

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 7, 2007

A. John Voelker
Acting 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. 2006AP774

Cir. Ct. No. 2005FA612

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

TINA LOUISE JAKIRCEVIC, N/K/A TINA LOUISE MORENO,

PETITIONER-RESPONDENT,

V.

MIRKO JAKIRCEVIC,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:

J. MAC DAVIS, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Mirko Jakircevic appeals from the property division portion of a judgment of divorce. He argues that the trial court erred in

awarding an equalizing payment of \$15,900 to his former wife, Tina Jakircevic. Because we conclude that the trial court did not err, we affirm.

¶2 Tina Jakircevic and Mirko Jakircevic were divorced after a trial to the court. They had been married for less than two years. The main issue at trial was the division of the value of the marital home. While both parties testified, the trial court found that Tina was more credible than Mirko. The court awarded the home to Mirko, crediting him with \$60,000 for the down payment on that home. The court then found that the appraised value of the home had increased by \$27,000 during the marriage. The court also charged several other smaller amounts to Mirko including \$983 from one bank account, \$2300 in cash left in the home, and \$1517 from three other credit union accounts, for a total of \$31,800. The court found that Mirko had the ability to pay, and that it was fair to make him pay, equalizing payment of half of this amount of \$15,900. Mirko challenges this portion of the judgment.

¶3 We review the trial court's decision about property division to determine whether the court properly exercised its discretion, and in the absence of an erroneous exercise of discretion, the award will be upheld. *Jasper v. Jasper*, 107 Wis. 2d 59, 63, 318 N.W.2d 792 (1982). We will not set aside the trial court's findings of fact unless the findings are clearly wrong. *See Sellers v. Sellers*, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996). “[A] discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.” *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). A trial court erroneously exercises its discretion when it “fails to consider relevant factors, bases its award

on factual errors, makes an error of law, or grants an excessive or inadequate award.” *Olski v. Olski*, 197 Wis. 2d 237, 243 n.2, 540 N.W.2d 412 (1995).

¶4 In his appeal, Mirko challenges the award of \$15,900, by arguing, essentially, that this court should believe him and not Tina. As we stated above, under our standard of review, we look to see if the trial court erred when it made its findings of fact. As the finder of fact, it is the trial court’s job to determine which witness’s testimony is more believable. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (“When the [trial] court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to given to each witness’s testimony.”).

¶5 The trial court specifically found Tina to be more believable than Mirko. While Mirko may disagree with this finding, he has not established that the trial court was clearly wrong. Based on the testimony and evidence presented, the trial court made a reasonable and fair determination. We affirm the trial court’s judgment.

¶6 Tina asks the court to strike Mirko’s brief because it does not comply with the Rules of Appellate Procedure, to find the appeal to be frivolous, and to award her attorney’s fees for the appeal. The issue presented by the appeal was the credibility of the witnesses. Because the trial court based its findings on the credibility of the witnesses, this is not a frivolous issue. We also decline to strike the brief and to award attorney’s fees to Tina.

By the Court.—Judgment affirmed.

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

