

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2006AP3020-FT

Cir. Ct. No. 2005FA21

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

TERRY ANN BARNES,

PETITIONER-RESPONDENT,

V.

KENT ROGER BARNES,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Vernon County:
MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

Before Lundsten, P.J., Higginbotham and Bridge, JJ.

¶1 PER CURIAM. Kent Barnes appeals the property division component of the judgment divorcing him from Terry Barnes. Specifically, he

challenges the trial court's method of calculating the value of the parties' interest in a farm partnership, its valuation of certain cooperative stocks, the exclusion of several debts from the list of the parties' marital liabilities, and the court's valuation of the parties' interest in a flooring business. For the reasons discussed below, we affirm the judgment in all respects.

BACKGROUND

¶2 Kent and Terry were married in 1975 and engaged in farming throughout most of their marriage, although Terry eventually went back to school to obtain a teaching degree while Kent sold the cows and opened a hardwood floor business.

¶3 In 1994, Kent entered into a limited liability farm partnership agreement with his parents, which Terry also signed as a spouse. The partnership agreement designated Kent as the general partner and his parents as limited partners. Kent and Terry put marital assets worth \$140,296 into the partnership. Kent's parents made a capital contribution of \$300,000, and were to receive the greater of \$1,000 or a specified percentage of the profits of the partnership each month in return, as well as a life estate in the farm. The parents' capital contribution is a liability from Kent and Terry's perspective. Per the partnership agreement, this liability dropped to \$250,000 in 1999.

¶4 The partnership agreement specified how to value Kent's interest as general partner in the event that he were to die or withdraw from the partnership and one of his parents wished to purchase his interest. The agreement contained a separate provision specifying how to distribute the proceeds of liquidated partnership assets in the event that the partnership was dissolved.

¶5 The parties submitted conflicting figures regarding the valuation of the farm, some cooperative stocks, some outstanding liabilities, and Kent’s hardwood floor business. The trial court adopted Terry’s proposed valuation of Kent’s interest in the farm partnership using the formula that would apply if Kent were to withdraw from the partnership, and accepted her figures for the cooperative stocks, the outstanding debts, and the valuation of the hardwood floor business. Kent appeals.

STANDARD OF REVIEW

¶6 We review the circuit court’s valuation of assets in a divorce—including business operations—as questions of fact, which we will not disturb unless clearly erroneous. *See, e.g., Siker v. Siker*, 225 Wis. 2d 522, 527-32, 593 N.W.2d 830 (Ct. App. 1999) (valuation of closely held corporation in divorce reviewed under clearly erroneous standard, even where proper methodology for valuation was disputed).

DISCUSSION

¶7 Kent first contends that the trial court, when valuing the farm partnership, failed to consider “several debts listed on [his] financial statement and numerous expenses shown on the farm Balance Sheet.” His brief does not specify the omitted farm debts and expenses, or explain why he believes they should have been included in the calculation of the marital estate. Rather, he simply refers us to his financial disclosure statement and a balance sheet for the farm partnership’s account with Badgerland Farm Credit. Since Kent does not present a developed argument regarding the allegedly omitted farm debts and expenses, we will not address them further. *See generally State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider undeveloped arguments).

¶8 Kent next complains that the court erroneously listed his parents' capital contribution—a liability from Kent and Terry's perspective—as \$250,000, rather than \$300,000, when calculating the parties' liabilities. Kent concedes that the formula set forth in the partnership agreement, pursuant to the clause reducing his parents' capital account after July 1999, would value his interest if he were withdrawing from the partnership at \$250,000. He contends that it was improper to use the withdrawal valuation formula, however, because he is not in fact withdrawing from the partnership. He argues that the court instead should have used the liquidation valuation method that would apply if the partnership dissolved, under which he claims his parents would have recovered their entire initial \$300,000 capital contribution.¹

