COURT OF APPEALS
DECISION
DATED AND FILED

January 17, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2010AP2479 **Cir. Ct. No. 2008FA75**

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

IN RE THE MARRIAGE OF:

BRUCE G. WINTERS,

PETITIONER-RESPONDENT,

V.

VALERIE L. WINTERS,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Green County: WILLIAM D. JOHNSTON, Judge. *Affirmed*.

Before Lundsten, P.J., Sherman and Blanchard, JJ.

¶1 PER CURIAM. Valerie Winters appeals the terms of maintenance and property division as set forth in a judgment of divorce entered by the circuit

court. Valerie argues on appeal that the circuit court's maintenance award was inadequate and that valuation errors in the court's division of property require correction. Valerie also argues that the circuit court erred in denying her motion for reconsideration and for relief from judgment after the Social Security Administration (SSA) made a finding that she was permanently disabled. For the reasons discussed below, we affirm.

STANDARD OF REVIEW

¶2 Decisions regarding property division and maintenance in divorce proceedings are matters typically left to the sound discretion of the circuit court. ***McReath v. McReath***, 2011 WI 66, ¶21, 335 Wis. 2d 643, 800 N.W.2d 399. Whether to grant relief from judgment and whether to grant a motion for reconsideration also are discretionary decisions of the circuit court that will not be disturbed on appeal absent an erroneous exercise of that discretion. *See* ***Franke v. Franke***, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832; ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853.

BACKGROUND

¶3 Valerie and Bruce Winters were married in 1985, and this divorce action was commenced in April 2008. The parties have two children together, one of whom was still a minor at the time of the contested divorce trial held on February 17, 2010. At the time of trial, Bruce was employed as an operations supervisor at MG&E with an annual income of $85,996.08, and Valerie was not employed. Evidence was presented at trial regarding Valerie's history of health problems.

¶4 Following the trial, the circuit court entered a decision and order dated April 12, 2010, followed by findings of fact, conclusions of law, and a judgment of divorce entered on June 18, 2010. The terms of the judgment included a limited term maintenance award to Valerie in the amount of $1,000 per month for three years. If Valerie were to enroll in technical college for one semester to refresh her job skills, she would receive $1,500 per month during that semester. The judgment did not include child support. The circuit court's findings of fact specified that Bruce had assumed full responsibility for supporting their minor son, who was then sixteen years old.

¶5 Valerie moved for reconsideration and for relief from the court's decision and order dated April 12, 2010. Valerie filed a second motion for relief from judgment following the circuit court's entry of its findings of fact, conclusions of law, and judgment of divorce. After briefing, the circuit court denied the motions. Valerie now appeals.

DISCUSSION

¶6 Valerie argues three issues on appeal. First, she argues that, in determining maintenance, the circuit court failed to apply the evidence correctly to applicable law. Second, Valerie argues that the circuit court used erroneous values in calculating the division of property. Third, she asserts that the SSA decision was a new factor that entitled her to relief from the original judgment of divorce.

¶7 As a threshold matter, we note that many of the arguments in the appellant's brief are undeveloped or are without merit under applicable law. The depth of our discussion below is therefore proportional to the appellant's development, or lack of development, of each issue. Any arguments in the appellant's briefs that we do not address are either patently meritless or are so

inadequately developed that they do not warrant our attention. *See* ***Libertarian Party of Wisconsin v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not address arguments that "lack sufficient merit to warrant individual attention").

Maintenance

¶8 Valerie argues that the circuit court did not adequately consider the length of the marriage, Valerie's health problems, and the limitations on her ability to work in determining the maintenance award. We reject this argument because the record shows that the circuit court did take these matters into consideration, and that the court produced a detailed, written analysis of each of the statutory factors for determination of maintenance, pursuant to WIS. STAT. § 767.56.[1] In particular, the court discussed in detail Valerie's physical and emotional health, her earning capacity, and the feasibility that she could become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. *See* § 767.56(2), (5), and (6).

¶9 The circuit court acknowledged that Valerie had been treated for lymphoma and that she had surgery in 2002 to remove a cancerous tumor from her groin. The court also discussed the fact that, while Valerie was undergoing radiation treatments, she began to have pain in her hip, groin, and back, and had trouble walking. The court referenced the fact that Valerie had hip surgery in June of 2008 and that, at trial, Valerie testified that she was not doing well and was unable to stand or sit for long periods of time. The court further acknowledged

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

that Valerie had been diagnosed with depression, had a history of asthma, and that she had received temporary disability payments from SSA.

¶10 In addition, the court considered testimony from Valerie's expert witness, Gregory Wisniewski, who is an expert in the area of vocational counseling. Wisniewski opined that, if Valerie were to enter the labor market, there would be a number of options she could pursue, but that she would need to limit the amount of time she spent sitting and that she would need to refrain from lifting more than ten pounds.

