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DISTRICT IV

August 6, 2020

To:

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Lynnette M. Henry
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You are hereby notified that the Court has entered the following opinion and order:

2019AP261 In re the marriage of: Lynnette M. Henry v. Raymond M. Henry (L.C. # 2014FA327)

Before Fitzpatrick, P.J., Graham, and Nashold, 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).

Raymond Henry appeals a judgment of divorce that awarded maintenance to Raymond's ex-wife, Lynnette Henry.[1] Raymond argues that the circuit court erroneously exercised its discretion in determining the amount and duration of maintenance. Based upon our review of the

[1] Because the parties share a surname, we refer to them by their first names for ease of reference.

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[2] We summarily affirm.[3]

Raymond and Lynnette were married in December 1995. Lynnette petitioned for legal separation in October 2014, and the case was later converted to a divorce action. Following a divorce trial, the court found that Raymond had an annual income of a little over $80,000, and that Lynnette had no income aside from spousal support from Raymond. The court found that Raymond was working at his maximum earning capacity, while Lynnette had a "minimal earning capacity" based on her physical condition. The court also found that the total length of the marriage was twenty-two years, and was almost nineteen years at the time of the parties' final separation in October 2014, which the court characterized as a "relatively long" marriage. The court issued a judgment of divorce that awarded maintenance to Lynnette for a ten-year period, in the amount of $2,150 per month.

"[I]t is within the circuit court's discretion to determine the amount and duration of maintenance." ***McReath v. McReath***, 2011 WI 66, ¶43, 335 Wis. 2d 643, 800 N.W.2d 399. We will not disturb a court's maintenance award unless there has been an erroneous exercise of discretion. ***Hacker v. Hacker***, 2005 WI App 211, ¶10, 287 Wis. 2d 180, 704 N.W.2d 371. A circuit court properly exercises its discretion if it makes a rational, reasoned decision and applies

[2] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

[3] Lynnette, who is proceeding pro se in this appeal, failed to file a respondent's brief, and we considered whether the appeal could be decided based solely upon the appellant's brief and the record. For the reasons explained in this opinion, we affirm based on Raymond's failure to establish that the circuit court erroneously exercised its discretion in awarding maintenance. As the appellant, Raymond bore the burden to establish that the circuit court erroneously exercised its discretion, *see* ***Winters v. Winters***, 2005 WI App 94, ¶18, 281 Wis. 2d 798, 699 N.W.2d 229, and we conclude that Raymond failed to meet that burden.

the correct legal standards to the facts of record. *See* ***Sellers v. Sellers***, 201 Wis. 2d 578, 585, 549 N.W.2d 481 (Ct. App. 1996). A circuit court erroneously exercises its discretion if it makes a maintenance award based on factual or legal errors. ***Rohde-Giovanni v. Baumgart***, 2004 WI 27, ¶18, 269 Wis. 2d 598, 676 N.W.2d 452.

Raymond argues that the circuit court erred by finding that Lynnette is unable to work in the absence of supporting expert testimony. He argues that whether Lynnette is physically unable to work is within the realm of medical or vocational expertise. *See* ***Grace v. Grace***, 195 Wis. 2d 153, 159, 536 N.W.2d 109 (Ct. App. 1995) ("Expert testimony is required when the issue under consideration involves special knowledge or skill or experience on subjects which are not within the realm of the ordinary experience of humankind." (quoted source omitted)). He also contends that the circuit court erred by admitting Lynnette's medical records over Raymond's objection that Lynnette failed to comply with the notice requirements in WIS. STAT. § 908.03(6m) (providing that medical records are not hearsay under certain circumstances, including compliance with notice requirements). Raymond argues that, putting aside the medical records, the circuit court relied upon only Lynnette's subjective testimony and her demeanor at trial. Finally, Raymond argues that the court's finding that Lynnette was unable to work was undermined by the court's statement encouraging Lynnette to work.

We are not persuaded. At the outset, we note that the circuit court did not, as Raymond asserts, find that Lynnette was totally unable to work. Rather, the court found that Lynnette was currently unemployed, with no income except for support from Raymond, and that her ability to work was "limited" by her physical condition. Thus, the court's statement encouraging Lynnette to work was consistent with the court's findings that Lynnette had no income and a limited ability to work.

Next, we conclude that expert testimony was not necessary to support the court's findings as to Lynnette's lack of income and limited ability to work and its exercise of discretion as to maintenance. *See* ***Grace***, 195 Wis. 2d at 159 (whether expert testimony is necessary in a given situation is a question of law, which we review de novo). The circuit court was able to evaluate Lynnette's testimony as to her physical condition and its impact on her ability to work in making its maintenance award. The court found that while Lynnette had "exaggerated her disability, … she has at least a limited ability to work and … would have physical restrictions." Raymond has cited no authority for the proposition that expert testimony was required under the circumstances here.

We also conclude that Raymond has not shown that the circuit court erred by admitting Lynnette's medical records over Raymond's objection based on lack of notice. Raymond does not explain the facts relevant to his objection or the circuit court's decision, or provide any argument that the circuit court's evidentiary ruling was an erroneous exercise of discretion. *See* ***Martindale v. Ripp***, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698 (circuit court's decision whether to admit evidence is discretionary); *see also* ***Winters v. Winters***, 2005 WI App 94, ¶18, 281 Wis. 2d 798, 699 N.W.2d 229 (the appellant bears the burden to prove that the circuit court erroneously exercised its discretion). Additionally, we reject Raymond's contention that Lynnette's testimony as to her income and physical condition, standing alone, was insufficient to support the court's findings. The circuit court, as the fact-finder, was entitled to weigh the parties' testimony and determine their credibility. *See* ***Micro-Managers, Inc. v. Gregory***, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988). Raymond has not established that the circuit court's factual findings, based on the testimony at trial, were clearly erroneous.

See ***id.*** at 511 ("We uphold a [circuit] court's factfindings if, upon a review of the record, they are not clearly erroneous.").

Next, Raymond contends that the ten-year duration of the maintenance award was excessive based on Raymond's age of fifty-eight; his partial disability due to a worker's compensation injury; and the parties' separation fourteen-and-a-half years into their twenty-two year marriage. Again, we are not persuaded.

First, Raymond does not explain how the circuit court erroneously exercised its discretion based on the fact that Raymond will be sixty-eight years old when the maintenance award ends. If Raymond means to contend that a maintenance award that extends until the payer is sixty-eight years old is an erroneous exercise of discretion as a matter of law, we reject that contention.

Second, Raymond does not explain how his partial disability renders the duration of the maintenance award an erroneous exercise of discretion, in light of the circuit court's undisputed factual finding that, despite his physical limitations, Raymond was working at his maximum capacity and earning $80,000 per year.

Finally, we reject Raymond's argument that the circuit court erred in its consideration of the length of the marriage. While the court noted that the total length of the marriage was twenty-two years, the court also recognized that the parties separated when this action was filed in October 2014, which was nineteen years into the marriage. Raymond cites his testimony that he and Lynnette separated in 2010, and that they therefore only lived together as husband and wife for fourteen-and-a-half years. However, Raymond also recognizes that the parties had a "tumultuous relationship" after a reconciliation in 2010, and that they ceased living together when this action was filed in October 2014. Moreover, Raymond does not explain how the exact

date of separation was relevant to the circuit court's exercise of discretion in determining the length of the maintenance award. We are not persuaded that the circuit court erroneously exercised its discretion by considering that the marriage was "relatively long," whether the parties separated fourteen-and-a-half or nineteen years into the twenty-two year marriage.

Therefore,

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

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

Sheila T. Reiff
Clerk of Court of Appeals