner, as outlined in Schedule A—prior to the execution of the MPA, significant information relevant to Ryan's reasonably foreseeable financial circumstances,

[13] Given this conclusion, we need not address Tracy's arguments that the MPA is inequitable under the second ***Button*** requirement, including her assertion that the circuit court "ignored allegations of domestic violence." (Formatting altered.) *See* ***Turner v. Taylor***, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (explaining that this court need not address all issues raised by the parties if one is dispositive).

which were necessary for Tracy to make an informed decision about signing the agreement, was not disclosed. For example, and perhaps most importantly, Ryan failed to disclose any value of Camera Corner, and he did not provide Tracy with financial information regarding his potential net worth or how much he would make once he took over his father's position in the company, with or without any future merger or sale. Furthermore, there is no evidence in the record to suggest that Tracy knew that any shareholder interest Ryan had in Camera Corner would be divisible between the spouses absent the MPA. The information Ryan failed to disclose was imperative to Tracy for her to have a complete understanding of Ryan's financial status, given that Ryan planned to become the sole owner of Camera Corner once his father retired. In other words, Ryan's *reasonably* foreseeable income should have been disclosed to Tracy. While this information would still not have completely accounted for the actual increase in Ryan's wealth that took place prior to the divorce, the information was nonetheless necessary for Tracy to make an informed decision as to whether or not to enter into the agreement.

¶44 Moreover, and as Tracy argues, Ryan disclosed an outdated tax return in Schedule A. His 2005 tax return—the year of Tracy's disclosed tax return in Schedule B—was not included in Schedule A. Therefore, even if Tracy had reviewed Schedule A, as the circuit court found she did, the record does not support a finding that Ryan made a fair and reasonable disclosure to Tracy about his then-current financial status prior to the execution of the MPA.

¶45 To the extent Tracy is correct that the circuit court found that she had knowledge of Ryan's financial status—including how much he would make if he took over his father's position at Camera Corner, prior to her execution of the MPA—based on Tracy's observations of Ryan's father's lifestyle, we conclude

that this finding is clearly erroneous. Ryan conceded during his testimony at the hearing regarding the validity of the agreement that prior to the execution of the agreement, he did not discuss with Tracy how much his father earned even though Ryan knew his father earned around $1 million a year. While Tracy may have "assumed" that Ryan's father made enough money to live a more-than-comfortable lifestyle, as Ryan suggested during his testimony, "such general knowledge does not satisfy the ***Button*** requirement for independent knowledge." *See* ***Schumacher v. Schumacher***, 131 Wis. 2d 332, 340, 388 N.W.2d 912 (1986). "[I]ndependent knowledge is not a general or imputed knowledge of" the other spouse's assets and their value.[14] ***Id.*** at 338. On this record, we cannot say that the court reasonably found that Tracy had independent knowledge of Ryan's financial status at the time she signed the agreement.[15]

[14] Our supreme court concluded in ***Schumacher*** that the disclosure requirement was not satisfied because the record supported the circuit court's finding that that neither party had a "complete and total picture" of the others' finances. ***Schumacher v. Schumacher***, 131 Wis. 2d 332, 340, 388 N.W.2d 912 (1986). The supreme court noted that one of the spouses did not provide the other spouse with information as to the existence, or the value, of an employee pension plan or an annuity. ***Id.*** at 339-40. The court rejected the argument that the other spouse could have assumed the existence of the pension plan "given that she was similarly employed" because "if one party surmises that the other has a pension, that conjecture is not the equivalent of knowing that the other party has both a pension and an annuity plan with a total value in excess of $60,000." ***Id.*** at 340. The court concluded its analysis by stating that "[o]nly actual knowledge of [assets and their values], which was not demonstrated, satisfies the disclosure requirement of ***Button***." ***Id.***

[15] We note that Tracy clearly addressed in her initial brief that, under ***Schumacher***, she did not have independent knowledge of Ryan's financial status prior to signing the MPA. In his appellate brief, Ryan did not respond—in any respect, much less with reference to ***Schumacher***—to Tracy's argument concerning her lack of independent knowledge of Ryan's financial status. Therefore, we further conclude that, independent of our substantive analysis, Ryan has conceded that Tracy did not have independent knowledge of his financial status under the first ***Button*** requirement. *See* ***Shadley v. Lloyds of London***, 2009 WI App 165, ¶26, 322 Wis. 2d 189, 776 N.W.2d 838 ("Arguments not rebutted on appeal are deemed conceded.").

