COURT OF APPEALS
DECISION
DATED AND FILED

February 17, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0895

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

IN RE THE MARRIAGE OF:

KATHLEEN VENTURA,

PETITIONER-RESPONDENT,

v.

MICHAEL VENTURA,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County: DAVID M. BASTIANELLI, Judge. *Affirmed.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

PER CURIAM. Michael Ventura appeals from a judgment of divorce from Kathleen Ventura. He challenges the valuation of his personal property, the unequal debt division, the failure to limit maintenance to five years, and the requirement that he contribute $1500 to Kathleen's attorney's fees. We

conclude that the circuit court properly exercised its discretion in all respects and affirm the judgment.

The Venturas' divorce ended a marriage of twenty-two years. Three children were born during the marriage. In 1989, Michael was transferred from Chrysler Corporation's Kenosha operation to Kokomo, Indiana. By the time of the divorce, Michael had established his own residence there.

The first issue we address is the circuit court's valuation of household furnishings and other personal property in Michael's possession. The court valued such property at $3200, the same value assigned to personal property in Kathleen's possession. Michael argues that this finding is clearly erroneous in light of his testimony of the estimated fair market value of certain items. In the circuit court Michael assigned a value of $1805 to his household furnishing, tools and sporting equipment.

The valuation of a particular marital asset is a finding of fact which we will not upset unless clearly erroneous. *See* ***Sharon v. Sharon***, 178 Wis.2d 481, 488, 504 N.W.2d 415, 418 (Ct. App. 1993). For purposes of appellate review, the evidence supporting the court's findings need not constitute the great weight and clear preponderance of the evidence; reversal is not required if there is evidence to support a contrary finding. *See* ***Bank of Sun Prairie v. Opstein***, 86 Wis.2d 669, 676, 273 N.W.2d 279, 282 (1979). Rather, the evidence in support of a contrary finding must itself constitute the great weight and clear preponderance of the evidence. *See* ***id.*** In addition, the trial court is the ultimate arbiter of the witnesses' credibility when it acts as the fact finder and there is conflicting testimony. *See* ***id.*** We accept the inference drawn by the trier of fact when more than one reasonable inference can be drawn from the evidence. *See* ***id.***

Here, the circuit court explained that Michael had given inconsistent estimations of the value of personal property in his possession. Also, he had not included certain items in his financial disclosure statement. The court saw the purchase price for some of the items Michael listed. It made a specific finding that Michael had underestimated the value. In light of the absence of reliable evidence as to what Michael possessed and its value, the circuit court was free to assign a value it determined reasonable. The circuit court's assignment of the same value as the property in Kathleen's possession was a reasonable inference. Michael had testified that he had not listed all his items of personal property because he and Kathleen had discussed splitting certain items and that he thought they would "make an even deal on the things that she kept and the things I kept" and not "nit-pick" over personal property. The valuation is not clearly erroneous.

Michael argues that it was error not to equally divide the marital debt. He suggests that the circuit court erred by not deducting joint debts from the marital estate. Michael's reliance on ***Weiss v. Weiss***, 122 Wis.2d 688, 699, 365 N.W.2d 608, 614 (Ct. App. 1985), in support of his proposition is misplaced. ***Weiss*** held that certain debts incurred after the filing of the petition for divorce should not reduce the marital estate. *See* ***id.*** Here, there was no question that the circuit court considered the debt to be marital debt. The court rejected Kathleen's attempt to have a portion of the debt Michael incurred after several years in Kokomo declared nonmarital or waste. ***Weiss*** has no application here.

The circuit court was not required to deduct marital debts against the marital estate. Having first divided the marital assets and determining the equalization payment which Kathleen must make, the court turned to debt allocation as another facet of property division. The division of property in a divorce is within the circuit court's discretion, and we review for an erroneous

exercise of that discretion. *See* ***Parrett v. Parrett***, 146 Wis.2d 830, 843, 432 N.W.2d 664, 669 (Ct. App. 1988). The circuit court may deviate from the presumption of equal division after considering several statutory factors. *See* § 767.255(3), STATS.

