COURT OF APPEALS DECISION DATED AND FILED

April 28, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

No. 97-0942

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

IN RE THE MARRIAGE OF:

ROBERTA L. GORENSTEIN,

PETITIONER-RESPONDENT,

V.

RALPH G. GORENSTEIN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIS J. ZICK, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Ralph Gorenstein appeals his divorce judgment. He argues that the trial court erroneously exercised its discretion with respect to (1) property division; (2) maintenance; (3) denial of his motion for a second

adjournment; and (4) denial of his motion for a new trial based upon "character assassination." We reject his arguments and affirm the judgment.

Ralph and Roberta Gorenstein were married for approximately thirty-three years and had four children who were adults at the time of the divorce. Ralph is an attorney and Roberta works part-time as a nurse. Roberta acquired considerable assets during the marriage as a result of gifts and inheritance. At the time of trial, her American Brands stock was valued at $2,500,000 and her interest in a trust established by her mother was valued at $5,000,000.

During their marriage, the parties invested in real estate. Roberta contributed collateral for loans for down payments, and Ralph managed the properties. At the time of trial, their real estate investments were valued at approximately $5,000,000.

The trial court awarded Roberta as her separate property the American Brands stock and her interest in the trust. As part of the division of the marital estate, Roberta was awarded the parties' interest in limited partnership units in certain real estate properties. Ralph was awarded the parties' interests in apartment buildings and Bell Management, Inc.[1] In order to equalize the marital estate, Ralph was ordered to pay Roberta the sum of $836,374 within eighteen months from the date of trial, subject to credits from one-half the proceeds of the sale of the marital residence and other property, together with interest at 8.75% compounded semi-annually until paid. As a result, an equal division of marital assets was achieved. Maintenance was deemed waived.

[1] Other property was also divided, but is not subject to dispute on appeal.

1. Property Division

Ralph challenges the award to Roberta of the American Brands stock and interest in the trust. The trial court determined that the property was gifted and inherited, and therefore not subject to division.[2] Property division is addressed to trial court discretion. *See* ***Lang v. Lang,*** 161 Wis.2d 210, 230, 467 N.W.2d 772, 780 (1991). Underlying discretionary determinations may be issues of law and issues of fact. *See* ***Michael A.P. v. Solsrud,*** 178 Wis.2d 137, 153, 502 N.W.2d 918, 925 (Ct. App. 1993). We review conclusions of law de novo. *See* ***id.*** at 147, 502 N.W.2d at 922. Findings of fact are not overturned unless they are clearly erroneous. Section 805.17(2), STATS. We conclude that the record supports the trial court's exercise of discretion.

Section 767.255, STATS., governs property division and provides in part:

> (2) (a) Except as provided in par. (b), any property shown to have been acquired by either party prior to or during the course of the marriage in any of the following ways shall remain the property of that party and is not subject to a property division under this section:
>
> 1. As a gift from a person other than the other party.
>
> 2. By reason of the death of another, including, but not limited to, life insurance proceeds; payments made under a deferred employment benefit plan, as defined in s. 766.01 (4) (a), or an individual retirement account; and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance or by a payable on death or a transfer on death arrangement under ch. 705.

---

[2] As an alternative basis, the court ruled that the facts would support an unequal property division. Because we decide the issue on the basis of gifted and inherited property, we do not address the court's alternative basis for its decision. *See* ***Sweet v. Berge,*** 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983).

> 3. With funds acquired in a manner provided in subd. 1. or 2.
>
> (b) Paragraph (a) does not apply if the court finds that refusal to divide the property will create a hardship on the other party or on the children of the marriage. If the court makes such a finding, the court may divest the party of the property in a fair and equitable manner.
>
> (3) The court shall presume that all property not described in sub. (2) (a) is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct ….

Ralph argues that this court should conclude that if the American Brands stock was a gift to his former wife, it was transmuted into divisible property. Ralph offers no argument for the proposition that the property was acquired in any way other than by gift or inheritance. In his statement of facts, Ralph states that it is undisputed that Roberta received small amounts of American Brands stock as inheritance and gifts, but that the dispute centers around whether the bulk of the stock "was gifted or transferred by the estate planning freeze/sale method." Roberta, however, testified that she never received any stock through any method other than gift or inheritance. Her mother unequivocally testified that at no time were any of the gifts of stock to her daughter given in the form of some disguised transaction, such as a sale for which she would then forgive the purchase price. The record supports the determination that the property was gifted and inherited.

In any event, Ralph does not revisit this alleged dispute in the argument section of his brief or cite any legal authority to support his apparent contention that an estate planning device results in something other than a gift or inheritance under § 767.255, STATS. An inadequately developed argument, located in a brief's factual section and without proper legal citation, will not be

considered. ***State v. Gulrud,*** 140 Wis.2d 721, 730, 412 N.W.2d 139, 142-43 (Ct. App. 1987).