¶46 In addition, we conclude that, under the third ***Button*** requirement, the circuit court erroneously exercised its discretion by determining that the MPA was equitable and enforceable as it applied to some of Ryan's assets at the time of divorce. "The third requirement is an issue of 'substantive fairness.'" ***Button***, 131 Wis. 2d at 96. In determining substantive fairness, a circuit court must be mindful of the two principal legislative concerns reflected in WIS. STAT. § 767.61(3)(L)—"the protection of the parties' freedom to contract and the protection of the parties' financial interests at divorce." ***Button***, 131 Wis. 2d at 96. To meet the requirement of substantive fairness, "an agreement need not divide the property in conformity with how a divorce court would divide the property, but it should in some manner appropriate to the circumstances of the parties take into account that each spouse contributes to the prosperity of the marriage by his or her efforts." ***Id.*** at 96-97.

¶47 When assessing the substantive fairness of an agreement, a circuit court should consider such factors as (1) the objectives of the parties in executing an agreement; (2) the economic circumstances of the parties; (3) the property brought to the marriage by each party; (4) each spouse's family relationships and obligations to persons other than to the spouse; (5) the earning capacity of each party; (6) the anticipated contribution by one party to the education, training, or increased earning power of the other; (7) the future needs of the respective spouses; (8) the age and physical and emotional health of the parties; and (9) the expected contribution of each party to the marriage, "giving appropriate economic value to each party's contribution in homemaking and child care services." ***Id.*** at 97.

¶48 "In assessing the fairness of the substantive terms of the agreement, a circuit court considers these factors and evaluates the terms of the agreement

from the perspective of the parties at the execution of the agreement." ***Id.*** An "agreement fair at execution is not unfair at divorce just because the application of the agreement at divorce results in a property division which is not equal between the parties or which a court might not order under" WIS. STAT. § 767.61. ***Button***, 131 Wis. 2d at 98. "If, however, there are significantly changed circumstances after the execution of an agreement and the agreement as applied at divorce no longer comports with the reasonable expectations of the parties, an agreement which is fair at execution may be unfair to the parties at divorce." ***Id.*** at 98-99. Therefore, the third requirement is assessed as of the time of the execution of the agreement and, if circumstances significantly changed since the agreement was signed, then also at the time of divorce. ***Id.*** at 89.

¶49 "[F]or a change of circumstances to be uncontemplated, the event must not have been reasonably foreseen by the parties prior to or at the time of the making of the agreement." ***Krejci v. Krejci***, 2003 WI App 160, ¶21, 266 Wis. 2d 284, 667 N.W.2d 780 (citation omitted). The proper question in this context is whether, before signing the premarital agreement, the parties "were able to reasonably predict a particular event." ***Warren v. Warren***, 147 Wis. 2d 704, 710, 433 N.W.2d 295 (Ct. App. 1988). The "idea behind the test is that both spouses have a right to rely upon the prenuptial agreement when all subsequent events transpire as logically anticipated." ***Id.***

¶50 Here, the circuit court found that the economic circumstances of the parties had significantly changed since the MPA was signed and that Tracy could not have reasonably foreseen these changes. However, the court found that the changed circumstances related only to the agreement's maintenance provisions, not to its property division provisions. The court found that as the agreement pertained to property division, it was "much more clearly defined" than Ryan's

"income and income streaming" and that Tracy had a much "clear[er] expectation … that what Ryan had when he walked into the marriage was going to be his."[16]

¶51 Tracy argues, under the third ***Button*** requirement, that the circuit court erroneously exercised its discretion by enforcing some provisions of the MPA despite finding that the agreement "was unfair at the time of divorce." While Ryan does not challenge the court's findings that the parties' economic circumstances significantly changed following the execution of the agreement and that these changes were unforeseeable, he contends that the court did not erroneously exercise its discretion by nonetheless upholding most of the agreement's property division provisions, given the presumption of equitability in WIS. STAT. § 767.61(3)(L).