We first note that Kathleen argues that a $7000 bank loan assigned to Michael should be excluded from any calculation about debt allocation because the loan was a school loan benefiting their adult daughter and Michael agreed to be unilaterally responsible for this debt. Kathleen claims that Michael's assumption of liability for that debt is essentially a gift to the child. S*ee* ***Forester v. Forester***, 174 Wis.2d 78, 96, 496 N.W.2d 771, 778 (Ct. App. 1993). However, there is no evidence to indicate that it was a student loan on which Michael would be liable only in the event of default by the child, as was the situation in ***Forester***. Both parties acknowledged signing the loan. The circuit court properly found it to be a marital debt.

The one factor the circuit court found compelling in not ordering an equal debt division was the earning capacity of each party. *See* § 767.255(3)(g), STATS. The court made a specific finding that because Michael has substantially greater income, he is in a better position to pay on the marital debts. It also noted that Michael shares his living expenses with another person. This was proper consideration of "other economic circumstances." *See* § 767.255(3)(j). There was no erroneous exercise of discretion in not equally dividing marital debt.

The circuit court ordered that both Kathleen's and Michael's pension plan be divided equally by a Qualified Domestic Relations Order. Michael argues that his plan should have been solely awarded to him. We summarily reject Michael's suggestion that the circuit court erroneously exercised its discretion

with respect to the pension plans. *See* ***Arneson v. Arneson***, 120 Wis.2d 236, 247, 355 N.W.2d 16, 21 (Ct. App. 1984) (circuit court retains broad discretion in valuing pension rights and in dividing them). Here, the court relied on the long-term nature of the marriage, the parties' equal contributions to the family unit, and a desire to equalize the effect of valuation assumptions. There was no erroneous exercise of discretion.

Michael agreed to pay $100 a week maintenance to Kathleen but asked that it be for a limited term of five years. The circuit court ordered maintenance for an indefinite term. Michael argues that the court failed to consider whether he had the ability to pay maintenance for an indefinite period. Maintenance determinations are discretionary with the circuit court, and we will not reverse absent an erroneous exercise of that discretion. *See* ***Grace v. Grace***, 195 Wis.2d 153, 157, 536 N.W.2d 109, 110 (Ct. App. 1995). We look to the court's explanation of the reasons underlying its decision, and where it appears that the court looked to and considered the facts of the case and reasoned its way to a conclusion that is (1) one a reasonable judge could reach and (2) consistent with applicable law, we will affirm the decision as a proper exercise of discretion. *See* ***id.*** at 157, 536 N.W.2d at 111.

We reject Michael's contention that because the parties were at the same education level before and after the marriage and are both young enough to pursue other career opportunities, maintenance should have been limited. The fact remains that Michael earns more than Kathleen in what the circuit court found to be "steady and good paying employment with Chrysler." The court found that Michael had the ability to pay maintenance. It also found that given her debt liability, Kathleen was just making ends meet. The circuit court appropriately noted the admonition in ***LaRocque v. LaRocque***, 139 Wis.2d 23, 41, 406 N.W.2d

736, 743 (1987): "Because limited-term maintenance is relatively inflexible and final, the circuit court must take particular care to be realistic about the recipient spouse's future earning capacity. The circuit court must not prematurely relieve a payor spouse of a support obligation …." Michael does not suggest that Kathleen has the ability to earn more so as to mitigate her need for support to maintain the marital standard of living. Ordering maintenance for an indefinite term was not an erroneous exercise of discretion.

Finally, Michael argues that he lacks the ability to make the $1500 contribution to Kathleen's attorney's fees. It is within the discretion of the trial court to award attorney's fees. *See* ***Van Offeren v. Van Offeren***, 173 Wis.2d 482, 499, 496 N.W.2d 660, 666 (Ct. App. 1992). Attorney's fees are to be awarded upon a showing of need, ability to pay and the reasonableness of the fees. *See* ***id.*** Among the factors which necessarily must be considered are the assets, income and liabilities of both parties. *See* ***id.*** at 499-500, 496 N.W.2d at 666.

The circuit court made a finding on each of the three factors supporting a contribution to attorney's fees. It specifically found that Michael's testimony about the contribution to his household expenses from his live-in girlfriend was not credible. It concluded that Michael had an ability to contribute. Based on these findings, the circuit court properly exercised its discretion in ordering the contribution.

By the Court.—Judgment affirmed.

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