¶9 The main flaw in Kent's argument is that, while it is true there was no evidence that he was going to withdraw from the farm partnership, there was also no evidence that the partnership was going to be dissolved or liquidated. The partnership agreement quite simply did not make any provision for valuation in the event of a divorce. Kent provides no reason why the court was not free to choose any reasonable valuation method based on the evidence before it. We cannot conclude that it was clearly erroneous for the court to choose to value Kent's present interest in the farm partnership based on the valuation method that would apply if he chose to withdraw from the partnership. *See generally Ondrasek v. Ondrasek*, 126 Wis. 2d 469, 475, 377 N.W.2d 190 (Ct. App. 1985) (the value of

¹ We see nothing in the partnership agreement that would support Kent's contention that his parents would be entitled to \$300,000, rather than \$250,000, if the liquidation clause were applied instead of the provision for the withdrawal of the general partner. We will accept that contention for the sake of argument, however, since Terry has not directly challenged it on appeal.

interest in a partnership may generally be determined by monetary consequences of a partner withdrawing from the business).

¶10 Kent next asserts that the trial court erroneously awarded what he calls the “full future value” of the cooperative stocks to him, instead of their present value. He then argues that, because it is “impossible to ascertain the actual value” of the stocks, the only fair thing to do would be to divide them equally between the parties. He claims such an equal division is presumptively required by WIS. STAT. § 767.61(3) (2005-06).² Addressing the second contention first, we note that the statute Kent cites refers to “all property” in the marital estate. There is nothing in the language of the statute or any case law of which we are aware that would compel the equal division of each individual asset in the divorce, and we see no reason why the court could not choose to award the stocks to one party.

¶11 With regard to the valuation of the cooperative stocks, the court accepted the figures listed on Exhibit 20, which was a balance sheet that had been prepared for tax purposes. At trial, Kent did not argue that the figures on that sheet did not represent the present values of the stock. Instead, he seemed to contend that only a third of the value of the stocks should have been included in the marital estate because his parents had put up two-thirds of the initial capital of the farm partnership. However, the parents’ capital investment in the partnership was accounted for when the court accepted the \$250,000 amount as a liability. Therefore, it was not clearly erroneous for the trial court to include among the parties’ marital assets the full value of the stocks as listed on the balance sheet.

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶12 Kent next complains that the trial court refused to list among the parties' liabilities a \$60,000 individual tax debt which the farm partnership had paid during the pendency of the divorce, various payments Kent had made to Steve Hynek, Jared Barnes, and Brown Seeds during the pendency of the divorce, and a \$20,700 outstanding business loan for Hardwood Floors 'n More. It is well established that marital assets and liabilities may be valued as they exist at the date of the divorce. *Sommerfield v. Sommerfield*, 154 Wis. 2d 840, 851, 454 N.W.2d 55 (Ct. App. 1990). Because the tax debt and payments to various individuals had already been made by the time of the divorce hearing, those liabilities no longer existed and Kent does not explain why the court could not exclude them.³

¶13 With respect to the loan for the hardwood floor business, although Kent listed the debt on his financial disclosure statement, we do not see that loan amount itemized on any of the tax balance sheets in the record. Nor do we see any other documentation as to the outstanding amount of the loan. Because the parties gave differing figures as to the amount of their assets and liabilities, the court properly made credibility determinations as to which figures were the most credible. The court was not required to accept assertions of undocumented debts made on one of the financial disclosure statements. We conclude, therefore, that it was not clearly erroneous for the trial court to disregard the claimed business loan.

¶14 Finally, Kent claims that the trial court erred in adding his equity and equipment depreciation to the book value shown on the balance sheet of the hardwood floor business. He claims that the equity was already included in the

³ This is the exact opposite situation of the case cited by Kent, in which the parties *acquired* assets during the pendency of the divorce, which still existed at the date of the divorce. Cf. *Overson v. Overson*, 125 Wis. 2d 13, 21, 370 N.W.2d 796 (Ct. App. 1985).

assets of the business. However, the accountant who prepared the balance sheet testified that the partner's equity was *not* included in the book value. Similarly, Kent himself admitted on cross-examination that the depreciation figure merely reflected the tax advantage of buying new equipment. Given that testimony, we cannot conclude that it was clearly erroneous for the trial court to add both of those figures to the valuation of the hardwood floor business.

By the Court.—Judgment affirmed.

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

