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DISTRICT II

May 8, 2013

To:

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

2012AP2168-FT

In re the marriage of: Ruzica Djilas v. Milorad Djilas
(L.C. #2000FA368)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Ruzica Djilas, n/k/a Ruzica Kuzmanovic, appeals from a circuit court order finding that her former husband, Milorad Djilas, disclosed his Briggs & Stratton pension to her at the time of their 2000 divorce and Ruzica did not meet her burden to show under WIS. STAT. § 767.127 (2011-12)¹ that Milorad intentionally or negligently failed to disclose the existence of this asset. Pursuant to a presubmission conference and this court's order of October 22, 2012, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we affirm.

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

The parties divorced in 2000. In 2012, Ruzica moved the circuit court pursuant to WIS. STAT. § 767.127 to value and divide Milorad's Briggs & Stratton pension plan because Milorad did not disclose the pension plan in the divorce. She argued that under § 767.127, a constructive trust should be imposed on the undisclosed pension plan.

Milorad moved the circuit court to dismiss Ruzica's motion to value and divide his pension plan. Milorad also sought attorney's fees and costs for having to respond to Ruzica's motion. He argued that his financial disclosure statements and the marital settlement agreement, which was drafted by Ruzica's counsel, identified the asset Ruzica now sought to have divided. In addition, in June 2000, Milorad's divorce counsel sent a letter to Ruzica's divorce counsel discussing the existence of the pension plan and proposing a disposition for the plan. The June 2000 letter was disclosed at the hearing on Ruzica's motion. Ruzica's current counsel stated that he had not seen the letter before the hearing.

The circuit court granted Milorad's motion to dismiss. The court found that Ruzica did not meet her burden to show under WIS. STAT. § 767.127 that Milorad intentionally or negligently failed to disclose the existence of his pension plan. The court found that the pension plan was disclosed in the marital settlement agreement and Milorad's financial disclosure statements. The June 2000 letter to Ruzica's divorce counsel referred to the pension. The court found that Ruzica knew of the pension plan. The court awarded Milorad \$400 in actual attorney's fees because Ruzica's motion was not well founded.² Ruzica appeals.

² On appeal, Ruzica does not dispute this award of attorney's fees. We do not address it.

On appeal, Ruzica argues that the references in Milorad's financial disclosure statements were insufficient to disclose the pension plan. Ruzica ignores the June 2000 letter and the marital settlement agreement, both of which referred to the pension plan. The marital settlement agreement drafted by Ruzica's counsel specifically assigned the pension plan to Milorad.

The circuit court's findings of fact regarding Milorad's disclosures are not clearly erroneous. WIS. STAT. § 805.17(2). Milorad's April 7, 2000 financial disclosure statement identified a \$26,683.62 Briggs & Stratton "Milwaukee Savings & Inv. Plan" under the asset category of "Profit Sharing or Retirement Accounts." Milorad's November 10, 2000 final financial disclosure statement referred to this Briggs & Stratton account and, under the Briggs & Stratton category of profit sharing or retirement accounts, referred to a pension plan whose value was unknown. The June 2000 letter discussed the existence of the pension plan and proposed a disposition for the plan. Finally, the marital settlement agreement, drafted by Ruzica's counsel, specifically awarded to Milorad "his entire pension plan from Briggs & Stratton" in addition to the "Milwaukee Savings and Investment Plan, and his 401K."

We agree with the circuit court that on this record, Ruzica did not meet her burden to show that Milorad intentionally or negligently failed to disclose his Briggs & Stratton pension. The parties knew about the pension and it was the subject of discussion in the course of the divorce. The asset was not omitted from disclosure, and therefore the constructive trust provisions of WIS. STAT. § 767.127(5) do not apply.

Milorad moves this court to declare this appeal frivolous under WIS. STAT. RULE 809.25(3). As grounds, he relies upon a 2007 stipulation of the parties that we have declined to

add to the record on appeal. We deny Milorad's RULE 809.25(3) motion because it not based upon matters of record in this court.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

IT IS FURTHER ORDERED that Milorad Djilas' WIS. STAT. RULE 809.25(3) motion is denied.

Diane M. Fremgen
Clerk of Court of Appeals