¶52 We conclude that the circuit court erroneously exercised its discretion by concluding that the parties' significantly changed economic circumstances, and the unforeseeable nature of those changes, applied only to the MPA's maintenance provisions.[17]

¶53 Ryan's 2004 tax return showed that he made over $240,000 that year, which included $56,000 in wages and over $150,000 from his shareholder interest in Camera Corner. However, Ryan testified that during the period prior to

[16] We note, however, that the circuit court did find that the MPA's provisions relating to "certain assets" were "unfair" at the time of the divorce. In particular, the court found that the wealth accumulated in the Smith Barney account and the IRA during the marriage would be considered marital property, contrary to the terms of the agreement.

[17] Given our conclusion under the third ***Button*** requirement that the MPA was inequitable at the time of the divorce, we need not address Tracy's alternative argument that the agreement was inequitable at the time it was executed. *See* ***Turner***, 268 Wis. 2d 628, ¶1 n.1.

the marriage, he would reinvest his distributions back into the company, and he was unsure if Tracy knew that he was receiving and reinvesting his distributions. Ryan's testimony was consistent with Tracy's testimony, wherein she stated that she believed Ryan made around $65,000 per year before the marriage, and she could not recall whether she knew that Ryan earned income from his shares. Therefore, as the circuit court found, Ryan was effectively making around $60,000 per year, which was consistent with the parties' lifestyle at the time.[18]

¶54 By 2022, the year Ryan filed for divorce, Ryan's income had increased to over $1 million per year. Stated differently, and as the circuit court articulated, Ryan's income was over 16 times greater in 2022 than it was in 2004.

¶55 According to the circuit court, a reasonable person could not have foreseen just how much Ryan would be making at the time of the divorce, given his apparent income of about $60,000 in 2004. The court stated that while Tracy could have reasonably expected to live a "comfortable lifestyle" when she signed the MPA, the parties went on to live an "extraordinary lifestyle." Despite this finding, the court nonetheless found equitable most of the agreement's property

[18] We recognize that the circuit court, in characterizing Ryan's income in 2004, did not include the $150,000 income from Ryan's shareholder interest in Camera Corner. However, the court's characterization was consistent with Ryan's testimony that he reinvested that amount back into the business. It was also consistent with Tracy's testimony that she believed Ryan made around $65,000 per year before the marriage.

We further recognize that the circuit court found that Tracy had reviewed Schedule A, which showed that Ryan made over $240,000 in 2004. Ryan does not, however, argue on appeal that the court's characterization of Ryan's income in 2004 and its finding that Tracy had reviewed Schedule A are inconsistent with the court's findings that the parties' economic circumstances had significantly changed since the MPA was signed and that Tracy could not have reasonably foreseen these changes.

division provisions, particularly those pertaining to Ryan's shareholder interest in Camera Corner.

¶56 However, the significant change in Ryan's economic circumstances related directly to his shareholder interest in Camera Corner and the proceeds he received from the business. As the circuit court found, Tracy could not have reasonably foreseen Ryan's exponential growth in wealth as a result of his shareholder interest in Camera Corner when she signed the MPA. Accordingly, the changed circumstances relate both to the agreement's maintenance provisions—because Tracy could not have foreseen living an "extraordinary lifestyle" after agreeing to a one-time $350,000 lump sum payment upon divorce—*and* the property division provisions—because Tracy could not have foreseen Ryan's wealth from Camera Corner growing as it did after agreeing that his shareholder interest in the company would remain his individual property upon divorce. While the court aptly recognized that the property division provisions were "clearly defined" and that Tracy had a "clear expectation … that what Ryan had when he walked into the marriage was going to be his," the fact remains that Tracy could not have reasonably foreseen the value of Ryan's property interests growing as they did.

