COURT OF APPEALS
DECISION
DATED AND FILED

May 1, 2018

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP1892 **Cir. Ct. No. 2013FA5201**

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

IN RE THE MARRIAGE OF:

TIMOTHY JOHN,

PETITIONER-RESPONDENT,

V.

KARRI FRITZ-KLAUS,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: FREDERICK C. ROSA, Judge. *Affirmed*.

Before Brash, Dugan and Stark, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Karri Fritz-Klaus, *pro se*, appeals the judgment divorcing her from Timothy John. She contends that the circuit court erred when it: (1) granted the parties a divorce; (2) denied her maintenance; and (3) divided the debts and assets. She further alleges "multiple errors in the [circuit] court's management of the case," warranting reversal in the interest of justice. We reject her arguments and affirm.

Background

¶2 John and Fritz-Klaus married on September 15, 2007. The marriage was the second for both parties. John's previous marriage, entered into in 1982, ended in divorce on February 26, 2007. Fritz-Klaus's prior marriage ended with the death of her husband in 1996.

¶3 John and Fritz-Klaus separated after five years and eight months of marriage when John moved out of the marital home on May 19, 2013. At the time of their separation, both spouses were in their early fifties. John was the owner of a calendar publishing business and Fritz-Klaus was a divorce attorney with many years of experience. They had no children together although each had children from prior relationships.

¶4 John commenced this litigation on July 24, 2013. In his petition, he requested a divorce, property division, and related services, fees, and costs. Fritz-Klaus, who elected to represent herself, filed a response requesting "the parties' marriage," i.e., denial of the petition for a divorce, and "such other relief as the Court deems appropriate." Fritz-Klaus did not amend her pleadings, and her position throughout the litigation was that John did not and could not prove that the marriage was irretrievably broken.

¶5 The circuit court docket reflects that Fritz-Klaus did not appear at the initial pretrial conference in February 2014, and the matter was rescheduled for May 12, 2014. At that time, the circuit court acknowledged Fritz-Klaus's view that the marriage remained viable and agreed to order counseling with a treatment provider that Fritz-Klaus selected. The circuit court also ordered the parties to exchange financial declarations by the end of June and set another pretrial date for September 2, 2014.

¶6 At the September 2014 pretrial conference, the parties advised the circuit court that Fritz-Klaus wanted to continue in counseling but John did not. The circuit court recognized that the parties were in "different places" about whether the divorce should proceed but explained that the case must "move ... forward" due to its age. The circuit court then granted John's request for mediation of the unresolved financial issues. In doing so, the circuit court stated that it did not yet understand what issues were in dispute and expressed a hope that mediation would assist in identifying those issues. The circuit court established a February 2, 2015 trial date and ordered the parties to exchange financial disclosure statements within thirty days.

¶7 The parties appeared for a final pretrial conference on January 8, 2015. The circuit court began by noting Fritz-Klaus's continued opposition to the divorce and observing that Fritz-Klaus had never articulated "what it is she would want if the case goes to a divorce." The circuit court further acknowledged Fritz-Klaus's requests for "counseling and other interventions to save the marriage," but the circuit court advised that it intended to try the case as scheduled. The circuit court reminded the parties that it was rotating to another judicial assignment in August and intended to complete the matter before that date to avoid requiring a successor court to duplicate steps already taken.

¶8 As the hearing progressed, the parties described the status of their trial preparation. John, by counsel, advised that he had retained an expert to evaluate his business and anticipated receiving a report shortly. Fritz-Klaus told the circuit court that she had "prepared detailed discovery requests" but never submitted them and that she lacked necessary information. She requested an opportunity to conduct discovery into the financial aspects of John's failed bid for governor, John's gifts to third parties, and details of John's business enterprises. She also asked the circuit court to appoint an independent expert to value John's publishing business.

