

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 27, 2006**

Cornelia G. Clark  
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. 2004AP3336**

**Cir. Ct. No. 2002FA438**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**IN RE THE MARRIAGE OF:**

**BARBARA J. DULLERE,**

**PETITIONER-APPELLANT,**

**V.**

**DEREK J. DULLERE,**

**RESPONDENT-RESPONDENT.**

---

APPEAL from a judgment of the circuit court for Jefferson County:  
JOHN M. ULLSVIK, Judge. *Affirmed.*

Before Dykman, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Barbara Dullere appeals from her divorce judgment. She and her ex-husband, Derek Dullere, extensively litigated her

claims to maintenance, property and attorney fees. Her appeal concerns the trial court's decision on all three matters. Derek moves for an order declaring the appeal frivolous. We affirm, but deny Derek's motion for costs and fees.

¶2 The parties married in October 2000 and divorced in September 2003, after eighteen months of living together and seventeen months of separation. Barbara was fifty-three at the time of divorce and Derek was fifty-five. The court assigned Barbara an earning capacity of \$43,000 per year, and found Derek's to be \$87,000 per year as a self-employed businessman with some additional dividend income.

¶3 Barbara sought two years of maintenance to equalize the parties' income for that time, an equal property division, and a substantial contribution to her attorney fees. After a six-day trial the court denied maintenance, concluding that the marriage was too short, and that Barbara could maintain a reasonable standard of living without maintenance. In dividing the property, the court again considered the short duration of the marriage, each party's contribution to it, and several other factors in determining that each party should receive approximately fifty percent of the property accumulated during the marriage, and receive back what each brought to the marriage. This division, in the court's view, actually benefited Barbara because of the substantial business and personal debt Derek carried.

¶4 In determining the amount of that debt and the value of Derek's assets, the court heard competing expert testimony, and concluded that Derek's expert was more credible. The court therefore accepted his opinion that Derek's principal business was worth essentially nothing because its debts were so much greater than its assets. Finally, the court concluded that Barbara overlitigated her

“overly ambitious” claims for maintenance and property, and therefore denied her an attorney fee contribution.

¶5 The trial court’s maintenance and property awards are discretionary, and upheld on review unless there has been an erroneous exercise of discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. The trial court properly exercises its discretion if it undertakes a reasonable inquiry and examination of the facts, and the record discloses a reasonable basis for the court’s decisions. *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982). An award of attorney fees is also within the trial court’s discretion. *Kastelic v. Kastelic*, 119 Wis. 2d 280, 290, 350 N.W.2d 714 (Ct. App. 1984).

¶6 In her appeal Barbara contends that the trial court erred or erroneously exercised its discretion by: (1) preventing her from deposing certain potential witnesses; (2) concluding the trial before she completed her cross-examination of Derek; (3) accepting and using testimony of Derek’s expert valuation witness; (4) awarding an inequitable division of property; (5) denying maintenance; and (6) denying her request for an attorney fee contribution.

¶7 Barbara has not demonstrated the trial court’s erroneous exercise of discretion on the parties’ discovery dispute. Barbara’s brief states in conclusory fashion that the information she unsuccessfully sought by deposition was material to her case, and that its absence prejudiced her. She does not, however, address the basis of the trial court’s decision, which was her untimely notice of the depositions, and we will not grant relief on an inadequately briefed issue. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Additionally, the court’s order expressly allowed Barbara to reschedule the depositions, with the court’s permission, and she had ample opportunity to do so

after the trial was postponed for several months. Derek contends that Barbara's failure to pursue this option constitutes waiver, and she does not refute that argument in her reply brief.

