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**DISTRICT II**

October 22, 2025

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2025AP554-FT

Thomas Carlson v. Joseph Kerznar (L.C. #2024PR42)

Before Gundrum, Grogan, and Lazar, JJ.

**Summary disposition orders 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).**

Thomas Carlson appeals from the circuit court's order granting summary judgment to Joseph Kerznar and Jared Boyd in the probate case arising from the death of Bonnie Carlson.<sup>1</sup>

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<sup>1</sup> Respondents Kerznar and Boyd's motion for an award of attorney fees under WIS. STAT. RULE 809.25(3) and WIS. STAT. § 895.044 is denied.

Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>2</sup> We affirm.

Bonnie purchased a house in 1997 in Burlington, Wisconsin, where she lived with her children, Joseph Kerznar and Jared Boyd. In 2001, she married Thomas Carlson, who moved into the Burlington house. Afterwards, the two significantly remodeled the house: Thomas performed the bulk of the work to remodel, and both husband and wife contributed marital assets to pay for the cost of materials, while Thomas's labor was unpaid. Throughout their marriage, and until Bonnie's death in 2024, the house was solely in Bonnie's name. The decedent died intestate.

Thomas filed a petition for assignment of the house to himself, thereby asking the circuit court to determine that the house was survivorship marital property, exempting it from the rules of intestate division.<sup>3</sup> The deceased's sons moved for summary judgment, arguing that because Bonnie acquired the home before her marriage to Thomas, and because Thomas was not listed on the deed, it could not be reclassified as survivorship marital property under WIS. STAT. § 766.605.<sup>4</sup> In their respective briefs, Thomas and the decedent's sons agreed that the house was

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

<sup>3</sup> “[I]f a married decedent or decedent in a domestic partnership has a property interest in a home, the decedent's entire interest in the home shall be assigned to the surviving spouse or surviving domestic partner if the surviving spouse or surviving domestic partner petitions the court requesting such a distribution and if a governing instrument does not provide a specific transfer of the decedent's interest in the home to someone other than the surviving spouse or surviving domestic partner. The surviving spouse or surviving domestic partner shall file the petition within 6 months after the decedent's death, unless the court extends the time for filing.” WIS. STAT. § 861.21(2).

<sup>4</sup> “A homestead acquired after the determination date which, when acquired, is held exclusively between spouses with no 3rd party is survivorship marital property if no intent to the contrary is expressed on the instrument of transfer or in a marital property agreement.” WIS. STAT. § 766.605.

“marital property.” In its summary judgment order, the court reclassified the decedent’s house to “marital property,” as the remodel satisfied WIS. STAT. § 766.63(2)’s requirements for reclassification to marital property,<sup>5</sup> and granted summary judgment to Bonnie’s sons, from which Thomas appeals. Thomas also seeks review of the court’s grant of summary judgment without conducting an evidentiary hearing.

With respect to Thomas’s latter request, this court notes Thomas did not request an evidentiary hearing when he filed his January 8, 2024 brief in opposition to the sons’ motion for summary judgment and stated to the contrary, “[t]here is no need to hold an evidentiary hearing.” Yet, per Thomas’s request at a September 13, 2024 hearing, the circuit court scheduled an evidentiary hearing to be held on December 17, 2024, at which the court ruled on the summary judgment motion and where Thomas waived the evidentiary hearing matter by not raising it before the issuance of the summary judgment ruling.

Summary judgment is a question of law that is reviewed de novo. *Estate of Oaks v. Stouff*, 2020 WI App 29, ¶ 11, 392 Wis. 2d 352, 944 N.W.2d 611 (citations omitted). Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The material facts are not in dispute: Bonnie purchased a home before Thomas married her, after which Thomas contributed his labor to remodel the home with marital assets, his labor

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<sup>5</sup> “Application by one spouse of substantial labor, effort, inventiveness, physical or intellectual skill, creativity or managerial activity to either spouse’s property other than marital property creates marital property attributable to that application if both of the following apply: (a) Reasonable compensation is not received for the application[:]; (b) Substantial appreciation of the property results from the application.” WIS. STAT. § 766.63(2).

having been uncompensated. Although the deed was solely in the decedent's name, the facts surrounding the remodel rendered the house "marital property," as found by the circuit court.

As a matter of law, Thomas's assertion that the Burlington house should be classified as "survivorship marital property" fails. The decedent purchased the house prior to her marriage to Thomas; it was not acquired by the married couple after their date of marriage and held exclusively between them without express contrary intent, such that it would be rendered "survivorship marital property." *See* WIS. STAT. § 766.605. Beyond this, the statute is explicit as to how property acquired prior to the determination date (in this case, their date of marriage) may be classified "survivorship marital property" and requires express intent: firstly, "Spouses may hold property in any other form permitted by law, including but not limited to a concurrent form or a form that provides survivorship ownership. ... If a document of title, instrument of transfer or bill of sale expresses an intent to establish a joint tenancy exclusively between spouses after the determination date, the property is survivorship marital property. ..." WIS. STAT. § 766.60(4)(a), (b)(1)(a). Secondly, "Spouses may hold marital property in a form that designates the holders of it by the words '(name of one spouse) or (name of other spouse) as marital property'... If the words 'survivorship marital property' are used instead of the words 'marital property' ... the marital property so held is survivorship marital property." Sec. § 766.60(1), (5)(a). It is undisputed that the deed to the Burlington house was solely in the decedent's name and was never transformed into "survivorship marital property" by the occurrence of either of these instances as described by statute. *See Droukas v. Felhofer*, 2014 WI App 6, ¶ 32, 352 Wis. 2d 380, 83 N.W.2d 57.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*