¶9 The circuit court rejected Fritz-Klaus's request for an independent expert but left open the possibility of revisiting such a request if the trial testimony so required. As to the request to conduct discovery, the circuit court did not bar Fritz-Klaus from taking any steps that she might think appropriate but observed that "the clock had run" on reasonable pretrial discovery requests, given the impending February 2, 2015 trial date. The circuit court went on to direct the parties to exchange and file financial disclosure statements and proposed dispositional orders a week before trial "so [the circuit court] know[s] ... each side's respective position." Additionally, pursuant to the parties' stipulation, the circuit court ordered Fritz-Klaus to meet with the vocational assessor that John had retained.

¶10 Trial began on February 2, 2015, and John presented most of his case on that date. At the conclusion of the day's testimony, the circuit court granted Fritz-Klaus's request to give an opening statement. At that time, she reiterated her commitment to her marriage and her commitment to preserving marital unions generally. She lamented that John had come to believe that she married him for his money, and she urged the circuit court to deny a divorce,

stating that the "evidence will show that it would be better off [sic] for [John] physically, emotionally and spiritually to stay [her] husband." The proceedings then adjourned, with a second trial date set for June 1, 2015.

¶11 In April 2015, during the interval between the first and second trial dates, the circuit court permitted Fritz-Klaus to depose John and granted her request that the parties' financial experts exchange information. The circuit court otherwise granted John's motion to quash Fritz-Klaus's mid-trial discovery demands.

¶12 Trial continued as scheduled on June 1, 2015, and the circuit court heard a third and final day of testimony on June 26, 2015. At the conclusion of the trial, the circuit court found that the marriage was irretrievably broken, granted the parties a divorce, and made findings and orders regarding the parties' obligations, assets, and debts.

¶13 Fritz-Klaus pursued postdisposition motions seeking reconsideration, clarification and a new trial. The circuit court conducted a hearing and denied reconsideration and a new trial, but made several additional orders that were incorporated into the final judgment of divorce.[1] From that judgment, Fritz-Klaus appeals. Further facts will be discussed below as necessary.

[1] Although a successor circuit court heard some postdisposition procedural matters, the original circuit court presided over and resolved the substantive postdisposition motions.

Discussion

¶14 Fritz-Klaus raises numerous issues. We examine them *seriatim*.[2]

A. The circuit court did not err by granting the parties a divorce.

¶15 Grounds for divorce are set forth in WIS. STAT. § 767.315 (2015-16).[3] As relevant here, § 767.315(1) provides:

> (b) If the parties to a ... divorce action have not voluntarily lived apart for at least 12 months immediately prior to commencement of the action and if only one party has stated under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and proceed as follows:
>
> 1. If the court finds no reasonable prospect of reconciliation, it shall make a finding that the marriage is irretrievably broken.

The bulk of Fritz-Klaus's appellate submission is devoted to the contention that the circuit court erred by finding the marriage irretrievably broken.

¶16 Pursuant to WIS. STAT. § 767.315(1)(b)1., whether a marriage is irretrievably broken is a question of fact for the circuit court to resolve. *See* ***id.*** We review a circuit court's factual findings "under a clearly erroneous standard. Under this standard, even though the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a

[2] To the extent that we have not addressed each and every argument that Fritz-Klaus presents in her briefs, the arguments are deemed denied. *See* ***Libertarian Party of Wisconsin v. Wisconsin***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (appellate court need not discuss arguments unless they have "sufficient merit to warrant individual attention").

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

reasonable person to make the finding." ***Sellers v. Sellers***, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996) (internal citation omitted).

¶17 Fritz-Klaus contends that the evidence does not support the finding that the marriage is irretrievably broken because John did not provide "evidence of legitimate circumstances that could lead to the irretrievable breakdown." The statute does not require such evidence. For nearly half a century, Wisconsin has had a no-fault divorce law, *see* ***Dixon v. Dixon***, 107 Wis. 2d 492, 502, 319 N.W.2d 846 (1982), and, under our scheme, a circuit court determines whether a marriage is irretrievably broken by considering "all relevant factors, including the circumstances giving rise to filing the petition," *see* WIS. STAT. § 767.315(1)(b).

