

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 2008

David R. Schanker
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. 2007AP524

Cir. Ct. No. 2004FA42

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

TIFFANI RAE LAJEUNESSE,

PETITIONER-RESPONDENT,

V.

MICHAEL CHRISTOPHER LAJEUNESSE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County:
ROGER W. LEGRAND, Judge. *Affirmed in part; reversed in part and cause
remanded with directions.*

Before Higginbotham, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Michael LaJeunesse appeals from an order denying his postjudgment motion filed in a divorce case. Based on a concession by respondent Tiffani LaJeunesse, we reverse in part and remand with directions, but otherwise affirm.

¶2 The parties were divorced in January 2006. Michael filed one motion for reconsideration in February 2006, and while that motion was still pending before the court, filed another one in July 2006. The second motion was eventually disposed of in December 2006, and Michael appeals from that amended judgment.

¶3 As a threshold issue, Tiffani argues that Michael’s motion should have been rejected because it was not brought within the twenty-day period described in WIS. STAT. § 805.17(3) (2005-06).¹ She argues that the circuit court therefore lost “jurisdiction” to decide the motion. In support of that proposition she quotes this sentence: “Failure to appeal within the times set by either sec. 808.04, Stats., or sec. 805.17(3), Stats., deprives this court of jurisdiction.” *Wainright v. Wainright*, 176 Wis. 2d 246, 250, 500 N.W.2d 343 (Ct. App. 1993).

¶4 As we previously pointed out to Tiffani in our July 18, 2007 order denying her motion to dismiss this appeal, she is misconstruing that sentence. The failure described in the sentence is failure to *appeal*, not failure to file the reconsideration motion, and the reference to WIS. STAT. § 805.17(3) is clearly to that portion of the statute that controls the time to appeal, not the time to file a motion for reconsideration. At most, the circuit court may have lost competency

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

to proceed, rather than jurisdiction, but competency to proceed is an issue that can be held waived if not first raised in circuit court. *See Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶¶1-3, 273 Wis. 2d 76, 681 N.W.2d 190. Tiffani does not direct our attention to any such argument she made in the circuit court, or to how that court responded. Our review of the record has not located such argument or decision. We conclude, therefore, that the issue was waived.

¶5 Turning to the substance of Michael’s motion, he first argues that the circuit court erroneously omitted the GE Bank Card debt from his debt column in the balance sheet. Tiffani agrees that this debt was improperly omitted from the balance sheet. To correct the error, she proposes that the sum owed her be reduced by \$1,534, resulting in an amendment to the “net amount due to petitioner” from \$2,642.82 to \$1,108.82. Michael’s reply brief does not dispute these calculations, and therefore we reverse and remand as to this issue, with directions to make the proposed amendment.

¶6 Michael also argues that the circuit court failed to take into account the tax consequences of its method for dividing the property. According to Michael, the property divisions proposed by both parties as to retirement funds did not have tax consequences, but the court instead created its own method, which included a charge against one of Michael’s retirement accounts, thus causing a tax consequence to him. In addition, Michael argues that Tiffani and the court failed to take into account the state capital gains tax consequence of Tiffani’s proposal for dividing the proceeds from sale of a rental property, which the court adopted.

¶7 The circuit court rejected both of these arguments on the ground that they would involve the taking of new evidence regarding tax consequences that should have been presented to the court during the original hearing. We agree that

Michael is attempting to introduce new facts into the record. In addition, the proper method to raise this issue would have been a motion to reopen the judgment under WIS. STAT. § 806.07, rather than a motion for reconsideration.

¶8 In summary, we reverse as to the GE Bank Card debt and remand for the circuit court to amend the judgment as described above in ¶5. We otherwise affirm the denial of Michael's July 2006 motion for reconsideration.

¶9 Because this is a partial affirmance and partial reversal, no costs on appeal to either party.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

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