¶8 Barbara has also failed to show that the trial court unreasonably terminated her cross-examination of Derek. The trial court ended the cross-examination after three hours, thereby ending the six-day trial. WISCONSIN STAT. § 906.11(1) provides that "the judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to ... (b) avoid needless consumption of time." In this case, the trial court concluded that additional questions Barbara wished to ask Derek were either repetitive, unlikely to elicit any new evidence, or immaterial. Barbara's briefs make no attempt to explain why the court was wrong in its analysis of her proposed questions. Again, the issue is inadequately briefed. If the trial court correctly concluded that further cross-examination was useless, and Barbara has not shown otherwise, there is no basis to hold unreasonable its application of § 906.11(1).

¶9 The trial court properly relied on Derek's expert witness to value his property. Barbara contends that this expert was not well qualified, conceded that Derek's business was improving, and did not review certain financial information, which Barbara fails to identify. Barbara's argument goes to the credibility of the witness and the weight of the witness's testimony. In a bench trial, those are matters for the trial court to decide. "The weight and credibility to be given to the opinions of expert witnesses are uniquely within the province of the fact finder." *Ricco v. Riva*, 2003 WI App 182, ¶17, 266 Wis. 2d 696, 669 N.W.2d 193.

¶10 The trial court properly exercised its discretion in dividing property. Barbara contends that the court did not adequately consider the factors set forth in

WIS. STAT. § 767.255. In Barbara's view, the court considered only the short length of the party's marriage, and had the court adequately considered all factors, Barbara would have received a share of the property Derek brought to the marriage. However, Barbara mischaracterizes the trial court's decision. In fact, the trial court's memorandum decision identifies and addresses all thirteen factors enumerated in the statute, and their relevance to this marriage. The court's decision to rely primarily on the short length of the marriage, and the party's respective contributions, was a proper exercise of discretion.

¶11 The trial court properly denied maintenance. Barbara contends that her health problems and declining financial situation render erroneous the trial court's denial of maintenance. In addressing this question, the trial court again considered all of the statutory factors and addressed Barbara's health and financial situation at length. The trial court determined as a matter of credibility that Barbara's health problems were not as severe as she testified they were. As for Barbara's financial situation, the trial court found her to be in a relatively secure financial position, and she has not demonstrated that this finding is clearly erroneous. The trial court could therefore reasonably rely on it and decline to award maintenance after the parties' brief marriage.

¶12 The trial court properly denied Barbara's request for an attorney fee contribution from Derek. The trial court has discretion to award or deny attorney fees upon a finding that one party's unreasonable approach to litigation causes the other party extra and unnecessary fees. *Ondrasek v. Ondrasek*, 126 Wis. 2d 469, 484, 377 N.W.2d 190 (Ct. App. 1985). A party's approach to litigation is unreasonable if it results in unnecessary proceedings or unnecessarily protracted proceedings, together with attendant preparation of time. *Id.* at 483-84. Here, Barbara's appellant's brief does not address the trial court's finding that she

overlitigated. In her reply brief, she contends only that the trial court erred because she spent more time testifying at trial and in depositions than Derek did. This fact, alone, does not persuade us that the court's finding of overlitigation was clearly erroneous.

¶13 Barbara also contends that the trial court erred by granting her divorce petition on the first day of trial rather than the last, and the trial court erred by postponing a decision on Derek's motion for attorney fees until after judgment was entered. Barbara fails to develop either argument in her brief. Additionally, she makes no effort to explain how either decision prejudiced her.

¶14 Also before this court is Derek's motion for attorney fees and costs on appeal, based on his contention that the appeal is frivolous. He acknowledges that we must find the entire appeal frivolous in order to grant his motion. If we do not grant it, he asks this court to identify any specific issues we deem frivolous, because doing so may provide a guide to the trial court should Derek decide to file an overtrial claim for this appeal on remittitur. We conclude that the entire appeal is not frivolous, and therefore deny Derek's motion. We decline to identify any specific issues that may be frivolous, because we do not act in an advisory capacity to the trial court in deciding potential future litigation. *See Brown v. LaChance*, 165 Wis. 2d 52, 58, 477 N.W.2d 296 (Ct. App. 1991) (this court does not give advisory opinions).

*By the Court.*—Judgment affirmed.

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