¶18 In this case, John testified that he moved out of the parties' shared home two months before he filed the divorce petition and that he and Fritz-Klaus lived apart thereafter. He stated that "finances were a big part" of the problems he perceived in the marriage. He went on to discuss the efforts he made to save the marriage, describing "thousands of hours of introspection, rereading the letters that [Fritz-Klaus] sent to [him], talking to family and friends, and attending the counseling sessions." He said that no amount of counseling would save the marriage and that he believed it was irretrievably broken.

¶19 The circuit court found no reasonable prospect of reconciliation, taking into account that the parties had explored counseling, had lived apart for two years by the time the trial concluded, and that John was unwavering in his assertion that the marriage was over. The circuit court also noted its observations of the parties and found that John's demeanor on the stand showed that he had "had enough." Fritz-Klaus asserts she was equally firm in her view that the marriage was not irretrievably broken, but "the weight of the evidence and the

credibility of the witnesses are matters within the province of the [circuit] court." *See* ***Perrenoud v. Perrenoud***, 82 Wis. 2d 36, 42, 260 N.W.2d 658 (1978). The circuit court's finding here that the marriage was irretrievably broken was supported by the evidence and therefore was not clearly erroneous.

¶20 Fritz-Klaus nonetheless insists that one spouse's testimony that a marriage is irretrievably broken is insufficient to prove the claim. She directs our attention to, *inter alia*, the decisional law of Florida, specifically ***Ryan v. Ryan***, 277 So. 2d 266 (Fla. 1973), which addressed the "constitutional interpretation of the [then] new 'no-fault' divorce law" enacted in that state. *See* ***id.*** at 268. Following her lead, we have examined a more recent decision from Florida, ***Groeger v. Groeger***, 864 So. 2d 1273 (Fla. Ct. App. 2004). There, as here, one spouse believed the marriage could be salvaged but the other spouse did not. On appeal, the question was whether the trial court properly denied a request for additional counseling and dissolved the parties' marriage. The appellate court affirmed, stating:

> [t]he marriage was not dissolved until March 2003, more than two years after [the husband] filed for dissolution and some 16 months after the parties entered into the mediation agreement. During all this time, [the husband] has maintained the marriage is irretrievably broken and the parties have not been able to effect a reconciliation. At this point, requiring the parties to undergo counseling would be futile and an abuse of discretion.... [I]f the evidence demonstrates the marriage is broken beyond repair in one party's firm view, the trial judge must dissolve the marriage. It is commendable to try to effectuate a reconciliation. But like ballroom dancing, it takes two.

Id. at 1274-75.

¶21 Fritz-Klaus also directs our attention to a New York court's decision, ***Strack v. Strack***, 916 N.Y.S.2d 759 (N.Y. Sup. Ct. Essex Cty. 2011), for guidance

in assessing the irretrievable breakdown of a marriage. Our review reveals that the decision has been rejected by the sister courts that considered it. *See, e.g.*, ***Stancil v. Stancil***, 1 N.Y.S.3d 917, 922 (N.Y. Sup. Ct. N.Y. Cty. 2015) (stating that ***Strack*** espouses an "increasingly minority viewpoint" that the New York statutory scheme "allows for grounds trials" and explaining that "an irretrievable breakdown is in the eye of the beholder, a subjective state of mind"). We have also considered the following:

