COURT OF APPEALS
DECISION
DATED AND RELEASED

December 12, 1995

No. 95-0008

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN RE THE MARRIAGE OF:

BARBARA J. DIPASQUALE,

Petitioner-Appellant,

v.

BENN S. DIPASQUALE,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Milwaukee County: DOMINIC S. AMATO, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Barbara J. Dipasquale appeals from a judgment granting her divorce from Benn S. Dipasquale. She challenges the trial court's decision that the prenuptial agreement entered into between the parties was valid and enforceable. Further, Mrs. Dipasquale argues that the court-ordered child-support trust was unlawful. Finally, Mrs. Dipasquale alleges that the trial

court refused to receive competent evidence and that the trial court was biased in favor of her husband. We affirm.

Prior to their marriage on June 12, 1984, Mr. and Mrs. Dipasquale entered into a prenuptial agreement concerning property division upon divorce. On June 28, 1993, Mrs. Dipasquale petitioned for a legal separation. Mr. Dipasquale countered for divorce one month later. During the divorce proceedings, the trial court applied the prenuptial agreement to divide the parties' property and to deny maintenance. The trial court determined that when Mrs. Dipasquale received the proposed agreement in June, 1984, she was made aware of its contents and entered into the agreement knowingly, understandingly, and voluntarily.

Section 767.255, STATS., provides that when dividing the property of the parties to a divorce, the court shall presume that the marital estate "is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering ... (11) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties."

"The statutory test of equitability in sec. 767.255(11), STATS., leaves enforceability generally to the trial court's sense of fairness." ***Hengel v. Hengel***, 122 Wis.2d 737, 744, 365 N.W.2d 16, 19 (Ct. App. 1985). "Discretion is inherent in the test." ***Id***. Our review of the court's conclusion that the agreement is equitable is therefore limited to whether the court properly exercised its discretion. During our review, we are obligated to accept the trial court's resolution of the credibility of the witnesses because of the court's superior opportunity to judge such matters. ***Greenwald v. Greenwald***, 154 Wis.2d 767, 781, 454 N.W.2d 34, 39 (Ct. App. 1990).

The law is well settled that a prenuptial agreement is equitable if: (1) each spouse made fair and reasonable disclosure to the other of his or her financial status; (2) each spouse has entered into the agreement voluntarily and freely; and (3) the substantive provisions of the agreement dividing the

property upon divorce are fair to each other. ***Greenwald***, 154 Wis.2d at 779-780, 454 N.W.2d at 38.

Mrs. Dipasquale essentially disputes all of the requirements stated in ***Greenwald***. First, she contends that Mr. Dipasquale failed to fairly disclose the value of his retirement benefits. Second, she states that she did not enter the prenuptial agreement voluntarily because Mr. Dipasquale refused to marry her without the agreement. Finally, Mrs. Dipasquale states that enforcement of the prenuptial agreement would be unfair because enforcement would not allow her children to maintain the lifestyle they had before the divorce.

The prenuptial agreement contained the following clause regarding Mr. Dipasquale's retirement benefits:

> In the case of Mr. DiPasquale, there shall be excluded from the computation of Adjusted Net Worth (i) the value of Mr. DiPasquale's interest in the partnership Foley & Lardner (or any successor thereto) and of any right which Mr. DiPasquale shall have to receive compensation or benefits (retirement benefits or otherwise) from such partnership....

Further, Exhibit "A" to the prenuptial agreement lists as item number 15, "[i]nterest in Foley & Lardner Partnership including contractual right to retirement benefit."

The trial court determined that Mr. Dipasquale had fairly disclosed his retirement benefits. The trial court correctly noted that Mrs. Dipasquale was sophisticated with respect to financial matters because of her past employment as a securities broker and a company president. The trial court also noted that Mrs. Dipasquale was aware of the contents of the prenuptial agreement and had independent knowledge of the existence of Mr. Dipasquale's retirement benefits. These findings have not been shown to be clearly erroneous and therefore we must accept them. Section 805.17(2), STATS. Further, Mrs. Dipasquale was represented by counsel who certified that Mrs. Dipasquale understood the provisions of the prenuptial agreement. Based

upon the above, it is clear that the disclosure made by Mr. Dipasquale was fair and reasonable.

