COURT OF APPEALS
DECISION
DATED AND FILED

January 5, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2991 **Cir. Ct. No. 2012FA502**

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

IN RE THE MARRIAGE OF:

KATHLEEN M. FLOOD,

PETITIONER-RESPONDENT,

V.

JOSEPH F. FLOOD,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: GREGORY B. GILL, JR., Judge. *Affirmed in part; reversed in part and cause remanded for further proceedings with directions*.

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

¶1 PER CURIAM. Joseph Flood appeals a divorce judgment. His primary argument is that the circuit court's property division failed to accomplish

the court's stated goal of dividing the marital estate equally after providing for the repayment of a $115,000 loan Joseph made to his spouse, Kathleen Flood, out of individual, non-marital assets while the divorce action was pending. We agree with Joseph and remand with directions for the circuit court to modify the divorce judgment to require a $56,434.25 equalization payment from Kathleen to Joseph and to hold such further proceedings as may be necessary on that issue.

¶2 Joseph also asserts the circuit court erroneously valued several retirement assets and incorrectly determined the net amount the parties received from the sale of their marital residence. Joseph's arguments in this regard are based solely on evidence not presented at the final evidentiary hearing, but which could have been presented at that time. We conclude the circuit court did not erroneously exercise its discretion in refusing to consider this post-hearing evidence and, further, the court's factual findings regarding the valuations of the contested assets are not clearly erroneous. We also reject Joseph's argument that he is entitled to attorney's fees for opposing what he deems a frivolous motion to dismiss his appeal.

BACKGROUND

¶3 Joseph and Kathleen married in 1987. Kathleen petitioned for divorce in 2012. The parties had substantial marital assets, including a residence,

retirement accounts, and insurance policies.[1] In addition, Joseph had inherited assets that included two Charles Schwab accounts of considerable value.

¶4 On November 12, 2012, prior to the scheduling of a final hearing, the parties entered into a partial marital settlement agreement (PMSA). Under the PMSA, the parties acknowledged the two Schwab accounts were Joseph's individual and inherited property and would be treated as such for property division purposes (i.e., excluded from the marital estate). However, because Kathleen had vacated the parties' marital residence and wished to purchase a new residence in Appleton, Joseph agreed to provide Kathleen $115,000 from the Schwab accounts for a down payment on her Appleton property. This amount was to "constitute an advance on property division and will be 'repaid' to [Joseph] from [Kathleen's] share of the marital estate at the time of the final hearing in this matter." The PMSA excluded Kathleen's Appleton residence from the marital estate and allocated, for property division purposes, certain cash-value life insurance accounts to Joseph and an annuity to Kathleen.

¶5 The parties submitted position statements concerning the disputed issues (including property division) prior to the final evidentiary hearing. They generally agreed as to the assets included in the marital estate, although there were some differences in the parties' valuations of those assets, as reflected in property division worksheets the parties prepared. Joseph calculated the net marital estate

[1] The parties' assets also included a timeshare, several vehicles, and a health savings account. Although these assets were subject to division, and the circuit court divided them, the court does not appear to have made specific findings of fact as to their values. The parties do not directly address the division of these assets, and we therefore will not either. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (court of appeals will not abandon neutrality to develop arguments for the parties).

to be worth $726,184.82, while Kathleen calculated it to be worth $566,811.21.[2] The parties were the primary witnesses at the final evidentiary hearing, which was held on February 11 and March 27, 2013.[3] At the conclusion of the March 27 hearing, the circuit court ordered the parties to "submit no longer than a three-page summary argument of the respective positions."

¶6 In post-hearing briefing, Joseph asserted the marital residence had recently been sold. Joseph proposed that he receive the entire proceeds from the sale, with half ($90,186) credited toward Kathleen's $115,000 debt. Joseph's brief included a revised property division worksheet that purported to allocate the parties' marital estate to reimburse Joseph for the remaining balance of that loan. Kathleen suggested accounting for the $115,000 debt following division by eliminating an anticipated $26,990.50 equalization payment from Joseph under her proposal and transferring Kathleen's anticipated share of the proceeds from the sale of the marital residence to Joseph.

