COURT OF APPEALS
DECISION
DATED AND RELEASED

November 15, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1777-FT

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

In re the Marriage of:

RUPERT J. LOEFFLER,

Petitioner-Appellant,

v.

EMMA G. LOEFFLER,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Kenosha County: MICHAEL FISHER, Judge. *Affirmed*.

Before Anderson, P.J., Brown and Nettesheim, JJ.

PER CURIAM. Rupert J. Loeffler appeals from a judgment of divorce from Emma G. Loeffler. He contends that his attorney should not have been permitted to withdraw two days before the final trial date, that he was not afforded the fair and special treatment to which pro se litigants are entitled and

that the trial court erroneously exercised its discretion in dividing the property.[1] We affirm the judgment of the circuit court.

The first issue is whether the trial court erroneously exercised its discretion in allowing Rupert's attorney to withdraw two days before the final day of trial set for March 29, 1995.[2] Rupert does not contest that counsel had adequate grounds to withdraw; instead, he argues that he was not provided with sufficient opportunity to retain new counsel or to prepare himself to proceed pro se.

The general rule is that although counsel has justifiable cause for withdrawing from the case, he or she is not entitled to withdraw until the client has been given reasonable notice and opportunity to obtain substitute counsel. ***Sherman v. Heiser***, 85 Wis.2d 246, 251, 270 N.W.2d 397, 399 (1978). The record establishes that on March 14, 1995, counsel advised Rupert by telephone that counsel would withdraw from the case if Rupert did not comply with court orders. The motion to withdraw was filed March 20 and heard on March 27. Rupert did not appear at the hearing. The trial court noted that it had received that day a letter from Rupert which concluded that since counsel "has made known his desire to withdraw, please be advised that I will henceforth be self represented."

Rupert was given adequate notice that counsel would withdraw. There was no misuse of discretion in permitting counsel to withdraw. Further, Rupert indicated that he would represent himself and he did not request time to retain new counsel. On the final day of trial, Rupert did not object to proceeding and affirmed the trial court's acknowledgement that Rupert would proceed pro se. Any objection to the withdrawal of counsel is waived. The doctrine of judicial estoppel further prevents Rupert from claiming on appeal that he should have been provided an opportunity to retain counsel. *See* ***State v.***

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[1] Pursuant to a presubmission conference and this court's order of July 19, 1995, the parties submitted memorandum briefs. Rupert's memorandum brief nearly violates that order's requirement that the brief not contain more than three issues because he raises several issues under the single argument challenging the property division.

[2] Trial was held in this matter on November 9, 1994; January 12, 1995; and March 29, 1995. Upon Rupert's failure to appear, the trial was continued on February 15, 1995.

Michels, 141 Wis.2d 81, 97-98, 414 N.W.2d 311, 317 (Ct. App. 1987) (a position on appeal which is inconsistent with that taken at trial is subject to judicial estoppel).

Rupert next argues that the trial court committed reversible error by failing to ensure that Rupert, as a pro se litigant, was treated gently and with fairness. He quotes ***Velich v. Runyon***, 860 F. Supp. 1342, 1345 n.4 (E.D. Wis. 1994), "pro se litigants are treated gently and are commonly required to comply with standards less stringent than those applied to expertly trained members of the legal profession." (Citations omitted.) Rupert contends that the circuit court clearly breached its duty to treat a pro se litigant gently when it forced him, a sixty-nine year old gravely ill cancer patient, to appear pro se via telephone with minimal notice and without a case file or the proposed findings Emma submitted.

The ***Velich*** standard has not been adopted by the courts of this state. Rather, our courts have recognized that the right to self-representation is "'[not] a license not to comply with relevant rules of procedural and substantive law.'" ***Waushara County v. Graf***, 166 Wis.2d 442, 452, 480 N.W.2d 16, 20 (*quoting* ***Farretta v. California***, 422 U.S. 806, 834 n. 46 (1975)), *cert. denied*, 113 S. Ct. 269 (1992). While some leniency may be allowed, neither a trial court nor a reviewing court has a duty to walk pro se litigants through the procedural requirements or to point them to the proper substantive law. ***Id.***

It was Rupert's choice not to appear at the final hearing except by telephone. In doing so, he assumed the risks attenuated to not being able to review written documents submitted that day. Rupert's claim that his illness prevented him from participating on that day is not supported by the record. There was no testimony from either Rupert or an expert as to how his medical condition impaired his ability to participate.

The trial court gave Rupert the opportunity to review and object to the proposed findings submitted by Emma. Although Rupert complains that he was only given five days for such review and objection, he ignores the history of noncompliance with court orders and the failure to appear which he demonstrated in this case. In light of that history, the trial court was justified in placing a time limit on Rupert. We conclude that Rupert was treated fairly.

