COURT OF APPEALS
DECISION
DATED AND FILED

December 8, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP259 **Cir. Ct. No. 2008FA388**

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

IN RE THE MARRIAGE OF:

JAMES JASHINSKY,

PETITIONER-RESPONDENT,

V.

MARY JASHINSKY,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County: JAMES R. KIEFFER and LEE S. DREYFUS, JR., Judges.[1] *Affirmed*.

[1] Judge Kieffer presided over the trial and granted the oral ruling. Judge Dreyfus signed the Findings of Fact, Conclusions of Law and Judgment of Divorce.

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

¶1 PER CURIAM. Mary Jashinsky appeals a judgment of divorce. She argues that the trial court erroneously exercised its discretion with regard to property division and maintenance. We disagree and affirm.

¶2 Mary and James Jashinsky began dating in the late 1980s, moved in together in 1993, broke up, resumed cohabiting and married in 1998. While living apart, James bought a wooded lot for $69,000 with his individual funds and titled it solely in his name. In 1996, the parties broke ground to build a house.

¶3 James and Mary did much of the labor themselves. James testified that he cleared the land, dug trenches for a culvert and for power company access, laid the driveway, did the roofing, installed skylights, did the electrical wiring, tile work, siding and soffit and fascia, and worked with the subcontractors. Mary helped cut shingles, stained the cedar siding, painted the interior, stained the custom cabinets she helped her father make, and helped with weekly site cleanup. James had receipts for $181,000 in materials and subcontractor costs. James and Mary moved into the house in December 1997 and married the following July.

¶4 The parties divorced in 2009. They stipulated to placement of their two minor children, child support and division of their personal property. Trial was held on the disputed issues of maintenance and division of the marital estate. The trial court awarded each party the value of his or her premarital interest in various bank, stock and retirement accounts and equally divided amounts that accrued during the marriage.

¶5 As for the house, the court awarded James the $181,000 he paid individually, subtracted that amount from the $345,371 total equity and equally

divided the remaining $164,371 in equity between the two parties. All told, James received about $562,000 and Mary was awarded approximately $220,000. The court also ordered step-down maintenance to Mary for five years, beginning at $1250 per month in year one and decreasing to $850 per month by year five. Mary appeals the division of the marital estate and the limited-term maintenance.

Property Division

¶6 The primary dispute concerns the trial court's division of the equity in the marital residence, which the parties built and occupied before the marriage. Rather than first deducting James' $181,000 financial contribution, Mary argues that the court should have equally divided the entire $345,371 to compensate her for the substantial value of her "sweat equity."

¶7 We review a trial court's decision on property division at divorce for an erroneous exercise of discretion. ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. A court properly exercises its discretion if it considers the facts in the record, applies the correct legal standard and uses a rational process to reach a decision that a reasonable court could reach. ***Id.***

¶8 A court begins with the presumption that property should be divided equally. WIS. STAT. § 767.61(3) (2007-08).[2] It may deviate from that presumption only after considering all twelve listed factors. *See* ***id.***; *see also* ***LeMere***, 262 Wis. 2d 426, ¶22. The court may give varying weight to the factors it deems applicable. *See* ***id.***, ¶ 25.

[2] All references to the Wisconsin Statutes are to the 2007-08 version unless noted.

¶9 Here, the trial court's oral decision fully satisfied the standard we have set forth. The court began by noting the presumption of equal division and then reviewed each statutory factor. It concluded that the second factor, property brought to the marriage by each party, *see* WIS. STAT. § 767.61(3)(b), weighed in favor of an unequal division because James brought "substantially significantly" larger sums and amounts of property compared to Mary's premarital contributions.

¶10 The court found that James purchased the land, that Mary did not co-sign the documents for either the initial construction loan or when James first secured a mortgage, that James alone incurred $181,000 in out-of-pocket expenditures and that while Mary made "significant" contributions of sweat equity, James "[c]learly … put in more time."

¶11 Although Mary complains that the unequal property division failed to compensate her "sweat equity," it likewise did not reimburse James'. Rather, the $181,000 the court subtracted from the equity reflected the undisputed financial outlay James made before the marriage, not his significant sweat equity.[3]

¶12 The court's findings are not clearly erroneous. *See* WIS. STAT. § 805.17(2). Further, we see nothing in the decision that is irrational or poorly explained. *See* ***LeMere***, 262 Wis. 2d 426, ¶13. The court's rationale and the resulting property division represent a proper exercise of discretion.