> a plaintiff's self-serving declaration about his or her state of mind is all that is required for the dissolution of a marriage on grounds that it is irretrievably broken. As stated in our statute, a no-fault divorce may be granted "provided that one party has so stated under oath" that the marriage is irretrievably broken. In adopting no-fault divorce, the Legislature implicitly recognized that the parties to a marriage should be able to make personal and unavoidably subjective decisions about the continuation of their marriage partnership.
>
> The conclusion, that it is sufficient that a party subjectively decide that their marriage is over, finds support in the reasoning of other courts. (*See, e.g.* ***In re Marriage of Walton***, 28 Cal. App. 3d 108, 117, 104 Cal. Rptr. 472 [1972], *quoting* ***In re Marriage of McKim***, 6 Cal.3d 673, 680, 100 Cal. Rptr. 140, 493 P.2d 868 [1971]; [in deciding whether evidence supports findings that irreconcilable differences do exist and that the marriage has broken down irremediably and should be dissolved the court must necessarily depend to a considerable extent upon the subjective state of mind of the parties]; ***Joy v. Joy***, 178 Conn. 254, 255, 423 A.2d 895 [1979] [there need not be objective guidelines for determination that marriage is irretrievably broken]; ***Mattson v. Mattson***, 376 A.2d 473, 475 [Me. 1977] [The term 'irreconcilable marital differences' is one that necessarily lacks precision and should not be circumscribed by a strict definition']; ***Matter of the Marriage of Dunn***, 13 Or. App. 497, 501-502, n.1, 511 P.2d 427 [1973] [explaining necessity of a subjective standard of marital failure in context of no-fault divorce]). (***Caffyn v. Caffyn***, [806 N.E.2d 415, 422] n.17 [(Mass 2004)]).

A.C. v. D.R., 927 N.Y.S.2d 496, 505-06 (N.Y. Sup. Ct. Nassau Cty. 2011)(some punctuation amended).[4]

¶22 As the foregoing reflects, no-fault divorce law permits a party to a marriage to make his or her own decision about the viability of the union and recognizes that one party alone cannot make a marriage or compel a reconciliation. We are satisfied that, based on John's testimony, the circuit court properly found that the parties' marriage was irretrievably broken and granted a judgment of divorce. The mere fact that Fritz-Klaus would have preferred to stay married, regardless of the reasons for that preference, does not make the circuit court's finding contrary to the evidence.

B. The circuit court properly denied maintenance and divided the property.

¶23 We turn to Fritz-Klaus's claims concerning the denial of maintenance, the division of property, and related issues concerning the financial aspects of the divorce. These matters rest within the sound discretion of the circuit court. *See* ***Haack v. Haack***, 149 Wis. 2d 243, 247, 440 N.W.2d 794 (Ct. App. 1989). Our review of a circuit court's exercise of discretion is highly deferential. We uphold a discretionary decision as long as the circuit 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.***

[4] Fritz-Klaus directs our attention not only to the decisional law of Florida and New York, but also to that of Missouri, specifically, the decision in ***Capstick v. Capstick***, 547 S.W.2d 522 (Mo. Ct. App. 1977). We conclude that Missouri decisions are not helpful here. The ***Capstick*** court explains that Missouri's law is "not a true 'no fault' dissolution law." ***Id.*** at 524. By contrast, our supreme court has recognized that "the 1977 Divorce Reform Act is a sweeping reform which changed the divorce law in [Wisconsin] from a fault-based statute to a no-fault divorce law." ***Dixon v. Dixon***, 107 Wis. 2d 492, 501, 319 N.W.2d 846 (1982).

LeMere, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (citation omitted). When the circuit court's explanation is incomplete, we independently search the record for reasons to sustain the circuit court's discretionary decision. *See* ***Long v. Long***, 196 Wis. 2d 691, 698, 539 N.W.2d 462 (Ct. App. 1995). We uphold the circuit court's findings of fact unless they are clearly erroneous, *see* ***Sellers***, 201 Wis. 2d at 586, and we defer to the circuit court's assessments of credibility, *see* ***Perrenoud***, 82 Wis. 2d at 43.

1. Denial of Maintenance.

¶24 On June 1, 2015, at the outset of the second day of trial, the circuit court concluded that Fritz-Klaus could not pursue a claim for maintenance because she had failed to raise the claim earlier in the proceedings. A party may forfeit a claim by failing to assert it in a timely manner. *See* ***State v. Ndina***, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612. Whether to apply forfeiture is a discretionary determination. *See* ***State v. Kaczmarski***, 2009 WI App 117, ¶7, 320 Wis. 2d 811, 772 N.W.2d 702.

¶25 On appeal, Fritz-Klaus primarily contends that the circuit court denied her maintenance because she failed to include the claim in a responsive pleading. We do not agree with her characterization of the circuit court's ruling. Although the circuit court considered John's citation to a case holding that a responsive pleading for maintenance is required, *see* ***Hoh v. Hoh***, 84 Wis. 378, 54 N.W. 731 (1893), the circuit court's decision took into account much more than the pleadings.