His next contention, that the stock and trust were transmuted to marital property, is without merit. There is no transmutation if the character and identity of the asset has been preserved. ***Brandt v. Brandt,*** 145 Wis.2d 394, 410-11, 427 N.W.2d 126, 131-32 (Ct. App. 1988). There is no dispute that the identity of the stock has been retained. The original Masterlock stock was exchanged for American Brands stock, which has been held in the same form and titled in Roberta's name throughout the marriage. The question becomes whether the stock has changed character. "Character addresses the manner in which the parties have chosen to title or treat gifted or inherited assets." ***Id.*** at 410, 427 N.W.2d at 132. Ralph contends that although title to the stock has never changed, it is necessary to determine evidence of donative intent.

Ralph argues that the following facts indicate donative intent: (1) Roberta signed a power of attorney;[3] and (2) Roberta listed the stock on joint financial statements. We are unpersuaded. While a power of attorney may contain broad language permitting one to deal with another's property, one could do so only for the benefit of the owner. A power of attorney fails to indicate donative intent.

Roberta's signature on joint financial statements is not indicative of donative intent. Ralph admits that Roberta's property was pledged as collateral to

---

[3] Ralph argues: "Giving all power over an asset to another is as compelling evidence of constructive donative intent as can be imagined." *See* § 809.19(1), STATS.

secure a bank loan on which she was a responsible obligor. Signing a joint financial statement that listed her property does not indicate donative intent.

> [T]he exercise of powers derived from exempt property for the benefit of a marital or family unit does not serve to transmute the underlying exempt property to marital property. Were the law otherwise, every gifted or inherited business entity would be transmuted to marital property where the financial benefits acquired therefrom were applied for the well-being of the marital unit. Rather, the law is that the character of the *exempt property itself* must be changed in some way.

Popp v. Popp, 146 Wis.2d 778, 790, 432 N.W.2d 600, 604 (Ct. App. 1988) (emphasis in original). We conclude that the court was entitled to reasonably infer that donative intent was lacking.

Next, Ralph argues that the trial court erroneously valued three properties: (1) Bay Point; (2) Stratford; and (3) Bell Properties. We disagree. With respect to Bay Point, the trial court accepted the parties' stipulation:

> THE COURT: Back on the record. We now have a stipulation on Bay Point, and that figure for the two 10 percent interests and the one .9 percent interest is whatever, what figure, Mr. Reilly?
>
> MR. REILLY [Ralph's counsel]: 223,627.
>
> THE COURT: Okay. Mr. St. John, is that agreeable?
>
> MR. ST. JOHN [Roberta's counsel]: That's correct.
>
> THE COURT: So that's a stipulation.

Because Ralph stipulated to the value of the Bay Point property, his challenge to the trial court's finding is without merit. *See* ***State v. McDonald,*** 50 Wis.2d 534, 538, 184 N.W.2d 886, 888 (1971) (A litigant's deliberate choice of strategy is binding and claim of error based on litigant's own choice will not be considered on appeal.).

With respect to Stratford, Ralph argues that the trial court should have adopted his testimony because he is an experienced real estate investor, instead of the testimony of Roberta's expert, who is a certified public accountant. The trial court, not this court, assesses the weight and credibility of testimony. *See* ***Estate of Wolff v. Weston Town Bd.,*** 156 Wis.2d 588, 598, 457 N.W.2d 510, 513-14 (Ct. App. 1990). The trial court's credibility assessments will not be overturned unless they are patently or inherently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts. *See* ***Chapman v. State,*** 69 Wis.2d 581, 583, 230 N.W.2d 824, 825 (1975). Here, there is no showing that the accountant's testimony is inherently incredible. Ralph argues that he testified that Stratford would be worth $2,072,000 or $2,757,250 if turned into condominiums. The trial court concluded that it was not realistic to base its decision on a possible future conversion to condominiums, and therefore rejected Ralph's opinion. The record fails to disclose reversible error.

With respect to Bell properties, Ralph argues that the trial court erroneously accepted the valuation of Roberta's certified public accountant, who made certain adjustments to the value testified to by Ralph's expert witness. Ralph fails to indicate that the adjustments made were inherently or patently incredible. *See* ***id.*** As a result, Ralph fails to demonstrate reversible error.

Next, Ralph argues that the trial court erroneously awarded Roberta 1% of the parties' interests in the Bay Point and Stratford limited partnerships. The trial court provided two reasons for its determination: (1) to reduce the amount of the payment Ralph owed to Roberta to equalize the property division, and (2) because other investors in the partnerships did not want to be in partnership with Ralph. Because the first basis provided by the trial court is a

reasonable consideration in order to reach the presumed equal division under § 767.255, STATS., we do not overturn the court's discretionary decision.

Ralph argues that the second factor is grounds for reversal. We disagree. When one ground is a sufficient basis to sustain the trial court's determination, we need not address additional grounds on appeal. *See* ***Sweet v. Berge,*** 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983). Nonetheless, Ralph contends that the trial court erred because the other investors are the parties' adult children, and that to consider the wishes of the parties' children in reaching an equal property division in effect "created a new factor under § 767.255(3), STATS., which could determine how property is to be divided." This argument is without merit. It is evident that to the extent the court's decision was based upon the wishes of the parties' adult children, it was in their capacities as investors, not as children. The record does not demonstrate reversible error.