¶7 Following these submissions, the parties continued to contest various property division issues in numerous letters submitted prior to an oral ruling scheduled for August 28, 2013. Kathleen's post-hearing brief included an unexplained reference to a balance sheet prepared for Joseph by "Rosemary Barnes" that purportedly contained a previously undisclosed retirement asset and altered the tax treatment of certain other retirement accounts. Joseph acknowledged he had retained Barnes, a certified divorce financial advisor,

[2] The different values were attributable, in part, to Kathleen's application of a twenty-five percent reduction in the values of many retirement accounts to account for future taxation.

[3] In addition to Kathleen and Joseph, the only other witness called at trial was an engineering recruiter who was familiar with a job offer Joseph had received.

following the final evidentiary hearing date on March 27, 2013. Joseph's submissions included a lengthy email to Judge Gill in which Joseph alleged Kathleen had covertly obtained from the marital residence documents prepared by Barnes. Based upon information Barnes provided, Joseph disputed Kathleen's tax treatment of certain retirement accounts and alleged Kathleen failed to disclose a retirement asset and omitted or mischaracterized the tax treatment of certain other assets in her post-hearing property division worksheet.[4] Joseph also claimed that, since the final evidentiary hearing, Kathleen had received a 2012 tax refund in the amount of $7,186 that she had kept in its entirety. Joseph conceded the post-hearing revisions he had made to his property division worksheet—including alterations to the tax characteristics of certain retirement assets—were based on information that "was available to the parties before March 27th, but unfortunately neither [party] separated out the Roth and traditional components of the parties' accounts in composing our earlier balance sheets."

¶8 On August 28, 2013, the parties returned to court for the oral decision regarding property division. The court observed the parties' home recently had sold, with net proceeds from the sale of $181,932. Because of the $115,000 debt, the court ordered that Joseph be awarded all proceeds from the sale of the home to offset the loan, leaving an outstanding balance of approximately

[4] By letter dated April 26, 2013, Kathleen acknowledged her post-hearing submission had omitted a retirement asset with a balance of $9,987.

$24,000 that would be dealt with through the division of the parties' retirement assets.[5]

¶9 The circuit court then addressed the division of the parties' retirement and life insurance assets. The court noted the following retirement assets, assigned them the designated values, and allocated them as follows:

RETIREMENT ASSET	VALUE	KATHLEEN	JOSEPH
Voith 401(k)	$187,235.47		X
American Funds Roth IRA	$14,293.22		X
W-Nicholas Rollover IRA	$43,979.41		X
Alcan 401(k)	$42,362.99		X
American Funds IRA	$10,546.89		X
American Funds Roth IRA (2)	$9,987.00		X
Allianz Annuity	$122,236.22	X	
E-Trade IRA	$7,780.53	X	
CUNA Mutual IRA	$2,640.08	X	
BMO 401(k)	$42,336.47	X	
Paychex 401(k)	$28,803.52	X	
Jacobs Field Services 401(k)	$49,654.01	X	
American Funds Custodial IRA	$5,098.19	X	
Roth IRA	$106.12	X	

The total value of Joseph's retirement assets was $308,404.98, while Kathleen received retirement assets valued at $258,655.14. The circuit court reasoned that if the retirement assets were divided equally, each party would receive approximately $283,500. The ordered division of the retirement assets, when coupled with the award to Joseph of the proceeds from the sale of the parties' marital residence, would result in full repayment of the $115,000 loan, as Joseph

[5] The circuit court believed there was an outstanding balance on the loan of $24,814 following the application of Kathleen's half of the proceeds from the sale of the marital residence to the $115,000 debt. However, Kathleen's share of the marital residence sale proceeds was $90,966 ($181,932 ÷ 2). The remaining debt therefore would have been $24,034 ($115,000 – $90,966).

would receive $24,875.36 more in retirement assets than he was otherwise entitled to under an equal division. The circuit court also ordered that all life insurance policies with a cash value be surrendered and the proceeds divided equally.