¶57 Ryan is correct that WIS. STAT. § 767.61(3)(L) states that we must presume that the MPA is equitable as to both parties when addressing the agreement's property division provisions. However, that presumption is rebutted once one of the three ***Button*** requirements has not been satisfied. Given the circuit court's finding regarding the parties' significantly changed economic circumstances from the time the agreement was signed to the initiation of the divorce, and the court's finding that these changed circumstances did not comport with Tracy's reasonable expectations—findings that Ryan does not dispute—we

conclude under the third ***Button*** requirement that the court erroneously exercised its discretion.

II. Maintenance award

¶58 While not dispositive to our decision, we briefly address the circuit court's maintenance award and Tracy's arguments challenging that award because the issue is likely to arise again upon remand and the court's modified property division determination.

¶59 Maintenance determinations are governed by WIS. STAT. § 767.56(1c), which sets forth factors for a circuit court to consider in determining whether to award maintenance.[19] The statutory factors are designed to further two distinct but related objectives in the award of maintenance: "to support the recipient spouse in accordance with the needs and earning capacities of the parties (the support objective) and to ensure a fair and equitable financial arrangement between the parties in each individual case (the fairness objective)." ***LaRocque v.***

[19] These factors are: (a) the length of the marriage; (b) the age and physical and emotional health of the parties; (c) the division of property made under WIS. STAT. § 767.61; (d) the educational level of each party at the time of marriage and at the time the divorce action is commenced; (e) the earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment; (f) the feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal; (g) the tax consequences to each party; (h) any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, if the repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties; (i) the contribution by one party to the education, training or increased earning power of the other; and (j) such other factors as the court may in each individual case determine to be relevant. WIS. STAT. § 767.56(1c).

LaRocque, 139 Wis. 2d 23, 32-33, 406 N.W.2d 736 (1987). In making a maintenance decision, a circuit court "is not obliged to consider all of the statutory factors," but rather "must consider those factors that are relevant." ***Brin v. Brin***, 2014 WI App 68, ¶11, 354 Wis. 2d 510, 849 N.W.2d 900.

¶60 We review a circuit court's maintenance award in a divorce action for an erroneous exercise of discretion. ***LeMere***, 262 Wis. 2d 426, ¶13. A circuit court erroneously exercises its discretion when it misapplies or fails to apply the relevant statutory factors or when it fails to apply the objectives of maintenance. *See* ***LaRocque***, 139 Wis. 2d at 33.

¶61 Here, in setting the maintenance award, the circuit court stated that Tracy had an earning capacity of $31,000 per year.[20] The court further found that Tracy maintained the household during the marriage so that Ryan could devote time to developing Camera Corner. According to the court, Tracy "has the right to maintain a reasonable standard of living that is in some way related to the standard that she enjoyed while the parties were married," but the court did not believe that "either party is entitled to income or support payments that were not really

[20] Neither party hired vocational experts at the contested divorce hearing, however, Tracy testified that her work experience included waitressing and bartending 16 years prior and telephone sales 23 years prior. Citing "U.S. Labor Statistics in Wisconsin," and Tracy's past work experience, the circuit court found that Tracy had an earning capacity of between $31,000 and $45,000 per year. The court clarified that it was not "guided by" the labor statistics but that it had used them as "some reference point."

Tracy argues that the circuit court erred as a matter of law by relying on the labor statistics in determining her earning capacity. Conversely, Ryan argues that the court took proper judicial notice of the labor statistics pursuant to WIS. STAT. § 902.01, particularly because Tracy did not present a vocational expert at the contested divorce hearing. We need not decide whether the court erred by relying on the labor statistics to determine Tracy's earning capacity because regardless of that reliance, we ultimately conclude that the court erroneously exercised its discretion with respect to the maintenance award.

generated … principally by the parties' efforts." The court found that Tracy did not have "any substantial impact in the creation of" income from Camera Corner.