¶26 Specifically, the circuit court pointed out that it had repeatedly urged Fritz-Klaus during pretrial proceedings to disclose the specific forms of relief she wanted if the court granted a divorce, and the circuit court reminded her that she

had repeatedly responded that she wanted nothing but to remain married. Only when the parties reconvened for a second day of trial did Fritz-Klaus disclose the things she wanted should the marriage end and specify that her requests included maintenance.

¶27 Indeed, as late as the April 2015 hearing to quash the discovery requests that Fritz-Klaus pursued mid-trial, she advised that she "was still not in a position to indicate to [John] what she [was] asking for." Further, when she disclosed on June 1, 2015 that she wished to pursue maintenance, she acknowledged on the record that she had failed to provide any pretrial notice of her intent to pursue such a claim. Rather, she conceded that "it is correct, probably to my detriment, that I did not plead maintenance," and she did not deny that a few weeks earlier, while she was deposing John, she expressly "advised that she never asked for maintenance and never filed a request for maintenance."

¶28 Moreover, and perhaps most importantly, Fritz-Klaus explicitly acknowledged during the course of proceedings on June 1, 2015, that her approach in this case was part of a considered strategy crafted to make John believe she would not seek financial support from him. She reminded the circuit court that, in her view, John separated from her because he did not want to support her and her children, and she asserted that to seek maintenance "would have fed into his disillusionment about what our marriage was all about. So yes, I made a thoughtful conscious decision, which will probably be to my detriment, of not pleading maintenance."[5] Given Fritz-Klaus's concessions regarding her trial

[5] In a subsequent hearing, Fritz-Klaus reiterated her trial strategy: "to talk about financial issues, that was just putting ammunition on the fire for him to get divorced. It was a thought [out] position on my part, your Honor. I understand the consequences but now I'm living with [it]."

strategy and the tactics she chose to implement it, the circuit court did not err by precluding her from commencing pursuit of maintenance in the middle of the trial. *See* ***State v. McDonald***, 50 Wis. 2d 534, 538, 184 N.W.2d 886 (1971) (deliberate choice of strategy, even if it backfires, is binding on a litigant).

¶29 Finally, regardless of forfeiture, we are satisfied that the circuit court properly denied Fritz-Klaus maintenance from John. In the oral decision resolving the issues, the circuit court found that Fritz-Klaus, although an attorney by training, did not want to practice law any more and at the time of the hearing was "occasionally wash[ing] dishes for $10 an hour." The circuit court found that Fritz-Klaus had elected not to support herself but "John does not wish to finance that decision," and the court agreed that the circumstances warranted imputing income to Fritz-Klaus. The circuit court then denied maintenance to Fritz-Klaus. Multiple statutory factors support that decision. *See* WIS. STAT. § 767.56(1c).

¶30 First among the considerations in determining whether to allow maintenance is the length of the marriage. *See* WIS. STAT. § 767.56(1c)(a). Here, the circuit court found that John and Fritz-Klaus had a short-term marriage in which they lived together for "essentially ... five and a half years" and then spent two years litigating. Although Fritz-Klaus disputes the circuit court's characterization of the marriage as short-term, Wisconsin authority fully supports the circuit court's conclusion. *See* ***Metz v. Keener***, 215 Wis. 2d 626, 628-29, 573 N.W.2d 865 (Ct. App. 1997) (describing as "brief" a marriage in which the parties separated after seven years of marriage and formally divorced three years later); *see also* ***King v. King***, 224 Wis. 2d 235, 239-40, 241, 590 N.W.2d 480 (1999) (eight-year marriage, including a year following the parties' separation, described as "short-term").

