COURT OF APPEALS
DECISION
DATED AND FILED

December 30, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0898

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

IN RE THE MARRIAGE OF:

DIANE T. GILBERT,

PETITIONER-RESPONDENT,

V.

DAVID G. GILBERT,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

¶1 PER CURIAM. David Gilbert appeals the judgment divorcing him from Diane Gilbert. The appeal concerns the trial court's decision to award a $101,000 cash asset of the parties to Diane. We affirm.

¶2 The dam creating the Token Creek Mill Pond washed out in 1994. Shortly afterward, the Token Creek Inland Lake Protection and Rehabilitation District was created, pursuant to ch. 33, STATS., to determine the future of the dam and pond, and to hold title to the dam site and the fifty acres of land lying below the normal high water mark of the pond. All adjacent and nearby land owners belonged to the district. That included the Gilberts, whose land abutted Token Creek several hundred feet upstream from where it flowed into the former pond.

¶3 After substantial deliberation over the future of the pond, the district decided to sell the dam site and pond acreage to the Town of Windsor which, in partnership with the DNR, had decided to restore Token Creek to its natural state as a high quality trout stream. However, in addition to payment for the land, the district demanded one million dollars to compensate its members for the permanent loss of the pond, and the town agreed to pay that amount shortly before the Gilberts' final divorce hearing on September 3, 1998.

¶4 At that hearing, the parties stipulated to a property division that awarded Diane the property on Token Creek. The trial court approved the settlement, granted the divorce and ordered the judgment prepared. Neither party mentioned the fact that they anticipated receiving a share of the one million dollar payment.

¶5 Just over two months later, before entry of the judgment, Diane and David signed release of claim forms against the district, town and DNR, and received a check for approximately $101,000. David claimed one-half of the money as a marital asset. Diane claimed the total amount because the stipulation awarded the Token Creek property to her. To support her claim she asserted that the property was diminished in value by $100,000 when it was decided that the

nearby pond would not be recreated. After hearing evidence on the issue, the trial court ruled in Diane's favor and awarded her the $101,000, as well as any undistributed proceeds from the district's sale of its fifty acres. David appeals that determination.

¶6 The trial court properly awarded the $101,000 and any subsequent payments to Diane. The $101,000 may have been compensation for damage to the Token Creek property, as the trial court found. Or, it may have been essentially a windfall, as David argued. Either way, the right to the payment was inextricably linked to ownership of property within the district. On September 3, 1998, two months before the payment issued, David endorsed a property settlement awarding the Token Creek property to Diane without qualification. He also agreed to sign a quitclaim deed to the property upon demand, and acknowledged that he so stipulated with full knowledge and information of all relevant facts. The trial court approved the stipulation the same day, making it binding on the parties. *See* § 767.10(1), STATS.; *see also* ***Evenson v. Evenson***, 228 Wis.2d 676, 686, 598 N.W.2d 232, 237 (Ct. App. 1999). Therefore, after September 3, Diane was solely entitled to the benefits that accrued, and liable for the losses that derived from owning the Token Creek property. This is so even though David failed to sign Diane's proffered quitclaim deed before the $101,000 check was issued.[1]

¶7 David could have moved the trial court to set aside the stipulation on the grounds set forth in § 806.07, STATS. *See, e.g.,* ***Keller v. Keller***, 214 Wis.2d 32, 36-37, 571 N.W.2d 182, 184 (Ct. App. 1997). However, he did not, and the

[1] Prior to the hearing on disposition of the $101,000, Diane brought a contempt motion on the grounds that David had refused to sign the quitclaim deed prepared and sent to him shortly after the September 3rd hearing. The record indicates that David signed the deed on the day of the hearing.

record does not indicate that grounds existed for relief from the stipulation in any event.

¶8 Additionally, David contends that the trial court should have denied Diane's claim to the total amount because she sought relief without clean hands. Under the "clean hands doctrine," a court should deny relief to a party guilty of "wrongful or unlawful" conduct that created the situation requiring the court's intervention. *See* ***Security Pac. Nat'l Bank v. Ginkowski***, 140 Wis.2d 332, 339, 410 N.W.2d 589, 593 (Ct. App. 1987) (citation omitted). Here, David asserts that Diane knew about the anticipated payment but did not raise the issue during the settlement negotiations. However, he produced no evidence that her omission constituted wrongful or unlawful conduct, and no evidence that it caused him to stipulate away his claim. Moreover, David concedes that he, too, knew of the payment and did not mention it.

¶9 For the reasons discussed above, we conclude that the trial court did not erroneously exercise its discretion in awarding the $101,000 payment entirely to Diane.

By the Court.—Judgment affirmed.

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