¶10 After the circuit court addressed maintenance, Joseph requested clarification of the property division ruling. Joseph observed that under the PMSA, the life insurance policies with a cash value were to be allocated to him for property division purposes, not divided equally as the court had ordered. The court stated that if Joseph wanted to be awarded the life insurance policies, "the net effect is I'm going to go back to the retirement accounts which are, quite frankly, the only other type of asset that has significant monetary value, and Mr. Flood would essentially have a reduction equal to whatever would be the cash surrender of the life insurance policies."

¶11 The court then attempted to redivide the retirement assets in light of Joseph's desire to enforce the PMSA. According to Joseph's calculations, the cash surrender value of the life insurance policies was $133,140.[6] The court determined it would award all retirement assets but the Voith 401(k) to Kathleen, which represented a reallocation of $121,169.51. Joseph was to pay Kathleen the

[6] Kathleen claimed at the hearing that the cash surrender value of the life insurance policies was $130,240.57. However, the circuit court later questioned Joseph about the policies' value. His attorney responded that she calculated the policies to be worth "about the same that [Kathleen] came up with, 133,140." Although the circuit court does not appear to have made a specific finding as to the value of the life insurance policies, Kathleen did not object to Joseph's revised valuation (as it was to her benefit to allocate a greater amount to Joseph). Although Joseph now cites Kathleen's valuation in his brief, this represents a deviation from his submissions to the circuit court. We conclude, in the absence of an express finding by the circuit court as to the value of the life insurance policies, Joseph is bound by his earlier representations to the court.

approximately $12,000 difference by check within 30 days.[7] Joseph then observed the parties had received a refund on their 2012 taxes in the amount of $7,186, which Kathleen had retained. The circuit court ordered that the $12,000 be reduced to $8,500 to account for a $3,500 offset for Joseph's share of the tax refund.

¶12 Near the end of the August 28, 2013 hearing, Joseph questioned whether the court's property division had taken into account the parties' stipulation that Kathleen had taken $26,000 from the parties' joint saving account as a further payment for the purchase of her residence. The court stated that rather than "completely reinvent the wheel," it would withhold from division retirement assets equal to approximately $26,000 pending further review. In response, Kathleen argued that Joseph would have been entitled to only half of the $26,000, and therefore the circuit court only needed to withhold approximately $13,000 from the property division. The court concluded it would withhold the American Funds Roth IRA account valued at $14,293.22 until it determined who was entitled to the asset.

¶13 Following the August 28, 2013 hearing, the parties again submitted several letters to the circuit court. This correspondence focused not on the sole issue remaining following that hearing—division of the withheld American Funds Roth IRA account—but rather on whether the circuit court's property division as a whole was appropriate. Soon after the August 28 hearing, Joseph submitted a letter objecting to the ordered property division. Joseph argued the court's

[7] The circuit court contemplated that the $12,000 payment would include a credit owed to Kathleen because Joseph was required, but failed, to pay a tax on the parties' marital residence.

decision produced an unequal division, contrary to the court's stated intent to divide the estate equally after the $115,000 loan was repaid. Joseph also disputed the tax treatment of certain retirement assets, which he argued produced a windfall to Kathleen. An affidavit from Rosemary Barnes dated in early September 2013 was attached as an exhibit to the letter, in which Barnes opined that the parties had mischaracterized the tax implications associated with several retirement assets in prior filings.