¶31 Fritz-Klaus argues, however, that the circuit court should have viewed the marriage as including the eighteen months of premarital cohabitation that she alleged. We must reject this contention. John testified that the parties lived together for only a month or two before their marriage, and the circuit court believed him. Nothing renders John's testimony about the period of premarital cohabitation inherently incredible. *See* ***State v. Jacobs***, 2012 WI App 104, ¶17, 344 Wis. 2d 142, 822 N.W.2d 885 (we accept a circuit court's credibility assessment unless the testimony is inherently or patently incredible). Indeed, the record is uncontroverted that John remained married to his first wife until six months before he married Fritz-Klaus. Fritz-Klaus's statements throughout the instant litigation about her respect for the marriage vows lend support to the finding that she did not cohabit with John while he was married to another woman.

¶32 In addition to the length of the marriage, other relevant factors in determining whether to grant maintenance are the educational level of each party, the earning capacity of the party seeking maintenance, and the feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *See* WIS. STAT. § 767.56(1c)(d-f). Here, the record shows that Fritz-Klaus was a highly-educated professional with a substantial earning capacity and the ability to become self-supporting without delay. The circuit court found, based on a vocational assessment, that she could immediately earn $75,000 annually practicing law, given her thirty years in the profession, her reputation, and her experience as a divorce attorney. We are satisfied that the circuit court's decision to deny maintenance is supported by the record.

2. *Property Division.*

¶33 Fritz-Klaus next asserts the circuit court erred by not including John's publishing business as a divisible asset. We disagree.

¶34 Pursuant to WIS. STAT. § 767.61(2)(a), property that a spouse acquired as a gift from a third party or by inheritance is not subject to division at divorce. The burden of proving that property is not divisible lies with the party seeking to exempt the property from division. ***Wright v. Wright***, 2008 WI App 21, ¶12, 307 Wis. 2d 156, 747 N.W.2d 690. To satisfy the burden of proving an exclusion here, John was required to establish that he acquired his publishing business by gift or inheritance, and that "the character and identity of the property has been preserved." *See* ***id.*** Fritz-Klaus concedes that John proved he acquired the property as a gift from his father in 1989, long before John married Fritz-Klaus in 2007. The circuit court found that John also met his burden to prove that the publishing business maintained its character and identity as a gift throughout his marriage to Fritz-Klaus. Specifically, the court found that "John alone runs the business," and that Fritz-Klaus did not work for or participate in its operation or otherwise engage in any activities that affected its value.

¶35 Fritz-Klaus nonetheless asserts that the business was "transmuted" into a divisible asset because John made "a million-dollar payout to the first Mrs. John" during his marriage to Fritz-Klaus. We reject the argument. Fritz-Klaus offers only conclusory assertions without record citations to support her claim. *See* ***State v. McMorris***, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 (requiring parties to support their arguments with proper citations to the record). Indeed, during the trial Fritz-Klaus was unable to articulate a factual

basis for her assertion that the business was transmuted into marital property by the payment to the first Mrs. John.

¶36 When property is exempt from division because it was gifted or inherited, a circuit court may nonetheless divide the property if failing to do so will create a hardship on the other spouse. *See* WIS. STAT. § 767.61(2)(b). Fritz-Klaus asserts that even if the circuit court correctly viewed John's publishing business as exempt property, she should nonetheless have received a portion to avoid hardship.

¶37 The party claiming that excluding property from division will work a hardship has the burden of proof and to satisfy the burden must show that failure to divide the property is necessary to avoid financial privation. *See* ***Popp v. Popp***, 146 Wis. 2d 778, 792, 432 N.W.2d 600 (Ct. App. 1988). "Privation" is defined "as a 'lack of what is needed for existence.'" ***Doerr v. Doerr***, 189 Wis. 2d 112, 124, 525 N.W.2d 745 (Ct. App. 1994) (citation omitted). Although we have acknowledged that a court is unlikely to require showing "dire straits" before finding hardship, the obligation to prove "privation" plainly requires "something more than an inability to continue living at the predivorce standard." ***Id.***