¶11 After reviewing the evidence, the circuit court concluded that Valerie had shown that she had medical conditions affecting her ability to work, but that she had not established to the court's satisfaction that she would be unable to accept the sort of positions described by Wisniewski, which included clerical work or returning to her former field of dental hygiene after taking a semester of classes to refresh her skills. The court's finding in this regard is supported by the absence of evidence indicating what income Valerie would need to allow her to have the standard of living the parties had enjoyed during the marriage and her failure to present expert medical testimony to support her own assertions regarding her physical and mental health.

¶12 Valerie also argues that the circuit court's maintenance decision was erroneous because it misapplied child support law. We note that the judgment of divorce did not include any award of child support. Rather, the judgment specified that Bruce had already assumed full responsibility for supporting the parties' minor son. Valerie argues that the circuit court erred in considering the monthly amount paid by Bruce toward child support when determining maintenance. However, Valerie fails to provide any legal authority for her

assertion that the circuit court's handling of the child support issue was contrary to law. She cites the statute governing child support, WIS. STAT. § 767.511, but does not cite any case law interpreting the statute in a way that supports her position. Bruce argues in his respondent's brief that the circuit court was obligated to consider his support for their minor child before determining maintenance, citing WIS. ADMIN. CODE § DCF 150.03(6). Valerie does not refute Bruce's argument in her reply brief and, thus, we assume she concedes the point. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶13 Although Valerie asserts numerous ways in which she is dissatisfied with the circuit court's maintenance decision, she fails to identify any error of law or erroneous fact finding that would constitute grounds for reversing the circuit court.

Valuation Of Property

¶14 Valerie asserts that the circuit court based its property division decision upon incorrect valuations of the parties' property. She asserts that the circuit court's findings of fact regarding the values of the parties' property were based upon numbers introduced at trial, when they should have been based upon values set forth by Bruce in his post-trial brief.

¶15 We will not disturb a circuit court's findings of fact on appeal unless those findings are contrary to the great weight and clear preponderance of the evidence. ***Rasmussen v. General Motors Corp.***, 2011 WI 52, ¶14, 335 Wis. 2d 1, 803 N.W.2d 623. Valerie fails to present a developed argument to persuade us that the circuit court's findings as to the values of the parties' property were against the great weight and clear preponderance of the evidence. She does not

explain the basis for the values she alleges to be correct or why, specifically, the values referenced in the court's findings of fact were incorrect. We need not consider arguments that are unsupported by adequate factual and legal citations or that are otherwise undeveloped and, accordingly, we affirm the circuit court's property division decision on that basis. *See* ***Dieck v. Unified Sch. Dist. of Antigo***, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (unsupported factual assertions); ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments).

Decision Of The SSA

¶16 Valerie also argues that it was error for the circuit court to deny her motion for reconsideration and for relief from judgment after she submitted documentation to the court showing that, after trial, she had received a decision from an SSA appeals council that entitled her to disability benefits. In support of her argument, Valerie cites both the statutory provision for motions for reconsideration after trial, WIS. STAT. § 805.17(3), and the statute that specifies when relief from judgment is available, WIS. STAT. § 806.07(1)(b).

¶17 To prevail on a motion for reconsideration, a party must either present newly discovered evidence or establish a manifest error of law or fact. ***Koepsell's***, 275 Wis. 2d 397, ¶44. Under WIS. STAT. § 806.07(1)(b), relief from judgment is available where there is "[n]ewly-discovered evidence which entitles a party to a new trial under s. 805.15(3)." A new trial shall be ordered in the interest of justice under WIS. STAT. § 805.15(3) if the court finds that: "(a) The evidence has come to the moving party's notice after trial; and (b) The moving party's failure to discover the evidence earlier did not arise from lack of diligence in

seeking to discover it; and (c) The evidence is material and not cumulative; and (d) The new evidence would probably change the result."

¶18 First, Valerie presents no legal support for the proposition that the circuit court was required to consider fact finding by a federal administrative body. Thus, if she means to argue that the circuit court erred by not considering this fact finding, she does not support such an argument.

¶19 Second, Valerie has not met her burden of showing that, at the time of trial, she did not have notice of the *evidence* that the SSA appeals council relied on in making its decision. The SSA decision is dated March 9, 2010, which indeed is after the conclusion of the trial in this case. However, the evidence on which the SSA appeals council relied does not post-date the trial. As Valerie admits in her brief, the SSA council considered medical records and letters from September 2001 through November 2008. Valerie had the opportunity to present this and other evidence of her claimed disability at trial and to demonstrate how it pertained to maintenance. She elected to present evidence in the form of her own testimony and the testimony of her vocational counseling expert, Wisniewski. She did not present any testimony from medical experts, even though she listed eight medical doctors on her expert witness disclosure list. "A party may not use a motion for reconsideration to introduce new evidence that could have been introduced at [a prior] phase." ***Koepsell's***, 275 Wis. 2d 397, ¶46. Because Valerie fails to identify any newly discovered evidence or to establish a manifest error of law or fact, we affirm the circuit court's denial of her motion for reconsideration and for relief from judgment.

By the Court.—Judgment and order affirmed.

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