

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 9, 2011

A. John Voelker
Acting 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. 2010AP3057

Cir. Ct. No. 2008FA1404

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

ROBIN LEA HUGHES,

PETITIONER-RESPONDENT,

V.

RONALD TODD HUGHES,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
LEE S. DREYFUS, JR., Judge. *Affirmed.*

Before Brown, C.J., Reilly, J., and Neal Nettesheim, Reserve Judge.

¶1 PER CURIAM. Ronald Todd Hughes appeals pro se from a circuit court order imposing a constructive trust in favor of his former spouse, Robin Lea

Hughes. The circuit court found that Ronald intentionally concealed and transferred an asset out of the marital estate during the pendency of the divorce. We affirm the circuit court.

¶2 Divorcing spouses must fully disclose “all assets owned in full or in part by either party separately or by the parties jointly.” WIS. STAT. § 767.127(1) (2009-10).¹ If a spouse negligently or intentionally fails to disclose an asset with a fair market value of \$500 or more and that asset is omitted from the property division, the other aggrieved spouse may petition the court to create a constructive trust as to the undisclosed asset. Sec. 767.127(5).

¶3 A constructive trust is an equitable remedy. *Pluemer v. Pluemer*, 2009 WI App 170, ¶9, 322 Wis. 2d 138, 776 N.W.2d 261. We review the circuit court’s decision to impose a constructive trust for an erroneous exercise of discretion. *Id.* We will sustain the circuit court’s discretionary act if the “court examined the relevant facts, applied the proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Id.* (citation omitted). We will uphold the circuit court’s findings of fact unless they are clearly erroneous. *Dickman v. Vollmer*, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202.

¶4 Robin filed a divorce petition on October 29, 2008. The divorce hearing was held on July 1, 2009. Ronald’s July 1, 2009 financial disclosure statement stated that he had gifted a 1972 Chevelle sedan to a friend, Glen Miller,

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

in October 2008, before the divorce petition was filed. The judgment of divorce was entered in August 2009.

¶5 In March 2010, Robin moved the court to impose a constructive trust with respect to the vehicle because Ronald did not disclose his ownership of the vehicle as of the commencement of the divorce. Robin also alleged that Ronald transferred the vehicle to Miller during the pendency of the divorce.

¶6 After an evidentiary hearing, the circuit court made the following findings. At the time of the divorce, July 1, 2009, Ronald disclosed the vehicle as property disposed of within one year of the commencement of the divorce; he did not list the vehicle as property owned prior to the marriage or as property he acquired via a gift. Ronald did not place a value on the vehicle and stated that the vehicle was gifted to Miller in October 2008.

¶7 The court found that Ronald transferred the vehicle to Miller on November 21, 2008, the date Ronald obtained a replacement title, and after Ronald knew that the divorce action had been filed.² The court rejected Ronald's claim that he transferred the vehicle to Miller before the divorce began; the court found Ronald's testimony disingenuous.³ At the time Ronald transferred the vehicle to Miller, he was subject to court orders prohibiting the parties from disposing of any assets without court approval.

² Ronald admitted service of the divorce petition on November 14, 2008.

³ At the constructive trust hearing, Ronald testified at various points that he either gave the vehicle to Miller for safekeeping or he gifted the vehicle to Miller. On cross-examination, Ronald stated with finality that he gave Miller the vehicle for safekeeping. Ronald admitted that he did not disclose the value of the vehicle and that he did not claim during the divorce that the vehicle was a gift from his father.

¶8 The court found that Ronald intentionally concealed and transferred the vehicle to exclude it from the marital estate. The court rightly noted that the court determines the disposition of assets within the context of the property division; a party may not unilaterally decide to remove an asset from the marital estate in contravention of court orders. The court barred Ronald from arguing that the vehicle was gifted to him because Ronald did not make that claim during the pendency of the divorce; rather, he elected to conceal and transfer the vehicle. The court established a constructive trust over the vehicle.⁴

¶9 On appeal, Ronald argues that he transferred the vehicle to Miller before the divorce began. The circuit specifically rejected this claim after finding Ronald not credible. The circuit court was “the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness’s testimony.” *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (citation omitted). The court’s findings of fact about Ronald’s conduct are not clearly erroneous.

¶10 Ronald contends that he disclosed the vehicle in his financial disclosure statements. What Ronald disclosed was that the vehicle was gifted to Miller before the divorce began. However, the circuit court found that Ronald transferred the vehicle after the divorce began.

¶11 Ronald argues that his father gifted the vehicle to him. First, Ronald did not make this claim during the pendency of the divorce. Second, this claim

⁴ The court ordered that the vehicle’s value would be divided but any costs attributable to the imposition of the constructive trust, including Robin’s attorney’s fees and vehicle appraisal costs, if any, were to be deducted from Ronald’s share of the vehicle’s value.

does not change the outcome of the constructive trust proceeding. The disclosure requirements of WIS. STAT. § 767.127(1) apply to property claimed to be separately owned. A divorcing spouse may not unilaterally decide not to disclose property because he or she believes that the property would not be subject to the property division. *See Jezeski v. Jezeski*, 2009 WI App 8, ¶13, 316 Wis. 2d 178, 763 N.W.2d 176.

¶12 The disposition of property in a divorce is within the circuit court's discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. A divorcing spouse may not thwart the exercise of that discretion by transferring or failing to disclose property. A constructive trust was an appropriate remedy in this case. WIS. STAT. § 767.127(5).

By the Court.—Order affirmed.

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

