COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP465 **Cir. Ct. No. 2012FA256**

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

IN RE THE MARRIAGE OF:

BEVERLY A. LARSON,

PETITIONER-RESPONDENT,

V.

BRUCE E. LARSON,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed*.

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

¶1 PER CURIAM. Bruce Larson, pro se, appeals a divorce judgment. Bruce contends that the circuit court erred by granting Beverly Larson's petition

for a divorce from Bruce without first ordering the parties to participate in marital counseling.[1] Bruce also claims that various circuit court errors during the divorce proceedings warrant reversal. For the reasons that follow, we reject these contentions. Accordingly, we affirm the judgment of divorce.

¶2 Bruce and Beverly were married in July 1969. In March 2012, Beverly filed for divorce.

¶3 In May 2012, Bruce moved the family court commissioner to order marital counseling under WIS. STAT. § 767.315(1)(b)2. (2011-12).[2] The court commissioner first addressed the motion at a hearing held in May 2012, and declined to order counseling at that time. Bruce raised the issue again at a hearing held in October 2012, and the commissioner explained that he was denying the motion and that Bruce could seek a de novo hearing in the circuit court. The commissioner entered an order denying the motion, and Bruce moved for a de novo hearing in the circuit court. The circuit court held a de novo hearing in December 2012, and then denied Bruce's motion.

¶4 In July 2013, Bruce filed a revised motion for ordered counseling in the circuit court. Bruce also moved to exclude all persons other than the parties and their attorneys from the courtroom during the divorce trial under WIS. STAT. § 767.235(3). The circuit court held a hearing in October 2013, and then denied the motion for ordered counseling but granted Bruce's motion to exclude, ordering that "witnesses" would be excluded from the courtroom during trial.

[1] Because the parties share a surname, we refer to them by their first names.

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

¶5 The divorce trial was held on November 21, 2013. Bruce pointed out to the court that it had granted his motion to exclude, but the court stated that it could exclude non-testifying witnesses only, and there were none other than the parties. Following trial, the court entered a divorce judgment. Bruce appeals.

¶6 Bruce contends that both the family court commissioner and the circuit court erred by failing to order the parties to participate in marital counseling. However, our review is limited to decisions by the circuit court; we do not review decisions of court commissioners. *See* ***State v. Trongeau***, 135 Wis. 2d 188, 191-92, 400 N.W.2d 12 (Ct. App. 1986) (decisions of court commissioners are not appealable); WIS. STAT. § 757.69(8) (party may obtain review of court commissioner's decision by seeking a de novo hearing in the circuit court); ***Stuligross v. Stuligross***, 2009 WI App 25, ¶12, 316 Wis. 2d 344, 763 N.W.2d 241 ("[A] de novo hearing is 'a new hearing of a matter, conducted as if the original hearing had not taken place.' BLACK'S LAW DICTIONARY 738 (8th ed. 2004)."). Accordingly, we do not address Bruce's argument that the family court commissioner should have ordered marital counseling.

¶7 We turn, then, to Bruce's argument that the circuit court erred by failing to order marital counseling. Bruce argues that the circuit court erroneously exercised its discretion by denying Bruce's motion for ordered counseling under WIS. STAT. § 767.315(1)(b)2. We disagree.

¶8 WISCONSIN STAT. § 767.315 provides that the irretrievable breakdown of a marriage is grounds for divorce. Under § 767.315(1)(b), if only one party states under oath that the marriage is irretrievably broken and the parties did not live apart for twelve months prior to the petition for divorce, "the court shall consider all relevant factors, including the circumstances that gave rise to

filing the petition and the prospect of reconciliation." The court must then either make a finding that the marriage is irretrievably broken for purposes of granting the divorce, or that there is a reasonable prospect of reconciliation and continue the matter for further hearing. Sec. 767.315(1)(b)1., 2. If the court finds there is a reasonable prospect of reconciliation, it may order counseling either at a party's request or on its own motion. Sec. 767.315(1)(b)2.

¶9 Bruce argues that the circuit court failed to consider "all relevant factors," and instead focused exclusively on "the circumstances that gave rise to filing the petition and the prospect of reconciliation" in denying Bruce's motion for ordered counseling. He then contends that the circuit court should have considered facts, such as whether the parties had discussed reconciliation or attempted counseling, in exercising its discretion whether to order counseling. Essentially, Bruce argues that facts in the record would have supported a decision to order counseling, and thus the court should have done so.

