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DISTRICT III

October 15, 2014

To:

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

2014AP75

Jamie Young v. Douglas Kastner
(L. C. No. 1985CV2327)

Before Hoover, P.J., Stark, J., and Thomas Cane, Reserve Judge.

Jamie Young (p/k/a Jamie Kastner), pro se, appeals an order denying her WIS. STAT. § 806.07¹ motion for relief from a 1986 judgment dissolving her marriage to Douglas Kastner. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We reject Young's arguments, and summarily affirm the order. *See* WIS. STAT. RULE 809.21.

Young and Kastner were married in 1973 and had two children in 1977 and 1981, respectively. In 1982, Kastner had his third heart attack in less than two years and suffered

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

severe brain damage due to prolonged cardiac arrest. Kastner was found to be permanently disabled and was moved to a nursing home in 1983, where he remained until his death in November 1993.

In August 1985, the nursing home notified Young that pursuant to the Marital Property Act set to take effect on January 1, 1986, it intended to take half of her income to pay for Kastner's care. Young retained counsel and, on August 29, 1985, she petitioned for divorce to protect her income and other assets. Young, by counsel, and Kastner, who was represented by counsel and was appointed a guardian ad litem, entered into a stipulated agreement regarding property division, maintenance, child custody and child support. That stipulation was incorporated into a divorce judgment entered on October 1, 1986.

In the fall of 2012, Young purportedly learned Kastner had accrued Dependency and Indemnity Compensation as well as death pension benefits through the Department of Veterans Affairs. Because of the divorce, Young's application for these benefits was denied in January 2013. Young subsequently filed the underlying motion and amended motion to vacate judgment, claiming that extraordinary circumstances existed to warrant vacating the divorce judgment under WIS. STAT. § 806.07(1)(h). The circuit court denied the motion, concluding it had not been brought within a reasonable time. This appeal follows.

While WIS. STAT. § 806.07(1)(a) through (g) describe specific circumstances under which a court may permit relief, para. (1)(h) is a catch-all provision allowing the court to relieve a party from a judgment based on the existence of extraordinary circumstances. *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶¶32, 34, 326 Wis. 2d 640, 785 N.W.2d 493. Motions brought under the catch-all provision, however, must be made "within a reasonable time." WIS. STAT. § 806.07(2).

Whether the timing requirement of § 806.07(2) has been satisfied is a matter within the trial court's discretion. *Rhodes v. Terry*, 91 Wis. 2d 165, 170, 177, 280 N.W.2d 248 (1979).

As an initial matter, we note that Young's brief is in substantial noncompliance with our appellate rules. While a pro se brief is given substantial latitude, certain aspects of the brief must comply with the rules of appellate procedure. *See* WIS. STAT. RULE 809.19(1). A brief must contain a statement of relevant facts with appropriate citations to the record to show where those facts are established. *See* WIS. STAT. RULE 809.19(1)(d). The brief must also contain a clear statement of the issues and an argument, complete with appropriate citation to authority, demonstrating why the trial court's decision was wrong based on the information the court had before it at the time the decision was made. *See* WIS. STAT. RULE 809.19(1)(b), (e). An appellant's failure to comply with the appellate rules hinders this court's ability to track and review the issues.

Young's brief fails to include a clear statement of the issues and also fails to include record citations, where available, to show where asserted facts are established. *See* WIS. STAT. RULE 809.19(1)(b) and (d). Further, her brief does not consider this court's standard of review and, ultimately, fails to address the basis for the circuit court's decision. Rather than addressing the timeliness of her motion under WIS. STAT. § 806.07(2), Young claims she established extraordinary circumstances for vacating the judgment. Specifically, she claims that she and Kastner had religious objections to divorce and she would not have petitioned for divorce but for her attorney's alleged ineffectiveness and the pressure to preserve her assets. The threshold question to be addressed by the court, however, was whether the motion was filed within a reasonable time. *See Rhodes*, 91 Wis. 2d at 172. The court need not address merits of the motion upon a finding that the motion was not timely filed.

We conclude the circuit court properly exercised its discretion by concluding Young's motion to vacate was not made within a reasonable time. The motion was filed nearly twenty-seven years after the divorce judgment and nearly twenty years after Kastner's death. That Young belatedly discovered she is ineligible for Kastner's military pension does not render her motion timely under WIS. STAT. § 806.07(2).

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals