COURT OF APPEALS
DECISION
DATED AND RELEASED

March 12, 1997

NOTICE

No. 96-2397-FT

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

In re the Marriage of:

BETH E. HUEBNER,

Petitioner-Respondent,

v.

RUSSELL J. HUEBNER,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Winnebago County: WILLIAM H. CARVER, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

PER CURIAM. Russell J. Huebner appeals from a judgment of divorce from Beth E. Huebner. He challenges the valuation of Beth's business, the denial of maintenance to him, and the $3500 contribution he must make to Beth's attorney's fees. Pursuant to a presubmission conference and this court's

order of September 24, 1996, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we affirm the judgment of the circuit court.

The parties were married for twenty years and have four children, one of whom was an adult at the time of the divorce. Since 1987 and until this action was started in 1992, both worked in the family jewelry business, R & B Jewelers. The business cleans, repairs and resets jewelry for retail stores. Beth is a certified goldsmith. Russell served as the manager. At trial Russell produced a valuation report prepared by an accountant which opined that the business was worth $35,477 based on an income approach to valuation. Beth offered the testimony of Douglas Meyer, who has been in the jewelry business since 1946. He opined that the business was worth nothing without Beth's services. The trial court assigned value to R & B Jewelers for its inventory, equipment and receivables, less debt and payables.

The valuation of a particular marital asset is a finding of fact which we will not upset unless clearly erroneous. *See* ***Liddle v. Liddle***, 140 Wis.2d 132, 136, 410 N.W.2d 196, 198 (Ct. App. 1987); § 805.17(2), STATS. The appropriate valuation methodology is committed to the trial court's discretion. *See* ***Sharon v. Sharon***, 178 Wis.2d 481, 489, 504 N.W.2d 415, 419 (Ct. App. 1993). Thus, we determine if the trial court examined the relevant facts and demonstrated a rational process to reach a reasonable conclusion. *See* ***id.*** In the exercise of its discretion the trial court is free to assess expert opinion and determine the fair market value of a business asset based upon the nature of the business. *See* ***id.***

We reject Russell's contention that the trial court failed to examine the accountant's report at all or to explain why it rejected the accountant's opinion of value. The court rejected the report as "looking for a different value than would be useful here ... under these particular circumstances." The trial court recognized that the accountant had not assigned a particular value to the impact of Beth's personal services in the business or the goodwill attributable to her abilities.

In contrast, Meyer testified that customer loyalty is to the particular goldsmith rather than to the business entity. Thus, he concluded that the business had no inherent value other than inventory and equipment. The trial court accepted Meyer's opinion that the business was dependent on Beth's services and lacked any inherent value because "you can't sell [Beth.]"

The trial court was free to choose between the competing views of valuation. Russell argues that Meyer was unqualified to give an opinion. No objection appears of record. Admission of opinion evidence by a lay witness under § 907.01, STATS., is a discretionary decision for the trial court. *See* ***Pattermann v. Pattermann***, 173 Wis.2d 143, 152, 496 N.W.2d 613, 616 (Ct. App. 1992). The court may consider the witness's expertise gained from practical experience. *See* ***id.*** Meyer had worked in the jewelry business for thirty years and was qualified to give an opinion as to the nature of the business and customer loyalty. We conclude that the trial court properly exercised its discretion in adopting Meyer's valuation.

Although a business linked to the personal services of one person is not always without inherent value, the uniqueness of the goldsmithing business, as explained by Meyer, supports the value assigned in this case. The valuation of the business is not clearly erroneous.

Russell contends that because the marriage was of long duration and Beth has more income than he does, the trial court was obligated to begin the determination of maintenance with an equal division of combined income. *See* ***LaRocque v. LaRocque***, 139 Wis.2d 23, 33, 406 N.W.2d 736, 740 (1987). The determination of the amount and duration of maintenance rests within the sound discretion of the trial court and will not be upset absent a misuse of discretion. *See* ***Wikel v. Wikel***, 168 Wis.2d 278, 282, 483 N.W.2d 292, 293 (Ct. App. 1992). Although an equal division of total income is a reasonable starting point in determining maintenance where there is a long term marriage and increased earnings, the division may be altered upon consideration of the factors in § 767.26, STATS. *See* ***Wikel***, 168 Wis.2d at 282, 483 N.W.2d at 293.

Russell recites the statutory factors but fails to apply those factors to the facts of this case. Nor does he make a budget analysis establishing his need for maintenance. We will not consider an argument that is inadequately briefed. *See* ***Fryer v. Conant***, 159 Wis.2d 739, 746 n.4, 465 N.W.2d 517, 520 (Ct. App. 1990).

We conclude that trial court's denial of maintenance is a proper exercise of discretion. This was not a case like ***LaRocque*** where the spouse seeking maintenance had subverted career and education advancements to

devote time to the career of the other spouse and the family. Russell pursued an education and held a master's degree in mathematics in addition to being a certified nursing assistant. Moreover, the court found that Russell has the ability to earn more than he presently does. That finding is not clearly erroneous. The trial court concluded that the parties' earning capacities were equal making maintenance unnecessary. The decision reflects consideration of the appropriate factors.

Russell's final claim is that the trial court misused its discretion by awarding a contribution to Beth's attorney's fees without the presentment of an itemized bill of fees and without consideration of Russell's ability to make a contribution. Normally an award of attorney's fees requires the trial court to address the reasonableness of the total fees, the need of one spouse for contribution, and the ability of the other spouse to pay. *See* ***Johnson v. Johnson***, 199 Wis.2d 367, 377, 545 N.W.2d 239, 243 (Ct. App. 1996). However, findings of need and ability to pay are not necessary in situations where the trial court determines that there is "overtrial." *See* ***id.***

The trial court found that Russell had caused "overtrial" is this case. That finding is supported by the record. Because the award was based on overtrial, the trial court was not required to consider Russell's ability to pay. We need not consider Russell's claim that his ability to pay cannot be based on his earning potential rather than actual earnings.

We recognize that the trial court did not make a finding as to the reasonableness of the fees and that finding is required even when a contribution

is awarded because of overtrial. *See* ***Johnson***, 199 Wis.2d at 378, 545 N.W.2d at 243. However, Russell's claim that the trial court failed to determine the reasonableness of the total fees before ordering the contribution is raised for the first time on appeal. Courts generally will not consider an issue raised for the first time on appeal because had the issue been raised below, the opposite party might have addressed the situation by way of amendment or additional proof. *See* ***State v. Whitrock***, 161 Wis.2d 960, 969, 468 N.W.2d 696, 700 (1991). The burden is upon the party alleging error to establish by reference to the record that the error was specifically called to the attention of the trial court. *See* ***Allen v. Allen***, 78 Wis.2d 263, 270, 254 N.W.2d 244, 248 (1977). Russell did not question the reasonableness of the fees in the trial court and, in fact, admitted that his own fees exceeded $8000. Additionally, Russell only mentions the trial court's failure to make a finding on reasonableness, but he does not develop the claim. We need not consider arguments broadly stated but not specifically argued. *See* ***Fritz v. McGrath***, 146 Wis.2d 681, 686, 431 N.W.2d 751, 753 (Ct. App. 1988).

By the Court.—Judgment affirmed.

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