¶10 The first problem with Bruce's argument is that the statutory language he cites is the standard for the circuit court to use in finding whether, as an initial matter, the marriage is irretrievably broken or there is a reasonable prospect of reconciliation, and he fails to point to a clear error in the court's finding that the marriage is irretrievably broken. The court found that the marriage is irretrievably broken, and that finding is supported by the record. Beverly testified at the motion hearing and at trial that she believed that the marriage was irretrievably broken and that she had no intention of reconciling with Bruce. Because the court's finding that the marriage is irretrievably broken is supported by the record, that finding is not clearly erroneous. *See* ***Insurance Co. of N. Am. v. DEC Int'l, Inc.***, 220 Wis. 2d 840, 845, 586 N.W.2d 691 (Ct. App. 1998). The court's finding that the marriage is irretrievably broken is sufficient to

support its exercise of discretion not to order counseling. *See* WIS. STAT. § 767.315(1)(b)2. (providing that, if the court finds there *is* a reasonable prospect of reconciliation, it may order counseling either at a party's request or on its own motion).

¶11 Additionally, the court explained that it considered Beverly's health, the fact that Bruce and Beverly had already lived apart for almost two years, and Beverly's stated disinterest in reconciliation in denying Bruce's motion to order counseling. Because the circuit court relied on the facts in the record and the proper legal standard in denying Bruce's motion, we have no basis to disturb the court's exercise of its discretion. *See* ***Lyman v. Lyman***, 2011 WI App 24, ¶12, 331 Wis. 2d 650, 795 N.W.2d 475 (review of a circuit court's discretionary decision is limited to whether the court "relied on facts or inferences from the record and its conclusion was based on proper legal standards").

¶12 Bruce also argues that he was denied due process because there was a seventeen-month period between when he first moved the court commissioner to order counseling and when the circuit court denied Bruce's revised motion for ordered counseling. However, the record reveals that, in the seventeen months between May 2012 and October 2013, Bruce received multiple motion hearings before the family court commissioner and the circuit court, and multiple oral and written decisions explaining that his motions were denied. Additionally, Bruce does not develop a legal argument, with citation to relevant authority, that a court's delay in hearing a motion for ordered counseling may result in reversal of a divorce judgment. Accordingly, we do not address this argument further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (this court need not address insufficiently developed arguments).

¶13 Bruce also argues that the circuit court erred by stating that Beverly has a constitutional right to not participate in counseling against her will. Bruce argues that no such constitutional right exists. However, as explained above, the circuit court relied on the relevant facts and the appropriate legal standard in denying Bruce's motion to order counseling. Assuming without deciding that the court was mistaken that Beverly had a constitutional right not to participate in counseling, that error would be harmless and does not warrant reversal of the divorce judgment.

¶14 Bruce contends that the circuit court judge should have recused himself under WIS. STAT. § 757.19(2)(g) because he was not impartial. However, Bruce did not move the circuit court judge to recuse himself, nor does he contend that the judge found he was unable to act impartially. Accordingly, we are unable to consider this argument on appeal. *See* ***State v. American TV & Appliance of Madison, Inc.***, 151 Wis. 2d 175, 183, 443 N.W.2d 662 (1989) (the determination of a judge's ability to act impartially is for the judge to make).

¶15 Bruce also contends that the circuit court erroneously exercised its discretion by denying Bruce's motion to adjourn the October 2013 motion hearing based on Bruce's expert witness failing to appear. Bruce argues that expert testimony as to the benefits of marriage counseling was necessary for the circuit court to resolve Bruce's motion for ordered counseling. However, as set forth above, in declining to order marital counseling, the circuit court relied on Beverly's testimony that she had no interest in reconciling. The court explained that it was not interested in hearing testimony as to the type of counseling Bruce was seeking to have the court order. Because the record establishes that the testimony Bruce wished to introduce would not have affected the court's decision,

Bruce has not persuaded us that the circuit court erroneously exercised its discretion by refusing to adjourn the motion hearing.

¶16 Finally, Bruce argues that the circuit court erred by failing to exclude non-parties from the courtroom, despite previously granting Bruce's motion to exclude all non-parties and their attorneys under WIS. STAT. § 767.235(3). First, we note that the circuit court order states that "witnesses" would be excluded from the courtroom, despite Bruce's motion for a broader order and the circuit court's oral statement that it was granting Bruce's motion. The court reiterated at trial that it intended to exclude non-testifying witnesses, but not members of the public, from the courtroom. Thus, contrary to Bruce's argument, it is not clear that the court ever intended to order all non-parties excluded from the courtroom at trial. In any event, Bruce has not developed an argument, with citation to the record and relevant legal authority, that he was prejudiced as to the divorce judgment by the court's failure to exclude non-parties from the courtroom.[3]

¶17 To the extent we have not addressed any other argument Bruce raises on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). We affirm.

By the Court.—Judgment affirmed.

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

[3] Bruce asserts that the harm he suffered was humiliation, but does not develop a legal argument as to why that would warrant reversal of the divorce judgment.