¶14 The circuit court held another hearing on November 26, 2013. The court observed that although neither party was happy with the previously ordered property division, it would not disrupt any part of the prior order. However, the court acknowledged its original division did not account for the $26,000 Kathleen had taken from the parties' joint savings account. Because of this omission, the court determined that Joseph should receive an additional $13,000. Kathleen noted the court had withheld division of the American Funds Roth IRA account, which had been valued at $14,293.22 at the August 28, 2013 hearing. The circuit court accepted a revised valuation of approximately $13,500 for that asset and ordered that the account be allocated to Joseph in the property division.[8]

¶15 This did not conclude the November 26, 2013 hearing, however. Joseph expressed confusion regarding the property division the circuit court ordered at the prior hearing, in particular whether the life insurance policies were to be cashed and divided or allocated entirely to Joseph. The circuit court reminded Joseph that the sole issue for resolution at the November 26 hearing was

[8] The final judgment reflects an asset value of $13,541.47.

"simply the $26,000, was that to be credited or not." After a brief discussion regarding attorney fees, the hearing was adjourned.

¶16 On December 9, 2013, Joseph again wrote to the circuit court, claiming the equalization payment ordered at the August 28, 2013 hearing was no longer appropriate. The circuit court scheduled a "review hearing" for April 17, 2014, at which Joseph raised concerns regarding whether the property division was equitable. The court replied,

> Okay. And let me ask this. Is this issue that [Joseph] doesn't like my mathematics, because my math was predicated upon the numbers that everybody gave me and trying to come up with the right numbers, and so, quite frankly, if we reopen the numbers, what's going to happen is I'm going to get one set of numbers from [Kathleen] again, I'm going to get one set of numbers from you again, and then we're right back at square one. *So ... if the parties say, Judge, using the numbers you used it doesn't equal 50/50, we can talk about it.* If you say, Judge, it doesn't equal 50/50 because I don't like your numbers, then I'm not interested in revisiting the issue.

(Emphasis added.) The court invited Joseph to personally explain his position, during which time Joseph again challenged the circuit court's findings as to the value of certain retirement assets and requested that the court allow Rosemary Barnes to testify. The court refused to permit Barnes' testimony and reminded Joseph again that it would not revisit issues of valuation and taxation of marital assets. However, the circuit court agreed to review the transcript of the August 28, 2013 hearing to confirm that its property division order was appropriate.

¶17 On May 1, 2014, the circuit court issued an order confirming its property division. The court specifically found that "the proceeds from the sale of the house as well as the division of retirement accounts were dealt with in an appropriate manner." The previously ordered property division was reduced to a

judgment on October 1, 2014. The court denied a subsequent motion for reconsideration filed by Joseph seeking modification of the property division. Joseph now appeals.

DISCUSSION

¶18 Property division in a divorce generally rests within the sound discretion of the circuit court. ***Schwegler v. Schwegler***, 142 Wis. 2d 362, 364, 417 N.W.2d 420 (Ct. App. 1987). "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 (quoting ***Long v. Long***, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995)).

¶19 The circuit court is obligated to follow WIS. STAT. § 767.61 when dividing marital property.[9] The statute establishes a presumption in favor of equal division, but provides a list of factors that may justify an unequal division. *See* WIS. STAT. § 767.61(3). Joseph argues the circuit court deviated from the presumption of equal division and ordered an unequal division without analyzing the factors enumerated in § 767.61(3). In this case, the circuit court repeatedly stated its intent to follow the presumption and divide the marital estate equally, after accounting for the $115,000 loan Joseph had provided to Kathleen out of his individual, inherited property. Because the circuit court concluded an equal

[9] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

division was appropriate, it was not necessary to consider the factors justifying an unequal division under § 767.61(3).