Rupert's final argument is that the trial court failed to consider the true value of the assets, failed to equitably divide the assets and failed to provide adequate reasons for adopting Emma's proposed findings of fact and conclusions of law. At the outset, we note that based on the valuations utilized by the trial court, a 50/50 property division was made. Many of the values were stipulated to or based on appraisals. The balancing payment Emma would have been required to make to Rupert was waived because of Rupert's depletion of assets during the course of the divorce proceeding.

Rupert contends that this is a case like ***Trieschmann v. Trieschmann***, 178 Wis.2d 538, 542, 504 N.W.2d 433, 434 (Ct. App. 1993), where in adopting the wife's proposed disposition, the trial court failed to articulate why it believed the proposal provided the proper result. In ***Trieschmann***, we reversed the judgment and remanded the issues for further consideration by the trial court because it appeared that the court "simply accepted [the wife's] position on all of the issues of fact and law without stating any reasons for doing so other than its belief that doing so was the 'only just solution.'" ***Id.*** The trial court had failed to exercise its discretion. However, ***Trieschmann*** does not hold "that a trial court may never accept the rationale and conclusions contained in one party's brief to the court. If the court chooses to do so, however, it must indicate the factors which it relied on in making its decision and state those on the record." ***Id.*** at 544, 504 N.W.2d at 435.

Here, the trial court adopted the findings of fact and conclusions of law proposed by Emma. Its order recites that the proposal is "consistent with the testimony given at trial, the financial disclosure statement[s] which have been filed and a statement of the assets of the parties pursuant to § 767.255, Wis. Stats., and are reasonable and fit." The final judgment includes the following:

> The Court has considered the testimony of both parties, has reviewed both parties' Financial Disclosure Statements and exhibits introduced into evidence during trial and the Court has further reviewed the Respondent's Proposed Findings of Fact and Conclusions of Law and finds same to be reasonable and fair and incorporates same in its decision and order dated April 7, 1995.

The findings of fact and conclusions of law do not independently provide reasoning for the judgment.

Despite the absence of any indication of the factors upon which the trial court relied in deciding that Emma's proposed findings of fact and conclusions of law were "reasonable and fit," this is not a ***Trieschmann*** case. ***Trieschmann*** involved contested issues of maintenance, an unequal property division and contribution to attorney's fees. Here, a 50/50 property division was effectuated. Having adhered to the 50/50 presumption, the factors under § 767.255, STATS., did not come into play. We are not left to speculate as to why the property was divided 50/50, especially in light of the fact that this was a long-term marriage. Under these circumstances, a litany of reasons was not necessary.

As to particular valuations which the trial court adopted using Emma's proposed findings of fact, we need not look for a discourse as to why those values are appropriate. The valuation of a particular marital asset is a finding of fact which we will not upset unless clearly erroneous. ***Liddle v. Liddle***, 140 Wis.2d 132, 136, 410 N.W.2d 196, 198 (Ct. App. 1987); § 805.17(2), STATS. Thus, we need only look to whether the evidence supports the value assigned.

Rupert claims that the value of his federal pension is grossly overstated because his life expectancy is drastically reduced by his treatment for cancer. The value assigned is supported by an exhibit to Emma's financial statement and is based on an expert's valuation. Nothing presented at trial contradicts that value. *After* trial, Rupert attempted to prove a lower value by offering a valuation prepared by Emma's expert based on only a two-year life expectancy. Not only does his proof come too late, the record does not support the assumption of a two-year life expectancy. The value of the federal pension is not clearly erroneous.

Rupert also objects to the findings of fact which charge him with making substantial withdrawals of funds without court approval and in violation of the temporary order. He suggests that these findings are without a basis because throughout the proceeding he explained that he had increased living and medical expenses, and that various expenditures were necessary to

complete construction of the parties' Neshkoro cabin so Rupert could live there. Rupert's justification for withdrawing funds does not change the fact that he violated an order restraining him from withdrawing money from accounts and that he was unable to account for the withdrawals he made. Similarly, Rupert's frustration at being unable to gain access to the court to obtain relief from the temporary order does not require a different finding.[3] Rupert admitted at one point that he had taken $90,000 from marital accounts. Just before the last day of trial, he was found in contempt for failing to return such funds. The findings that Rupert's withdrawal of funds was a violation of the temporary order are not clearly erroneous.

Rupert argues that charging him for using funds which he put into the Neshkoro cabin results in double counting because those monies are included in the cabin's value. Rupert stipulated to the value of the cabin. He fails to identify what sums of money and from what accounts he was double charged with.

Rupert claims that the judgment requires him to make a $20,000 equalization payment to Emma and that the provision is arbitrary and without explanation in the record for the amount chosen. Rupert mischaracterizes a $20,000 entry for "unaccounted for funds" as an equalization payment. The entry is to reflect amounts withdrawn by Rupert during the action and unaccounted for. It is placed on his side of the asset sheet, as an amount charged to him. The record here supports the $20,000 figure, particularly in light of Rupert's admission that he withdrew $90,000.

By the Court.—Judgment affirmed.

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

[3] Presumably Rupert's reference to his frustration is based on his perception of the shortcomings of his three previous attorneys. That is not a matter before this court.