¶62 Based on these findings, the circuit court awarded Tracy maintenance for seven years, at which time she will be 57 years old: $4,000 per month until June 2028 and then, once child support terminates, $12,000 per month in maintenance until June 2030, and $10,000 per month until June 2032. In addition, in terms of property division, Tracy was awarded the marital residence, which did not have a mortgage, and Ryan was ordered to make a $239,799.17 equalization payment to Tracy.

¶63 We conclude that the circuit court erroneously exercised its discretion in setting both the amount of maintenance and the length of the award. As the maintenance order stands, Tracy will be destitute in 7 years, and, as Tracy argues, there is an "astronomical disparity" between the parties' post-divorce earnings.

¶64 These outcomes would be contrary to our supreme court's holding in ***LaRocque***. In ***LaRocque***, the parties divorced after 25 years and one spouse largely "worked outside the home sporadically." *See* ***LaRocque***, 139 Wis. 2d at 28. The supreme court concluded that the circuit court had erred in setting the amount and duration of a maintenance award "by misapplying (or failing to apply) several of the statutory factors and by not giving full play to the objectives of maintenance." ***Id.*** at 33. According to the supreme court, the circuit court awarded an "inadequate amount" of maintenance by mistaking "subsistence to be the objective of maintenance." ***Id.*** at 34. The supreme court stated that "the goal of maintenance is to provide support at pre-divorce standards"—"measured not by the average annual earnings over the duration of a long marriage but by the

lifestyle that the parties enjoyed in the years immediately before the divorce and could anticipate enjoying if they were to stay married"—and that a "court must not reduce the recipient spouse to subsistence level while the payor spouse preserves the pre-divorce standard of living." ***Id.*** at 35-36.

¶65 Based on our supreme court's holding in ***LaRocque***, Tracy is entitled to maintenance payments measured by the parties' lifestyle "in the years immediately before the divorce." *See* ***id.*** at 36. Even if Tracy were to make $45,000 in seven years, when maintenance would terminate, that would leave her with only $3,750 in monthly income. Tracy testified that Ryan informed her that the property taxes on the marital residence were $1,000 per month, while Ryan testified that the property tax was closer to $667 per month. Tracy estimated her monthly expenses, aside from property taxes, were in excess of $10,000, which included maintenance on the home, food, heat and electricity, and health insurance. Under those circumstances, the court's maintenance award would, in seven years' time, undoubtedly leave Tracy in a position where she could not cover her monthly expenses, much less allow her to enjoy a lifestyle similar to what the parties enjoyed in the years immediately prior to the divorce.

¶66 Furthermore, at the time of the divorce, Ryan reported monthly income of $81,694 in his financial disclosure statement, which the circuit court accepted as true. This figure is 20 times greater than what Tracy would be making in seven years and would again be contrary to our supreme court's holding in ***LaRocque***. Accordingly, we conclude that the court erroneously exercised its discretion in making its maintenance determination, and, on remand and after determining the division of property, the court should review the term and amount of the maintenance award to Tracy considering both the support and fairness objectives.

CONCLUSION

¶67 We reverse the divorce judgment in part and remand this matter to the circuit court for reconsideration of a fair and equitable property division, with the knowledge that the MPA is not binding, pursuant to WIS. STAT. § 761.61. Because we conclude that the court must reconsider the parties' property division, and the court previously determined the maintenance provisions of the MPA are unfair and inequitable, we further remand for the court to reconsider its maintenance award consistent with this opinion. *See* ***Bahr v. Bahr***, 107 Wis. 2d 72, 80, 318 N.W.2d 391 (1982); WIS. STAT. § 767.56(1c)(c).

By the Court.—Judgment reversed in part and cause remanded with directions.

Recommended for publication in the official reports.