¶20 Rather, the issue here is whether the court achieved its intent of an equal division, while accounting for full repayment of the loan. Joseph contends, "Although the court may have intended to effect an equal property division, the end result grossly deviated from the presumption of equal division by awarding [Kathleen] substantially more marital assets than [Joseph]." He argues the circuit court failed to fully compensate him for Kathleen's $26,000 property division advance because half of the retirement asset he received in return, valued at $13,541.47, was already his. Joseph further asserts the circuit court's property division failed to fully compensate him for the $115,000 loan he made to Kathleen from non-divisible assets. Finally, Joseph contends there remained an outstanding balance of $24,034 on the loan that the circuit court failed to account for in its property division.

¶21 We review de novo whether the circuit court's property division produced an unequal division of marital property. Although the circuit court's division is generally reviewed for an erroneous exercise of discretion, that discretion must be exercised by applying the correct legal standard. ***Cook v. Cook***, 208 Wis. 2d 166, 171, 560 N.W.2d 246 (1997). Joseph essentially argues the circuit court misapplied the presumption of equal division contained in WIS. STAT. § 767.61(3), which presumption it is undisputed the court intended to effectuate. The interpretation and application of a statute presents a question of law. ***Frisch v. Henrichs***, 2007 WI 102, ¶29, 304 Wis. 2d 1, 736 N.W.2d 85.

¶22 Despite its yeoman's efforts, we conclude the circuit court ultimately erred in its attempt to divide equally the marital estate. We reach this conclusion

applying all of the property values the circuit court found, as those findings are not clearly erroneous. *See infra* ¶¶26-33. The court appears to have used two different methodologies when it divided the property in this case to account for the $115,000 loan from Joseph's non-marital assets. Initially, at the August 28, 2013 hearing, the court determined it would achieve repayment of Joseph's $115,000 loan to Kathleen by first calculating the amount to which the parties would be entitled under an equal division, and then dividing the property such that Joseph would receive $115,000 more than, and Kathleen $115,000 less than, that amount. However, the court's ultimate property division reflects its belief that it was sufficient for Joseph to receive approximately $115,000 more than Kathleen in the property division.

¶23 The latter methodology is deficient because, as Joseph correctly observes, it fails to repay fully the $115,000 loan through the property division, as the PMSA contemplated. This concept is easily illustrated. As set forth below, we calculate the entire marital estate subject to division to be worth $914,566.37. *See infra* ¶24. Under the methodology the circuit court ultimately used, Joseph would receive the first $115,000 in assets, leaving $799,566.37 to be divided equally between the parties. Using this approach, Kathleen would receive approximately $399,783 in assets, while Joseph would receive approximately $514,783. While this approach has some superficial appeal, it ultimately results in the repayment of only half of the $115,000 loan, because Joseph was already entitled to half of the $115,000 he received at the outset of the analysis. In effect, the circuit court ordered Joseph to repay himself for a portion of Kathleen's loan.

¶24 The methodology the circuit court initially used was the correct one. Under this approach, the first step is to determine what each party was entitled to under an equal division of the marital property. As previously indicated, we

calculate the parties' martial estate to be worth $914,566.37; each party is therefore entitled to $457,283.19 in assets. To account for the loan, however, Joseph must receive $115,000 more than this amount (i.e., $572,283.19). Kathleen would therefore receive $342,283.18 ($914,566.37 - $572,283.19). These calculations are set forth in the table below:

Asset	Joseph	Kathleen
REAL ESTATE		
Sale of Marital Residence	$181,932.00	
LIFE INSURANCE		
Cash Value Policies[10]	$133,140.00	
RETIREMENT		
Voith 401(k)	$187,235.47	
American Funds Roth IRA	$13,541.47	
W-Nicholas Rollover IRA		$43,979.41
Alcan 401(k)		$42,362.99
American Funds IRA		$10,546.89
American Funds Roth IRA (2)		$9,987.00
Allianz Annuity		$122,236.22
E-Trade IRA		$7,780.53
CUNA Mutual IRA		$2,640.08
BMO 401(k)		$42,336.47
Paychex 401(k)		$28,803.52
Jacobs Field Services 401(k)		$49,654.01
American Funds Custodial IRA		$5,098.19
Roth IRA		$106.12
MISCELLANEOUS ASSETS		
2012 Tax Refund		$7,186.00
Savings Account Cash Advance		$26,000.00
TOTALS	$515,848.94	$398,717.43
TOTAL MARITAL ESTATE	$914,566.37	
EQUAL DIVISION	$457,283.19	
REPAYMENT OF $115,000 LOAN	$572,283.19	$342,283.18

[10] *See supra* note 6.

