COURT OF APPEALS
DECISION
DATED AND FILED

October 20, 2015

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. 2015AP230-FT **Cir. Ct. No. 2014CV30**

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

MICHAEL PAULSON,

PLAINTIFF-APPELLANT,

V.

DEBRA LUTZE AND DAVID LUTZE,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Forest County: LEON D. STENZ, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Michael Paulson appeals that part of an order denying his request to invalidate or reform a quit claim deed and granting Debra

and David Lutze quiet title to the subject real estate.[1] Paulson argues the circuit court erred by failing to reopen Paulson's divorce judgment to allocate the real estate as an omitted asset. Paulson also contends the deed executed in favor of the Lutzes was invalid because it lacked Paulson's signature. Finally, Paulson asserts that the court erred by concluding his suit is barred by laches. We reject Paulson's arguments and affirm the order.

BACKGROUND

¶2 In 1969, James and Stella Boodry deeded a home in Crandon to their daughter, Arlyce Sparks. Arlyce married Michael Paulson in 1987, and the couple eventually moved to the Crandon home after their retirement in 2005. According to Paulson, the house was in poor condition, necessitating several thousand dollars of improvements that Paulson paid for with money he inherited from his aunt.[2]

¶3 On January 28, 2009, Arlyce executed a quit claim deed of the Crandon home to the Lutzes, who are Arlyce's daughter and son-in-law. Paulson "disagreed" with the deed and did not sign it. On December 29, 2009, Arlyce petitioned for divorce. Paulson did not submit a financial disclosure statement and Arlyce's financial disclosure statement did not disclose the gift of the Crandon home. The couple entered into a marital settlement agreement and the divorce judgment was entered May 20, 2010. That agreement did not mention the

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] According to Paulson, he installed a new furnace, new siding, new roof, new hot water system, new electrical system, new front doors, new porches on the front and back of the home and two new windows. Paulson also claimed he tore down the old chimney, arranged for underground power lines to upgrade service to the house and installed central air conditioning.

Crandon home. Paulson and Arlyce nevertheless continued to live in the Crandon home as "roommates" in order to share expenses. Paulson subsequently left the home for approximately one year, but returned to help care for Arlyce, who died in September 2012.

¶4 The Lutzes filed an eviction action in May 2014 to remove Paulson from the property. Paulson then initiated the underlying action to either invalidate the 2009 deed or reform the deed to provide Paulson with a life estate in the home. Paulson also urged the court to reopen the divorce judgment and administer the home as an omitted asset. After a trial, the circuit court granted the Lutzes quiet title to the home, and denied Paulson's requests to reopen the divorce judgment or otherwise invalidate or reform the deed.[3] This appeal follows.

DISCUSSION

¶5 Paulson contends the 2009 deed created an omitted asset in the divorce proceedings, requiring the circuit court to reopen the divorce judgment to properly allocate the asset. WISCONSIN STAT. § 767.127(1) requires parties in a divorce action "to furnish, on standard forms required by the court, full disclosure of all assets owned in full or in part by either party separately or by the parties jointly." The financial disclosure form utilized in this case included a section on "disposal of assets," questioning whether the party disposed "of any assets (sold, given away, or destroyed) in the 12 months before the case was filed." That part of Arlyce's form was left blank. Citing §§ 767.127(5) and 767.63, Paulson argues he is entitled to relief based on the omitted asset.

[3] The court also awarded Paulson $674 as damages for the loss of personal property taken by the Lutzes, though that award is not challenged on appeal.

¶6 WISCONSIN. STAT. § 767.127(5) provides, in relevant part:

> If a party intentionally or negligently fails to disclose information required by sub. (1) and as a result any asset with a fair market value of $500 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time *petition the court granting the annulment, divorce, or legal separation* to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee.

(Emphasis added.) In turn, WIS. STAT. § 767.63 states:

> In an action affecting the family, … any asset with a fair market value of $500 or more that would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action and that was transferred for inadequate consideration, wasted, given away, or otherwise unaccounted for by one of the parties within one year prior to the filing of the petition or the length of the marriage, whichever is shorter, is rebuttably presumed to be property subject to division under s. 767.61 and is subject to the disclosure requirement of s. 767.127.