¶38 Fritz-Klaus's appellate brief offers only a conclusory assertion that division of John's business was "of course" required to avoid hardship. We do not address claims that are insufficiently developed. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995). For that reason alone, we could reject her argument. Moreover, Fritz-Klaus was awarded substantial property, including a debt-free residence in Oconomowoc, a piece of land in Crivitz, a vehicle, her interest in Fritz Real Estate, and two IRAs, among other assets. Further, as we have seen, the circuit court found that she could

immediately realize a substantial annual income by returning to the practice of law. Fritz-Klaus thus wholly fails to show that exclusion of the gifted property from property division works a hardship, that is, that the exclusion results in a "lack of what is needed for [her] existence." *See* ***Doerr***, 189 Wis. 2d at 124. Accordingly, the hardship claim must fail.

3. Assignment of marital debts as of date of separation.

¶39 Fritz-Klaus asserts the circuit court erred by dividing the marital debts as they existed on the date of the parties' separation rather than on the date of the divorce. Citing ***Sommerfield v. Sommerfield***, 154 Wis. 2d 840, 851, 454 N.W.2d 55 (Ct. App. 1990), she asserts that the circuit court's approach was atypical, but she neglects to acknowledge that a circuit court may deviate from the normal practice of valuing the marital estate as of the date of divorce when conditions exist over which a party has little or no control. *See* ***id.*** In this case, the circuit court explained that it "looked at the separation date, as opposed to the date of divorce [because] there was very substantial delay in trying the case. And that was because accommodations were being given to [Fritz-Klaus] for counseling and other things." In sum, the circuit court found that the divorce proceedings languished for nearly two years to accommodate Fritz-Klaus's requests for counseling and her inability to accept John's decision that the marriage was at an end. Accordingly, the court assigned each party his or her own post-separation debts.

¶40 Fritz-Klaus appears to argue that the circuit court acted unfairly in regard to the parties' debts because, she says, she is unable to pay the post-separation debts she incurred in light of "the outright denial of maintenance to her, and her nominal income." Fritz-Klaus's contentions ignore the circuit court's

factual findings that she has a substantial imputed income and can realize that income if she chooses to do so. In light of those facts, which we have no reason to disturb, Fritz-Klaus shows no inequity in requiring her to pay the debts she incurred while she prolonged the divorce proceedings. *See* ***id.*** at 851.

4. Unjust enrichment.

¶41 Fritz-Klaus next asserts that John was "unjustly enriched" by her contributions to his unsuccessful 2009-10 gubernatorial campaign and that she should be compensated now for the services she claims she provided. This claim must fail.

¶42 First, although Fritz-Klaus named a witness who she said would testify about the alleged value of her services to the campaign, she voluntarily withdrew that witness on the first day of trial. The circuit court subsequently excluded the witness's written report on hearsay grounds. Accordingly, the record includes no basis on which to assign any value to the services she claims she provided.

¶43 Second, as the supreme court recently explained, "unjust enrichment by a former cohabitant is founded on the premise of a mutual undertaking or joint enterprise which results in an accumulation of assets in which the parties expected to share equally but which are unfairly retained by one party." ***Sands v. Menard***, 2017 WI 110, ¶45, 379 Wis. 2d 1, 904 N.W.2d 789. Here, however, John did not prevail in his bid for the governorship and, as the circuit court found, Fritz-Klaus therefore failed to establish that any efforts she made led to an "accumulation" of anything that fairness requires John to share with her. We also observe that nothing suggests that John and Fritz-Klaus would have, or could have, shared an elected office.

¶44 Third, "a common law action for unjust enrichment cannot be litigated in a divorce action." ***Dahlke v. Dahlke***, 2002 WI App 282, ¶21, 258 Wis. 2d 764, 654 N.W.2d 73. Concerns related to unjust enrichment are instead addressed in the context of maintenance. *See* ***McReath v. McReath***, 2011 WI 66, ¶44, 335 Wis. 2d 643, 800 N.W.2d 399. As we have seen, however, the circuit court properly denied maintenance in this case. Therefore, the circuit court did not erroneously exercise its discretion when it barred Fritz-Klaus from resurrecting the issue merely by cloaking it in the form of a claim for unjust enrichment.