¶25 The foregoing establishes the circuit court did not achieve its stated intent to divide equally the marital estate in the context of repaying the $115,000 loan. The manner in which the court divided the estate resulted in an equalization payment from Joseph to Kathleen in the amount of $8,500. But under the circuit court's division of assets, Joseph received only $515,848.94, when in fact he was entitled to $572,283.19. Therefore, to ensure full repayment of the $115,000 in the manner the PMSA contemplated, the circuit court should have ordered Kathleen to make a $56,434.25 equalization payment. We remand with directions for the circuit court to modify the divorce judgment accordingly. On remand, the circuit court may address any further issues the parties raise regarding the date and manner in which the equalization payment is to be made. In addition, if the previously ordered $8,500 equalization payment has already been made by Joseph, it must be refunded or otherwise accounted for.

¶26 Joseph next argues the circuit court erroneously exercised its discretion by failing to utilize what Joseph contends are the correct valuations for several marital assets. Specifically, he argues the circuit court used out-of-date values for the retirement accounts, failed to consider the reasonable tax implications associated with many of those accounts, and used an incorrect number for the net amount the parties received upon the sale of the marital residence. We reject these arguments.

¶27 The circuit court's determination of the value of a marital asset is a finding of fact that will not be disturbed on appeal unless it is clearly erroneous. ***Preuss v. Preuss***, 195 Wis. 2d 95, 107, 536 N.W.2d 101 (Ct. App. 1995). The valuation of retirement assets for divorce purposes poses particular problems and often requires some speculation. ***Rumpff v. Rumpff***, 2004 WI App 197, ¶24, 276

Wis. 2d 606, 688 N.W.2d 699. In all events, the court should determine the fair market value of an asset as of the date of divorce. ***Id.*** In this case, the effective date of divorce, as stated in the judgment, was the date of the final evidentiary hearing, March 27, 2013. *See* WIS. STAT. § 767.35(3).

¶28 Joseph argues the circuit court should have relied on his post-March 27, 2013 submission from Rosemary Barnes for the correct valuation and taxation information regarding the retirement accounts. He contends the exhibits prepared with Barnes' assistance constituted "undisputed expert testimony" that made it unnecessary for the circuit court to speculate as to the correct value or tax treatment of any of the assets. Joseph relies on ***Ashraf v. Ashraf***, 134 Wis. 2d 336, 397 N.W.2d 128 (Ct. App. 1986), in which we stated it was improper for the circuit court to speculate regarding the tax treatment of certain assets in light of uncontradicted expert testimony; the court was required to "either accept it or explain why it found the testimony improbable or the witness discredited." ***Id.*** at 346.

¶29 Joseph admits in his appellate brief-in-chief that he did not submit the information from Barnes to the court until after the close of evidence on March 27, 2013. This concession is consistent with the record. Barnes did not testify at trial. The parties were the primary witnesses at the divorce hearing, and Barnes' name surfaced for the first time in the parties' post-hearing briefs. Joseph acknowledged before the circuit court that the information Barnes supplied had been overlooked by the parties when valuing the accounts both at and prior to trial. The only "evidence" Joseph ever attempted to submit from Barnes was her affidavit and attachments in early September 2013, after the circuit court had concluded the vast majority of the property division on August 28, 2013.