Mrs. Dipasquale also suggests that she did not have adequate time to review the prenuptial agreement. Although she does not develop this argument, a review of the record reveals no evidence to support a conclusion that Mrs. Dipasquale was coerced or forced to sign the prenuptial agreement. In rejecting her argument, the trial court stated on many occasions that Mrs. Dipasquale's testimony was less than credible. We must give deference to this finding. ***Greenwald***, 154 Wis.2d at 783, 454 N.W.2d at 40.

The main thrust of Mrs. Dipasquale's argument regarding the prenuptial agreement concerns the alleged substantive unfairness of the agreement. She argues that if the trial court enforces the prenuptial agreement, she will be forced to liquidate her assets and go to work because the prenuptial agreement does not provide for spousal maintenance. According to Mrs. Dipasquale, this will prevent her from giving her children the lifestyle they had prior to the divorce. Significantly, the prenuptial agreement provides that it "shall not in any way limit the court's power to make whatever child support arrangements it deems appropriate under the circumstances." The trial court awarded child support at 25% of Mr. Dipasquale's income. Mrs. Dipasquale failed to persuade the trial court that the evidence she produced supported the factual proposition she needed to establish: that the prenuptial agreement was unfair. ***Gardner v. Gardner***, 190 Wis.2d 217, 235, 527 N.W.2d 701, 707 (Ct. App. 1994). The trial court correctly exercised its discretion when it held that the prenuptial agreement was equitable.

Next, Mrs. Dipasquale argues that the trial court's imposition of the child-support trust is oppressive and unreasonable. Section 767.25(2), STATS., provides that "[t]he court may protect and promote the best interests of the minor children by setting aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children." Mrs. Dipasquale's objection to the trust as improperly usurping her right to make spending decisions as in ***Resong v. Vier***, 157 Wis.2d 382, 391-392, 459 N.W.2d 591, 594-595 (Ct. App. 1990), is misplaced. ***Resong***'s prohibition against ordering money to be placed in an educational trust pertained to sums meted out from a support order that was not originally subjected to trust provisions. Here, the trust was ordered in addition to child

support. Mrs. Dipasquale still retains the right to decide how to spend child support. The creation of the trust was a proper exercise of the trial court's discretion under § 767.25(2), STATS.

Finally, Mrs. Dipasquale argues that the trial court conducted the trial improperly. First, she claims that the trial court erroneously concluded that she had "opened the door" to evidence of fault in causing the breakup of the marriage. This argument has not been fully developed by Mrs. Dipasquale and is not supported by authority. We will not decide issues that are not or inadequately briefed. *See* ***State v. Pettit***, 171 Wis.2d 627, 646-647, 492 N.W.2d 633, 642 (Ct. App. 1992). Second, Mrs. Dipasquale claims that the trial court erred in refusing to receive competent evidence throughout the trial. Specifically, she states that the trial court rejected a "trial book" that her attorney "had spent a great deal of time assembling." The trial book contained various discovery matters. Trial courts have wide discretion in the admission of evidence. ***Loy v. Bunderson***, 107 Wis.2d 400, 414-415, 320 N.W.2d 175, 184 (1982). Mrs. Dipasquale has not demonstrated how the trial court misused its discretion. Third, Mrs. Dipasquale claims that the trial court used a *falsus in uno* approach to much of the evidence. She does not support this argument by reference to facts in the record, however, and therefore it must be rejected. Moreover, as we have already noted, the fact finder is given broad discretion in assessing the credibility of the witnesses. Fourth, Mrs. Dipasquale argues that the trial court erroneously accepted Mr. Dipasquale's valuation of the parties' property. A property owner may give an opinion as to the value of that property even if the owner has no special expertise in that area. *See* ***Trible v. Tower Ins. Co.***, 43 Wis.2d 172, 187, 168 N.W.2d 148, 156 (1969). Lastly, Mrs. Dipasquale argues that the trial court was biased against her. Again, this argument is not supported by any reference to facts in the record. The trial court found Mr. Dipasquale to be a more credible witness than Mrs. Dipasquale. In the context of the record here, this is not evidence of bias. We are required to give due regard to the opportunity of a trial court to judge the credibility of the witnesses. Section 805.17(2), STATS.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.