

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 16, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2011AP2817

Cir. Ct. No. 2010FA52

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

SUSAN ANNA GLISCH, P/K/A SUSAN ANNA KOENIGS,

PETITIONER-RESPONDENT,

V.

KARL PAUL KOENIGS,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Marinette County:
DAVID G. MIRON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Karl Koenigs appeals that part of a divorce judgment awarding Susan Koenigs \$71,000 for Karl's breach of his fiduciary duty of good faith regarding their prenuptial agreement. He argues: (1) the court erroneously implicitly allowed Susan to amend the divorce petition on the day of

trial; and (2) the remedy for breach of the fiduciary duty of good faith set out in WIS. STAT. § 766.70(1) (2009-10),¹ cannot be imposed in a divorce action. Because we conclude these issues were not properly preserved for appeal, we affirm the judgment.

¶2 Karl discharged his attorney and appeared pro se at his divorce trial. In his opening statement, Susan's counsel summarized the issues before the court stating:

And in addition, we plan on proving a violation of his fiduciary duty and we're asking the Court order or give a judgment to Susan for \$71,000 for the last six years of money that Karl has taken in violation of that fiduciary duty of his.

Counsel explained the \$71,000 came from checks written by Karl's parents to Susan that Karl appropriated for himself. Karl responded:

What that money was is every year for Christmas my parents would give us each the maximum amount of gift money that was allowed under the IRS rules. And what they would do is one parent would give me a check and the other parent would give me a check and then the same with Sue. And so that's where the – a lot of that money came from.

Now, a large amount of the gift money that she's talking about was actually a way to get severance pay to me from a company I was working with under my father and to minimize taxes. So that money was actually for me and it was a way to minimize the tax liability that would be required.

Karl further explained:

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

All the money that we had received was used for general household use to keep everything running, to pay the bills and all that sort of thing. I mean, I did not use that money for my own use by any stretch of the imagination. Everything, every penny that was used for the family and it was just used to cover our normal yearly cost of living.

¶3 At that time, Karl raised no objection to the court considering the prenuptial agreement. At trial, Susan testified without objection regarding her \$71,000 claim. Karl's only objection to considering the ch. 766 claim was vague, and appears to be grounded on the fact that he had no money at the time of the divorce:

I would like to kind of make a motion if I can that the Court would just forget that avenue and – and go on with the rest of the stuff. I think what he might be trying to do is talk about or get to the point of that I'm getting money into the future, God willing, because I certainly don't have it in my possession right now, and that he's trying to get money in the future and present a case for something that's happening in the future. If that's the case, I would make a motion that we push that off to the future and discuss that at a time when I actually have that money, your honor.

¶4 Karl's motion/objection was not sufficient to preserve the issue for appeal of whether the court implicitly allowed Susan to modify the divorce petition and whether the court had authority to apply WIS. STAT. ch. 766 remedies in this divorce action. An objection must be made with such specificity that the trial court and opposing counsel have an opportunity to remedy any defect. *State v. Williams*, 2001 WI App 7, ¶13, 241 Wis. 2d 1, 624 N.W.2d 164. The issues Karl raises on appeal were never presented to the circuit court.

¶5 Citing cases relating to circuit courts' ultimate findings, Karl argues he was not required to object. The cases Karl cites refer to whether a party must object to the court's *findings* as a prerequisite to appeal. The question relates to the equivalent of post-verdict motions. He cites no authority for the proposition

that an issue can be raised for the first time on appeal. Generally, issues raised for the first time on appeal are not considered. *State v. Holland Plastics Co.*, 111 Wis. 2d 497, 504, 331 N.W.2d 320 (1983). Although that is a rule of judicial administration and does not limit the power of this court to decide the merits, *see Brown Cnty. v. Department of Health & Soc. Servs.*, 103 Wis. 2d 37, 42, 307 N.W.2d 247 (1981), we see no reason to ignore Karl's forfeiture of his right to review these issues. Karl's failure to raise the issue deprived the court of the opportunity to address it.

¶6 In his reply brief, Karl also urges us to use our discretionary authority to reverse in the interest of justice under WIS. STAT. § 752.35. An issue cannot be raised for the first time in a reply brief. *Northwest Wholesale Lumber v. Anderson*, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995). Furthermore, we conclude that the issue was fully and fairly tried and that Karl has not established any miscarriage of justice from the circuit court's reaching the merits of Susan's claim.

By the Court.—Judgment affirmed.

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