¶30 Other than generically asserting that his valuations, submitted *after* the final evidentiary hearing in this case, "most accurately represent the actual values of the parties' assets on the date of the divorce," Joseph fails to explain why the circuit court's valuations were clearly erroneous. Joseph had ample opportunity to present evidence at the final divorce hearing. He now wishes he had presented different, more-detailed evidence in the form of expert testimony, which evidence he better appreciated after the hearing. A party's regret over the presentation of its case at trial is not a proper basis to conclude the circuit court's findings of fact based on the evidence of record were clearly erroneous.[11]

¶31 Joseph relies on ***Preuss*** to argue that it was error for the circuit court not to consider updated account balances for the retirement assets. In ***Preuss***, the parties offered at trial an appraisal of the value of a herd of cattle. ***Preuss***, 195 Wis. 2d at 100. One spouse testified that several animals had died or been sold since the date of the appraisal. ***Id.*** at 107. The circuit court accepted the appraiser's valuation and did not make any adjustment for the animals that undisputedly were no longer part of the herd. ***Id.*** On appeal, we concluded the circuit court's valuation was clearly erroneous. ***Id.*** The distinguishing feature in ***Preuss*** is the fact that the relevant evidence casting doubt on the appraiser's

[11] Joseph argues, "Even without the evidence submitted by the [Barnes], the court failed to engage in 'reasonable speculation' regarding the tax impact [to the retirement accounts]." Joseph relies on ***Rumpff v. Rumpff***, 2004 WI App 197, 276 Wis. 2d 606, 688 N.W.2d 699. However, ***Rumpff*** does not *require* the court to "reasonably speculate" regarding the potential future taxation of a given asset; that case merely states that in the absence of expert testimony, it is not error for the circuit court to do so. *See* ***id.***, ¶25. Here, there was no expert testimony at trial regarding the proper tax attributes of each account. In any event, Joseph's argument in this regard is inadequately developed on appeal. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed.").

valuation (and, by extension, the circuit court's factual finding) was introduced at trial and subject to adversarial testing. *See* ***id.*** That did not occur in this case.

¶32 Joseph also argues the circuit court should have utilized Barnes' valuations because the court invited further submissions from the parties after the close of evidence. What the court requested was a "three-page summary argument of the [parties'] respective positions." The court did not invite the parties to submit new valuation evidence in the form of "expert" opinion or otherwise. To be sure, it would have been within the circuit court's discretion to hold a further evidentiary hearing, but the circuit court did not err by refusing to give Joseph another opportunity to make his case, particularly after Joseph learned which assets the circuit court was inclined to award Kathleen in the property division.

¶33 For similar reasons, we reject Joseph's argument that the circuit court improperly valued the parties' marital residence. As of the date of the final evidentiary hearing, the parties were engaged in a series of counteroffers with the prospective buyers of the marital residence, the last of which Joseph testified was acceptable to him. The settlement statement on which Joseph relies as supplying the "correct" net funds from the sale of the marital residence is dated April 26, 2013, approximately one month after the final evidentiary hearing in this case. In any event, the amount of the net proceeds Joseph claims the parties realized from the sale of the residence has continually fluctuated. As of April 17, 2013, Joseph claimed in a letter to the court that the parties received $180,372 for the residence; at the April 17, 2014 hearing, Joseph variously claimed the parties' received $176,000 or $174,000. The circuit court's decision to value the property in accordance with the anticipated proceeds of the sale at the time of trial, and not based on subsequently submitted values, was not clearly erroneous.

¶34 Finally, Joseph seeks de minimis attorney's fees as a sanction for what he considers a frivolous motion Kathleen previously filed to dismiss his appeal. WISCONSIN STAT. § 802.05(3)(a) provides a twenty-one-day safe harbor within which a party may withdraw or correct an allegedly frivolous filing. Joseph acknowledges that this court denied Kathleen's motion before the expiration of this twenty-one-day period. Accordingly, we conclude Joseph is not entitled to the attorney's fees he requests.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded for further proceedings with directions.

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