COURT OF APPEALS
DECISION
DATED AND FILED

August 22, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1007 **Cir. Ct. No. 2015IN2**

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

IN RE THE ESTATE OF JAMES G. RECKER:

LYNN RECKER,

APPELLANT,

V.

LUANNE GILMORE,

RESPONDENT.

APPEAL from an order of the circuit court for Outagamie County: VINCENT R. BISKUPIC, Judge. *Affirmed*.

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

¶1 PER CURIAM. Lynn Recker, pro se, appeals an order entered in proceedings regarding the estate of James Recker. The order concerns the ownership of a table. We affirm.

¶2 The table at issue was an 1884 wedding gift to Adolph Burmeister and Louise Techlin, and it was eventually passed down to Louise's grand-daughter, Luella Van Ooyen, in 1993. Luella's will provided the table would pass to James Recker, but Luanne Gilmore contended she had previously been gifted or purchased the table from Luella. Luanne also claimed she had an informal agreement with James that he could keep the table during his lifetime, but at his death Luanne would re-acquire the table.

¶3 However, James bequeathed the table to Lynn in his will. After James died, Luanne requested the return of the table, but James's heirs sought the inclusion of the table in his estate. Following an evidentiary hearing, the circuit court found that although the table was mentioned in James's will, he did not own the table when he died. The court found James had a right of possession that expired upon his death, and it awarded the table to Luanne. Lynn now appeals.

¶4 As factfinder in the present case, it was the circuit court's function to decide the credibility of witnesses and weigh the evidence. *See* ***Estate of Dejmal v. Merta***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). We uphold factual findings unless they are clearly erroneous, giving proper deference to the circuit court's assessment of the weight and credibility of witness testimony. *See* WIS. STAT. § 805.17(2) (2015-16).[1] A factual finding is not clearly erroneous merely

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

because a different factfinder could draw opposing inferences from the record. Appellate courts search the record for evidence to support findings the circuit court reached, not for evidence to support findings the court did not but could have reached. *See* ***Dejmal***, 95 Wis. 2d at 154.

¶5 The circuit court's credibility assessments will not be overturned on appeal unless they are inherently or patently incredible, or in conflict with fully established or conceded facts. *See* ***Chapman v. State***, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975). Moreover, a fact finder is free to piece together the testimony it finds credible to construct a chronicle of the circumstances surrounding the relevant issues. *See* ***State v. Sarabia,*** 118 Wis. 2d 655, 663-64, 348 N.W.2d 527 (1984). Appellate court deference considers that the circuit court has the superior opportunity to observe the demeanor of witnesses and gauge the persuasiveness of their testimony. *See* ***Dejmal***, 95 Wis. 2d at 151-52.

¶6 Here, the circuit court's factual findings concerning the ownership of the table are not clearly erroneous, and we will not disturb its credibility determinations. In its written ruling, the circuit court stated:

> Considering all of the documents submitted and the direct testimony at the court hearing, this Court finds [Luanne] Gilmore's evidence is more credible and believes that she purchased and/or was gifted the table from her great aunt Luella. Thus, Luanne Gilmore is the proper owner of the table. The fact that Gilmore allowed the decedent James Recker to have the table while he was living means that she granted him a life estate in the table. *See* WIS. STAT. ANN. § 700.02(3) (West 2016). During the time period between the death of Luella Van Ooyen to the date of death of James Recker, Recker retained a right of possession, but not actual ownership.
>
> Although the table is mentioned in the will of James Recker, he did not own it. This is based on the court's analysis and credibility assessment of the testimony and documentation. Under the more credible facts and direct

> testimony, Recker should be considered a "life tenant." Under Wisconsin law, a "life tenant cannot injure or dispose of property to the injury of the rights of the remainderman but he differs from a pure trustee in that he may use the property for his exclusive benefit and take all the income and profits." ***In re Larson's Estate***, 261 Wis. 206, 211 (1952). Ownership is required for an item to be included in a decedent's estate.

¶7 The evidence allowed the finding that Luella gave Luanne the table in order to carry out Luella's wishes of assuring it passed down a particular lineage because it was Luanne's great-grandmother's table. On the day Luella died, she asked Luanne if she "had gotten [the] table," and Luanne informed her not yet but that she planned to get it the next day. When she attempted to pick up the table, Luanne was told by James, "Well, you're not getting the table."

¶8 The evidence further supports the finding that Luanne purchased the table when family members were invited to Luella's apartment to bid on items they desired. We note the circuit court specifically attached to its written ruling a cancelled check from Luanne. Luanne also testified that when James indicated to her the table "was willed to [him]," Luanne offered to allow James to keep the table in his home and enjoy it during his lifetime in order to avoid a "rift." The court indicated in its written ruling that it found Luanne's evidence "more credible and believes that she purchased and/or was gifted the table from her great aunt Luella." The court also found Luanne allowed James "to have the table while he was living." The court was entitled to so find.[2]

[2] To the extent Lynn suggests on appeal that Luella was not competent to gift the table to Luanne, the argument is not developed and we shall not further consider the issue. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶9 It is axiomatic that ownership at death is required for an item to be included in a decedent's estate. Although James was granted the right to possess the table while he was living, the table was not property James owned at his death and, therefore, it was not subject to administration under applicable laws relating to decedents' estates. *See* RESTATEMENT (THIRD) OF PROPERTY: WILLS AND OTHER DONATIVE TRANSFERS § 1.1 cmt. b (AM. LAW INST. 1999). Accordingly, we affirm the order concerning ownership of the table.[3]

¶10 Luanne seeks frivolous appeal costs and fees, pursuant to WIS. STAT. §§ 802.05(2) and 895.044. We are not persuaded the appeal was without any reasonable basis in law or equity, or that it was commenced in bad faith solely for the purpose of harassing or maliciously injuring Luanne. *See* §§ 895.044(1)(a) and (b); 802.05(2)(a) and (b). The motion for frivolous costs is denied.

By the Court.—Order affirmed.

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

[3] We note Luanne's brief fails to conform to the requirements of WIS. STAT. RULE 809.19 in that the brief cites generally to multi-page documents. By way of example, the brief cites "R42," which is a sixty-nine-page hearing transcript. Appellate briefs must give references to specific pages of the record on appeal for each factual statement made in the appellate brief. This failure has unnecessarily complicated our review in this case. We remind the parties that the rules of appellate practice are designed in part to facilitate the work of the court, not hinder it.