COURT OF APPEALS
DECISION
DATED AND FILED

September 15, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1893 **Cir. Ct. No. 2003FA86**

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

IN RE THE MARRIAGE OF:

JOHN ROBERT LETOURNEAU,

PETITIONER-RESPONDENT,

V.

JOYCE ARLENE HOLTER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Barron County: EDWARD R. BRUNNER, Judge. *Affirmed*.

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Joyce Holter appeals from a judgment of divorce from John Letourneau. The issue is property division. We affirm.

¶2 The circuit court divided the parties' property equally, except for awarding Letourneau an additional $36,000. That additional sum was in recognition of the value of property the court believed Letourneau brought to the marriage. At the time of the marriage, that property was in the form of a house in Hinckley, Minnesota, which became the marital residence in the early years of the marriage. The house was then sold and some or all of the proceeds were invested in a bar and residence that became the marital residence, and still belonged to the parties at the time of divorce.

¶3 Holter argues that the Hinckley property was marital property, and therefore the proceeds from its sale were also marital property. She also argues that even if the proceeds of the sale were Letourneau's separate property, those proceeds were converted to marital property by their investment into the joint tenancy by which the parties held the bar and new residence.

¶4 Both of these arguments miss the point. There is no question that the circuit court *did* include the $36,000 from the Hinckley sale in the marital estate. At the time of divorce, that money was still invested in the bar and new residence, and the court included the full value of the bar and new residence in the marital estate. That inclusion was proper, because the bar and residence were clearly a marital asset at that point. The court's treatment of the bar and residence is in contrast to its treatment of property in Marxville, Minnesota, which was regarded as separately owned by Holter, and was not included in, or awarded as part of, the court's property division chart. Therefore, it is clear that the court recognized the difference between keeping individual property out of the marital estate entirely, as it did with Holter's property, and including marital property in the estate.

¶5 Rather than leaving the Hinckley sale money out of the marital estate, what the court did was award Letourneau a sum equivalent to those proceeds as part of the division of the estate. In essence, the property division leaves Holter owning the bar and residence, but requires her to buy out Letourneau's original $36,000 investment, plus one-half of the remaining value of the bar and residence.

¶6 A court is permitted to consider the value of property brought to the marriage by each party. WIS. STAT. § 767.255(3)(b) (2003-04).[1] We will attempt, to the extent possible, to re-interpret Holter's arguments into the context of property division. The first argument is that the court erred by finding that the value of the Hinckley property was brought to the marriage by Letourneau. The argument is focused on the fact that the house was titled only in Holter's name, going back to a point even before the marriage. However, there was testimony by Letourneau and his former girlfriend, in whose name the house was titled before Holter, that Letourneau asked her to title the property in her name to avoid a possible tax lien. Holter does not dispute this testimony, which the trial court apparently accepted. Therefore, it was not clearly erroneous for the court to find that Letourneau brought the Hinckley property to the marriage.

¶7 Holter's second argument is that because the Hinckley property was used as the marital residence for several years, some of the value of the property at the time of its sale was attributable to marital funds that were used to maintain or improve the property during that period. There are two problems with this

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

argument. First, we are not told about any evidence showing the value of the property at the start of the marriage, as compared with its value at the time of its later sale during the marriage. Nor are we told about any evidence of specific maintenance or improvement that required substantial marital income. Second, as far as shown by the parties' briefs, the record is silent as to what the actual sale price of the Hinckley property was. All we know is that the sale price was a *minimum* of $36,000, because that is how much went from that sale into the purchase of the bar. Therefore, it is possible that the sale price exceeded $36,000, and that the excess, including all of whatever part of its value could be attributed to marital effort, was spent as marital funds after the purchase of the bar.

¶8 Finally, to the extent that Holter may attempt to argue that the court erroneously exercised its discretion by awarding the $36,000 to Letourneau, we reject the argument. As stated above, property brought to the marriage is a proper consideration. This was a relatively short marriage. It is not unreasonable for the court to attempt to return the parties to a position similar to that before the marriage. The division does not leave Holter with unreasonably little value, considering also her ownership of the property in Marxville.

By the Court.—Judgment affirmed.

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