5. Dissipation of Assets.

¶45 Under the heading "Dissipation of Marital Assets and Income by John," Fritz-Klaus offers a single lengthy paragraph, without citations to any case or statute, complaining that the circuit court did not permit "th[is] topic ... to go forward." We deem the claim inadequately developed, and we do not discuss it. *See* ***Barakat***, 191 Wis. 2d at 786; *see also* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (explaining that we do not address claims unsupported by citations to legal authority).

C. <u>The circuit court did not erroneously exercise its discretion in managing the case and took no actions that require reversal in the interest of justice.</u>

¶46 Fritz-Klaus concludes her brief-in-chief with several pages of allegations about the circuit court's alleged mismanagement of the case. She complains that "there was never a 'full' day of trial"; she "was not given the opportunity to 'open' the trial with her Opening Statement"; the circuit "court stressed repeatedly that [she] would need to prioritize her limited trial time"; and the circuit court did not "prepare a scheduling order, [] utilize a M[arital] S[ettlement] A[greement] checklist or [] draft a 'written' memorandum decision."

Further, she says that the circuit court "neglected ... certain concepts," and that it "could have bifurcated the trial." She concludes that "the record requires that the Court of Appeals exercise its broad power of discretionary reversal, pursuant to WIS. STAT. § 752.35, which provides authority to achieve justice in individual cases." Fritz-Klaus fails to show that she is entitled to such relief.

¶47 Fritz-Klaus asserts that she raised her claims of circuit court mismanagement in a postjudgment motion filed pursuant to ***Schinner v. Schinner***, 143 Wis. 2d 81, 420 N.W.2d 381 (Ct. App. 1988). ***Schinner*** holds that a party waives its claims of manifest error unless the party files a postjudgment motion in circuit court seeking to correct the alleged errors, *see* ***id.*** at 93, but the case does not relieve a party who has filed a postjudgment motion from the obligation of briefing and arguing the issues in this court should the party elect to pursue the issues further on appeal, *see* ***Barakat***, 191 Wis. 2d at 786.

¶48 Here, Fritz-Klaus asserts in her appellate brief that the circuit court acted and failed to act in ways that she evidently believes constituted mismanagement. A circuit court has discretion, however, to control the litigation before it and to do so in a way that the court believes will further the goals of efficiency and judicial economy. *See* ***Latham v. Casey & King Corp.***, 23 Wis. 2d 311, 314, 127 N.W.2d 225 (1964). In light of that well-settled proposition, Fritz-Klaus does not demonstrate that the circuit court was obligated to act differently than it did. For example, the circuit court did not enter a scheduling order setting deadlines for pretrial discovery in this case, but the circuit court did repeatedly require each party to file updated financial disclosure statements. The deadline for filing each such statement provided the parties an opportunity to make disclosures, to assess the financial information available, and to conduct any discovery that the financial disclosures revealed was necessary and appropriate. Similarly, the

circuit court did not permit Fritz-Klaus to give an opening statement before trial testimony began—choosing instead to accommodate the need to present and excuse an expert witness—but the circuit court did permit her to make such a statement at the conclusion of the first day of trial.[6] Fritz-Klaus offers only a bald assertion that the circuit court could have done "better" as support for her contention that the circuit court's approach to these and other case management decisions was an erroneous exercise of discretion. Accordingly, we reject the claim. *See* ***Barakat***, 191 Wis. 2d at 786.

¶49 Moreover, Fritz-Klaus fails to demonstrate that her complaints about case management warrant a new trial in the interest of justice pursuant to WIS. STAT. § 752.35. To earn relief under that statute, Fritz-Klaus was required to demonstrate that this is an "exceptional" case. *See* ***State v. McKellips***, 2016 WI 51, ¶52, 369 Wis. 2d 437, 881 N.W.2d 258. Fritz-Klaus made no effort to meet that standard. Indeed she failed to acknowledge it. For all the foregoing reasons, we reject her arguments and affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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

[6] The circuit court also received Fritz-Klaus's seventeen-page, single-spaced trial brief.