Paulson contends that the existence of the omitted asset created a rebuttable presumption that the home was marital property subject to division. We are not persuaded Paulson is entitled to relief in this case under these statutes. First, the relief available under § 767.127(5) is creation of a constructive trust, not invalidation or reformation of a deed. Paulson's complaint did not request a constructive trust. Second, and most significantly, Paulson failed to move for relief within the divorce proceeding as directed under the statute. Rather, he filed a separate action to void or reform the deed.

¶7 Paulson nevertheless contends the 2009 deed was invalid because it lacked his signature. WISCONSIN STAT. § 706.02(1), otherwise known as the statute of frauds, provides that a conveyance of real property is not valid unless it complies with the statutory requirements. Section 706.02(1)(f) specifically

addresses the conveyance of homestead property and requires that the conveyance "[i]s signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01(7) except conveyances between spouses ...."

¶8 Emphasizing the extensive home renovations he paid for, Paulson contends the Crandon home became homestead property necessitating his signature on the 2009 quit claim deed. According to Paulson, the deed is consequently invalid for failing to conform with the requirements of WIS. STAT. § 706.02(1)(f).

¶9 As an initial matter, we conclude the circuit court properly determined that Paulson's lawsuit is barred by laches. Laches is an equitable defense to an action based on the plaintiff's unreasonable delay in bringing suit under circumstances in which such delay is prejudicial to the defendant. *See* ***Schafer v. Wegner***, 78 Wis. 2d 127, 132, 254 N.W.2d 193, 196 (1977). The successful assertion of laches requires that the defense prove: (1) the plaintiff unreasonably delayed in bringing the claim; (2) the defense lacked any knowledge that the plaintiff would assert the right on which the suit is based; and (3) the defense is prejudiced by the delay. ***Schneider Fuel v. West Allis State Bank***, 70 Wis. 2d 1041, 1053, 236 N.W.2d 266 (1975).

¶10 Here, there was more than a five-year delay between execution of the quit claim deed and Paulson's suit. Paulson testified he knew about the deed and refused to sign it because he "disagreed" with the conveyance. Despite knowledge of the deed, Paulson made no attempt to challenge its validity until after the Lutzes initiated the eviction action. To the extent Paulson intimates that "all concerned" knew Paulson had an oral agreement with Arlyce to remain in the

house for the rest of his life, an oral agreement for the conveyance of an interest in land is void unless there is a memorandum that conforms to the statute of frauds. *See* ***Trimble v. Wisconsin Builders, Inc.***, 72 Wis. 2d 435, 441, 241 N.W.2d 409 (1976). Further, as the circuit court noted, Paulson's delay deprived the parties of the benefit of Arlyce's testimony and her position on the matter in litigation.

¶11 Alternatively, and even assuming the subject real estate was homestead property that required Paulson's signature, our supreme court has held that "a spouse can waive the statute of frauds homestead protection when the waiver is an affirmative act." ***Jones v. Estate of Jones***, 2002 WI 61, ¶17, 253 Wis. 2d 158, 646 N.W.2d 280 (spouse's unilateral conveyance of homestead property upheld where couple's premarital agreement waived homestead protection). Here, Paulson conceded that although he knew the deed was registered within one year of the divorce filing, he did not inform the divorce court because "[i]t didn't come up." By failing to file his own financial disclosure statement, the divorce court was authorized to accept as accurate any information provided in Arlyce's financial disclosure statement. *See* WIS. STAT. § 767.127(4).

¶12 Paulson then entered into a marital settlement agreement that makes no mention of the Crandon home and indicates "[n]either party owns any real estate at this time." Under the agreement, the parties acknowledged that "no payment is required to be made to equalize the marital property division" and confirmed that the parties had "no other agreements, written or oral, concerning this marriage." Just like the premarital agreement in ***Jones***, the Paulsons' marital settlement agreement is a binding contract, in writing, and as such, it is an affirmative act where the parties are intentionally relinquishing known rights. *See* ***Jones***, 253 Wis. 2d 158, ¶17. The court, therefore, properly held that Paulson

affirmatively waived any claim to the Crandon home when he signed the marital settlement agreement.[4]

By the Court.—Order affirmed.

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

[4] We note that although expedited appeal briefs have fewer requirements, the briefs filed by both parties in this case were, at times, confusing and largely conclusory, sometimes omitting record cites to support factual assertions. Further, the appellant's brief cites a California case to support a legal assertion regarding Wisconsin divorce law. Inadequacies in briefing cause a waste of judicial time and resources. We admonish both parties' counsel that this court is a high-volume, error-correcting court, and that we will not overlook counsels' inadequate briefing in the future. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).