[3] It is not clear from the record whether the $69,000 James paid for the lot is a part of the $181,000. If not, it only strengthens our analysis and does not change the result.

Maintenance

¶13 Mary disputes only the limited term, not the amount, of the award of maintenance. She had asked the trial court to order James to pay her maintenance until their youngest graduated from high school in approximately eleven years. She argues that the court's decision reflects a disregard of the support and fairness objectives of maintenance because it failed to give her credit for her homemaking efforts that allowed James to work long hours and increase his earning power and to consider the level of support necessary for her to live the lifestyle she enjoyed while married. We disagree.

¶14 Determining the amount and duration of maintenance rests within the trial court's discretion. *See* ***LaRocque v. LaRocque***, 139 Wis. 2d 23, 27, 406 N.W.2d 736 (1987). The court must consider the statutory factors in WIS. STAT. § 767.56 and apply them to achieve the dual goals of support and fairness. *See* ***LaRocque***, 139 Wis. 2d at 32-33. If a court limits the term, a proper exercise of discretion contemplates that it explain why. *See* ***Parrett v. Parrett***, 146 Wis. 2d 830, 840, 432 N.W.2d 664 (Ct. App. 1988). We will search the record for reasons to sustain the trial court's exercise of discretion. ***Lofthus v. Lofthus***, 2004 WI App 65, ¶21, 270 Wis. 2d 515, 678 N.W.2d 393.

¶15 Here, the trial court examined the relevant statutory factors and applied the appropriate law to the facts of record. Its findings included the following about the parties' marriage which, at eleven years, was the "beginning of a medium-length" marriage. Both James, 45, and Mary, 42, are physically and emotionally healthy and their histories of depression do not interfere with their abilities to work. Mary earns $10.50 an hour as an investigator verifying doctor's credentials, and easily can add six to nine hours to her current thirty hours a week

so that she could earn approximately $21,500 a year. If she were to return to the printing business, in which she is trained, she could earn up to $30,000 within a year, and more than $30,000 within three to five years. Mary has no desire to advance her education beyond the GED she earned after leaving high school after tenth grade. James finished his electrical engineering degree and took four master's level courses before the parties met. He makes approximately $95,000 per year, sometimes getting additional bonuses. Mary's years as a homemaker contributed to James' professional advancement and increased earning power.

¶16 The court agreed that Mary was in need of maintenance and that James had the ability to pay. Although it recognized that Mary will not achieve the standard of living enjoyed during the marriage, the court observed that maintenance is not a permanent annuity. It awarded her maintenance for five years, a term roughly half the length of the marriage, when she should be as self-sufficient as she is going to be.

¶17 The facts of this case do not compel longer-term maintenance. WISCONSIN STAT. § 767.56(6) requires the circuit court to consider the feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage and, if feasible, the length of time necessary to achieve this goal. *See* ***LaRocque***, 139 Wis. 2d at 35. The court here frankly acknowledged that Mary will not be able to enjoy the standard of living that she enjoyed during the marriage because even if she returns to the printing business and earns the projected higher wage, she "will not obviously be able to enjoy the benefits of being married to a spouse who is earning in excess of $90,000 a year." The financial worksheets demonstrate that once tax consequences, child support and—at least for five years—maintenance is taken

into account, the parties' disposable incomes are remarkably similar. We note that James' lifestyle, too, is below the level enjoyed during the marriage.

¶18 Furthermore, while the court found that Mary's efforts helped to advance James' career, the disparity in their incomes is not a result of Mary subordinating her own schooling or career. Both parties had achieved their current level of education before they married. Indeed, Mary left high school before even meeting James and she expresses no interest in furthering her education now.

¶19 We re-emphasize our standard of review. When the trial court makes a discretionary decision using the proper reasoning process, the result need only be "a conclusion that a reasonable judge could reach." ***LeMere***, 262 Wis. 2d 426, ¶13. A given fact situation may present multiple reasonable results. While a trial court in an exercise of its discretion may reasonably reach a conclusion that another judge or another court might not, the decision must be one a reasonable judge or court could arrive at by considering the relevant law, the facts and a process of logical reasoning. ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). That a different result also is reasonable does not demonstrate that the result here is not.

By the Court.—Judgment affirmed.

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