Next, Ralph argues that the trial court erroneously made findings with respect to the parties' M & I line of credit, and ignored his request to correct the error at motions for reconsideration. We again disagree. First, Ralph fails to make any citation to the record with respect to this argument, contrary to RULE 809.19(1), STATS. Citation only to an appendix does not conform to appellate rules of procedure. On this ground alone, it is unnecessary to address the argument further. *See* ***Keplin*** v. ***Hardware Mut. Cas. Co.,*** 24 Wis.2d 319, 324, 129 N.W.2d 321, 323 (1964).[4]

---

[4] In 1996 alone, 3,628 cases were filed in our 16-judge court. This figure does not include the 324 petitions for leave to appeal, 5,643 motions and 931 miscellaneous matters filed, each requiring disposition by order. ***Cascade Mt., Inc. v. Capitol Indem. Corp.,*** 212 Wis.2d 265, 270 n.3, 569 N.W.2d 45, 47 n.3 (Ct. App. 1997). This court cannot continue to function at its current capacity without requiring compliance with the appellate rules of procedure, the purpose of which is to facilitate review.

Second, the record fails to support Ralph's contention of error. At trial, Ralph testified that as of December 9, 1996, the M & I principal balance was $969,457, as reflected on his financial statement. At motions for reconsideration, Ralph argued that Roberta failed to make certain quarterly payments in a timely fashion, resulting in additional interest due. Ralph, however, fails to demonstrate how this failure of proof results in trial court error. As a result, his argument must be rejected.

Ralph also argues that the trial court erred because Roberta had used joint dividend checks during the pendency of the action, totaling $29,500. Ralph fails to elaborate, however, why Roberta was not entitled to the use of joint dividend checks. As a result, this argument is also rejected.

Next, Ralph argues that the trial court erroneously awarded compound instead of simple interest. This argument is not accompanied by record or legal citation, contrary to RULE 809.19(1)(e), STATS., and therefore must be disregarded. ***State v. Shaffer,*** 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980). In any event, the record discloses a reasonable exercise of discretion. After hearing argument that "Compounding means you add the accrued interest to the principal and apply the interest rate to that sum," the trial court concluded that compound interest was appropriate. It stated that it was always assumed that there would be just one equalization payment at the end because Ralph would have to refinance to get the total sum. The court determined that while Roberta was waiting during the interim to be paid, it would be fair to compound the interest every six months. The court balanced the time value of the money with Roberta's desire to be paid in a timely fashion. Ralph fails to demonstrate reversible error.

2. Maintenance

Next, Ralph argues that the trial court should remand for a trial on the issue of maintenance. He unpersuasively argues that the judgment erroneously recites that maintenance was waived. Ralph fails to cite to any pleading requesting maintenance or putting the matter in issue in any way. We do not sift the record for matters to support an appellant's contentions. *See* ***Keplin,*** 24 Wis.2d at 324, 129 N.W.2d at 323. As Ralph characterized the record, "And as the voluminous transcripts show, there were myriad factual disputes, and complicated valuation issues." The record does reveal, however, that on the first day of trial, the following exchange occurred:

> THE COURT: Let me ask, I think maintenance is not an issue.
>
> MR. REILLY: [Ralph's counsel]: Not an issue.
>
> THE COURT: We will not be interested in anything except property.

The record supports the determination that the issue of maintenance has been waived.

3. Adjournment

Next, Ralph argues that the trial court erroneously exercised its discretion when it denied his request for a second adjournment. This action was commenced August 15, 1995. Trial was set for July 15, 1996. On July 1, the court permitted Ralph's trial counsel to withdraw, and granted Ralph's request for an adjournment. Trial was set for August 20. On August 12, Ralph's new attorney requested an adjournment, which was denied. However, at trial, the trial court granted Ralph an extension of six months to submit additional proofs.

The record reveals an appropriate exercise of discretion. The trial court has discretion whether to grant a continuance. ***T & HW Enters. v. Kenosha Assocs.,*** 206 Wis.2d 591, 599, 557 N.W.2d 480, 482 (Ct. App. 1996). Here, one adjournment had been granted, and any prejudice resulting from the court's denial of a second one was alleviated by the six-month extension to bring in additional proofs. We conclude that the record fails to reveal reversible error.

4. Character Assassination

Finally, Ralph argues that the trial was permeated with accusations of fault, which resulted in character assassination and an unfair trial. Fault is not a consideration with respect to property division under § 767.255, STATS. The record reveals that the court accepted testimony regarding misconduct for the limited issue of determining whether awarding certain investment properties to Ralph would be against co-investors' wishes. The court did not consider fault as a factor in dividing marital assets, because an equal property division was awarded. As a result, the record fails to support Ralph's claim that accusations of fault resulted in an unfair trial.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.