COURT OF APPEALS
DECISION
DATED AND FILED

July 21, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2522 **Cir. Ct. No. 2014CV116**

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

ESTATE OF MICHAEL T. HINZE AND STEVEN BLAHA,

PLAINTIFFS-APPELLANTS,

V.

TAMMY J. HINZE AND FARMERS & MERCHANTS BANK,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed*.

Before Lundsten, Sherman and Blanchard, JJ.

¶1 PER CURIAM. Steven Blaha and the Estate of Michael Hinze appeal the circuit court's judgment dismissing their claims against Michael Hinze's surviving spouse, Tammy Hinze. Blaha and the Estate argue that the court erred in its application of marital property law. We affirm the circuit court.

Background

¶2 Michael Hinze died in 2011. Sometime before his death, Hinze negligently injured Blaha in an accident. The probate case that led to the opening of the Michael Hinze Estate is not before us. However, as we understand the briefing and record, it became apparent that the only property from which Blaha might recover for his injuries was the Estate's one-half interest in Michael and Tammy Hinzes' marital property that was also personal property. This property included farm implements, livestock, and other personal property. The parties stipulated that the Hinzes acquired all of this property during their marriage and that there were no written records to show how the property was acquired, held, or titled.

¶3 In the action on review here, Blaha and the Estate sued Tammy Hinze, alleging that she retained possession of the Hinzes' personal property, half of which belonged to the Estate under marital property law. Blaha and the Estate then moved for summary judgment.

¶4 Tammy Hinze conceded that the property was correctly classified as marital property. She argued, however, that the property was held in joint tenancy based on a common law presumption favoring a joint tenancy in "undocumented" personal property. She pointed out that one of the marital property statutes, WIS. STAT. § 766.60(4)(a),[1] provides that, when the classification of property under the marital property law conflicts with the incidents of a joint tenancy, the incidents of

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

the joint tenancy control, including the incident of survivorship inherent in joint tenancy.

¶5 The circuit court adopted Tammy Hinze's analysis and, as a result, denied Blaha and the Estate's motion for summary judgment. After further briefing by the parties, the court then dismissed Blaha and the Estate's claims against Tammy Hinze.

Discussion

¶6 We have difficulty following Blaha and the Estate's appellate argument, which is exceedingly short. Although it includes quotes from marital property statutes, the argument provides little discussion and no meaningful analysis. As we understand it, the thrust of their argument is mostly an assertion that, because marital property has no survivorship right while joint tenancy property does have that right, marital property can never be held as joint tenancy property.

¶7 We affirm the circuit court because Blaha and the Estate do not develop a legal argument that persuades us that the circuit court erred. We now provide observations suggesting directions in which a developed argument might have gone.

¶8 On the surface, at least, the brief argument made by Blaha and the Estate makes sense. Marital property and joint tenancy property differ not only as to survivorship but also as to management and control of the property, creditors' rights, statutory good faith duties between spouses that do not apply between joint tenants, and tax consequences upon death. *See* WIS. STAT. § 861.01(1) (explaining that, upon the death of either spouse, the surviving spouse retains only his or her

undivided one-half interest in marital property); KEITH A. CHRISTIANSEN ET AL., MARITAL PROPERTY LAW IN WISCONSIN § 2.253 (4th ed. 2010) (summarizing differences).[2]

¶9 When we dig deeper, however, we see that the analysis is not so simple and, at a minimum, calls for more explanation from Blaha and the Estate. In particular, as Tammy Hinze argued in the circuit court, WIS. STAT. § 766.60(4)(a) provides that spouses may hold property in any form permitted by law, including joint tenancy. And, as Tammy Hinze also argued in the circuit court, this statute further provides that, if the incidents of a joint tenancy conflict with the classification of property under the marital property statutes, then the incidents of the joint tenancy control:

> Spouses may hold property in any other form permitted by law, including but not limited to a concurrent form or a form that provides survivorship ownership. [With certain exceptions], whether a tenancy in common or joint tenancy was created before or after the determination date, to the extent the incidents of the tenancy in common or joint tenancy conflict with or differ from the incidents of property classification under this chapter, the incidents of the tenancy in common or of the joint tenancy, including the incident of survivorship, control.

WIS. STAT. § 766.60(4)(a).

¶10 Blaha and the Estate's discussion of this statute consists of a cursory paragraph in which they point out that the statute provides that spouses may hold "property" in joint tenancy, not "marital property" in joint tenancy. But Blaha and

[2] "Survivorship marital property" is another category of property under the marital property law in which spouses *do* have survivorship rights. *See* WIS. STAT. § 766.60(5)(a). However, there is no basis to conclude that the Hinzes' personal property was survivorship marital property.

the Estate do not explain why the term "property" in this statute could not be read as including marital property. If anything, it appears that the contrary may be true. We say this because there appear to be at least *some* scenarios in which spouses own marital property that is also joint tenancy property. For example, suppose that spouses use their wages to purchase property held in a joint tenancy *with one or more third parties*. In this example, as far as we can tell, spouses own marital property that is also joint tenancy property. *See* WIS. STAT. §§ 766.01(10) and 766.31(4) (spouses' wages are presumed marital property); ***Lloyd v. Lloyd***, 170 Wis. 2d 240, 257, 487 N.W.2d 647 (Ct. App. 1992) (property acquired with marital property is marital property).

¶11 Here, of course, we have a different situation involving property owned *exclusively between spouses*. However, our example illustrates that the term "property" in WIS. STAT. § 766.60(4)(a) does not unambiguously exclude marital property. Thus, support for a conclusion that spouses cannot own marital property in a joint tenancy exclusively between them would need to come from somewhere other than the text of § 766.60(4)(a). In short, this question appears to implicate other statutory provisions and legislative history that the parties do not discuss.

¶12 Based on the arguments before us and on our own research, we are unable to conclude that the circuit court erred. In effect, Blaha and the Estate have failed to demonstrate that they are entitled to relief from the circuit court's order. Accordingly, we affirm.[3]

[3] Blaha and the Estate also appear to challenge the circuit court's reliance on Tammy Hinze's argument that there is a common law presumption of joint tenancy for "undocumented" personal property. However, this is a topic that the appellants discuss for the first time in their (continued)

By the Court.—Judgment affirmed.

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

reply brief. We therefore decline to address it. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998) (we generally do not address arguments raised for the first time in a reply brief).