OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 23, 2025

To:

Hon. Frank M. Gagliardi
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

James A. Hiller
Hiller Law Office
6815 W. Capitol Dr., Ste. 214
Milwaukee, WI 53216

Mark R. Hinkston
Electronic Notice

Michael M. Jerominski
McLario, Helm, Bertling & Spiegel SC
N88W16783 Main Street
Menomonee Falls, WI 53051

Anthony Nudo
Electronic Notice

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

2024AP1344 Lauren McCarraher v. Jason S. McCarraher (L.C. #2022CV932)

Before Neubauer, 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).

Jason S. McCarraher appeals the trial court's order equally dividing the equity in real property located in Pleasant Prairie as well as the finding that his former wife, Lauren McCarraher, was "ousted" from that property. 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).[1] We reverse and remand with directions.

Shortly after their divorce in March 2019, Jason and Lauren[2] decided to "try again." They moved in together and then purchased the house at issue in this appeal in November 2019. Jason made the down payment by withdrawing $41,713.92 from his retirement savings account. The November 2019 warranty deed incorrectly listed Jason and Lauren as "husband and wife, as joint tenants."[3] Only Jason was listed on the promissory note. While cohabiting, only Jason was employed; he provided half of his salary to Lauren's bank account as payment of court-ordered child support and for other expenses. Lauren and Jason prepared "monthly true up[s]" in which they determined if either party was entitled to money to offset payments they had contributed to the household.

Despite their hopes and expectations, the relationship faltered again and Lauren moved out of the Pleasant Prairie residence in or about July 2021. In August 2022, Jason asked Lauren to sign a quit-claim deed that would give him sole ownership of the real property. Lauren did not sign it; instead, on September 7, 2022, she filed a complaint and action for partition seeking either a partition of the real property or a sale and equitable division of the proceeds. Jason counterclaimed for "equality of partition" pursuant to WIS. STAT. § 842.14(4).

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

[2] To avoid confusion, this court shall refer to the individuals by their first names.

[3] Following their three-and-one-half-year marriage, Lauren and Jason never remarried. The trial court, apparently comparing the facts to those in ***Klawitter v. Klawitter***, 2001 WI App 16, 240 Wis. 2d 685, 623 N.W.2d 169, called this a "marriage-type situation."

Following dismissal of Lauren's motion for partial summary judgment, the trial court held a two-day bench trial. The parties stipulated to the value of the real property and the court found, in its oral ruling, that the current equity was $356,000. The disputes between the parties were whether Lauren was "ousted" from the real property and whether, aside from his down payment, Jason was entitled to any credit for his payments toward the mortgage, maintenance, and improvements of the property.

At an oral ruling in March 2024, the trial court determined that Jason would keep the real property, that Lauren had been ousted, and that Lauren was entitled to half of the equity of $114,287 (calculated by making a single deduction to the total equity to account for Jason's down payment). Lauren was to be paid $57,143.50 from Jason; if he could not make the payment, the real property would be sold and she would get that sum first from the sale proceeds. The oral ruling was memorialized in a Findings of Fact and Order dated April 4, 2024. Jason's motion for reconsideration was never ruled upon and, pursuant to WIS. STAT. § 805.17(3), was deemed denied. Jason appeals.

Partition "is an equitable action." ***Klawitter v. Klawitter***, 2001 WI App 16, ¶7, 240 Wis. 2d 685, 623 N.W.2d 169. We review a trial court's decisions in equity under an erroneous exercise of discretion standard and will uphold the decision if the "court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Johnson v. Johnson***, 2016 WI App 60, ¶13, 371 Wis. 2d 388, 885 N.W.2d 603; ***Klawitter***, 240 Wis. 2d 685, ¶8.

Incumbent in the exercise of discretion is the need for a trial court to actually deliberate and consider factors on the record so that the parties are aware of how and why it reached its

conclusions. *See* ***State v. Salas Gayton***, 2016 WI 58, ¶19, 370 Wis. 2d 264, 882 N.W.2d 459 (“‘This process must depend on ... a conclusion based on a logical rationale founded upon proper legal standards.’” (citation omitted)); ***State v. Hall***, 2002 WI App 108, ¶17, 255 Wis. 2d 662, 648 N.W.2d 41 (holding that decisions with minimal explanation reflect “decision-making” but not “a process of reasoning … based on a logical rationale” as required (omission in original; citation omitted)).

Jason contends that the trial court erroneously exercised its discretion by not even considering what contributions he made towards the real property and affording him the appropriate credit. *See* ***Jezo v. Jezo***, 23 Wis. 2d 399, 405, 129 N.W.2d 195 (1964). We agree. At no point did the court determine what payments, if any, Lauren made towards the mortgage, improvements, and/or maintenance for the real property. We do not disregard that Lauren may have made contributions to the household by caring for the parties’ child, but again, the court neither addressed nor quantified these amounts.

Instead of addressing the figures and amounts identified in Jason’s testimony and post-trial brief, and despite concluding that Jason “ha[d] made significant contributions,” the trial court merely divided “the baby” in half and awarded Lauren 50 percent of the equity (less Jason’s down payment). The court did not calculate the parties’ contributions nor did it explain why it gave or declined to give credit for such contributions. We see no exercise of discretion for us to review and, therefore, we reverse.

Jason also challenges the trial court's finding that he ousted Lauren from the residence.[4] Both parties testified at trial regarding the circumstances of Lauren moving out of the house and whether this was a decision made voluntarily or forced upon her: Lauren said she was thrown out by Jason, and Jason claims that Lauren left of her own volition (presumably because this would arguably strengthen his side of the equitable ledger for financial obligations after she moved out). The court observed the parties, weighed their competing testimony, and determined that Lauren "had no choice but to leave the property" and "was ousted in the Court's eyes." To the extent this is a simple finding of fact, we review it under the clearly erroneous standard after a bench trial. *See* WIS. STAT. § 805.17(2) ("Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). Jason points to nothing in the Record that persuades us that the finding that Lauren had no practical choice but to leave the property at issue was clearly erroneous.

Pursuant to ***Klawitter***, in which the parties had a similar post-divorce "marital-like" relationship and "the [trial] court declined to hold [a party's] departure, whether voluntary or involuntary, against [them]" in a "commonsense" approach, 240 Wis. 2d 685, ¶12, it appears the court most likely concluded that Lauren did not file a claim based on her alleged ouster, but rather was raising the issue as a defense to Jason's counterclaim seeking money from her (or an offset) under WIS. STAT. § 842.14(4). Assuming this is accurate, the same concern exists with its

[4] The parties dispute whether ouster is a cause of action or a remedy. And, Jason argues that the issue was not timely raised to afford him an opportunity to respond. These arguments are not relevant to the appeal and we need not resolve them herein because the trial court did not fully elucidate why or how ouster, or Lauren's inability to stay in the house, affected its equitable partition of the property. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (when one issue is dispositive of an appeal, we need not discuss other issues).

equitable decision because the court, again, did not explain its application of ***Klawitter*** or how the issue of ouster played into its equitable distribution.

We remand for the trial court to review the facts and figures presented by the parties with respect to what amounts they paid or contributed and what credits each is due so that the $114,287 equity in their jointly owned real property is appropriately distributed between the parties.

For the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed and cause remanded with directions. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals