

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 27, 2001

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.

No. 00-2971

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

TINA L. LAMB,

PETITIONER-RESPONDENT,

V.

BRUCE A. LAMB,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Monroe County:
STEVEN L. ABBOTT, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Bruce Lamb appeals a judgment divorcing him from Tina Lamb after ten years of marriage. The issues are: (1) whether the trial court erred in including the value of a 1956 Chevrolet car in its computation of Bruce's assets; (2) whether the trial court erred in including the value of tools that

Bruce did not produce for appraisal in Bruce's assets; and (3) whether the trial court erred in awarding \$1,500 in attorney's fees to Tina. We affirm.

¶2 Bruce and Tina Lamb were married in 1990. At the time of divorce, Bruce was thirty-seven years old and Tina was thirty-eight years old. They have no children. Bruce earns between \$1,766 and \$3,322 per month. Tina earns \$3,056 per month. The trial court awarded no maintenance and divided the marital debts and property between them.

¶3 Bruce first argues that the trial court erred in including a 1956 Chevrolet car, valued at \$2,000, as one of his assets. Bruce contends that he gave the car to his accountant to satisfy a \$250 debt, which is what the car is worth. He points out that the trial court specifically stated the car was worth \$250 dollars when the trial court was attempting to determine how much Bruce still owed his accountant. We see no inconsistency. The trial court determined that the car was worth \$2,000. This finding is supported by Tina's testimony and the accountant's testimony that the car would be worth \$2,000 if it were in good shape.¹ The trial court's finding of fact is not "clearly erroneous." *See* WIS. STAT. § 805.17(2) (1999-2000)² (findings of fact by a trial court shall not be set aside on appeal "unless clearly erroneous"). The trial court's comment that the car was "worth \$250" was made in the context of determining how much Bruce still owed his accountant. For that purpose, the car was worth \$250 because that is what Bruce wrote on the title when it was transferred. The trial court implicitly found that

¹ We note that the accountant contended the car was not in good shape, but conceded that it was worth much more than \$250.

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Bruce had transferred the car for less than what it was worth, thus resulting in the different valuations.

¶4 Bruce next argues that the trial court erred in imputing the value of personal property to him that was not appraised because there was no “evidence that said property was in existence.” Tina claimed that Bruce had tools that he did not produce for appraisal that were worth \$4,002. To reach this figure, she totaled the tool receipts and valued them at fifty percent of their original price. Despite Bruce’s argument to the contrary on appeal, Bruce testified at trial that most of the items on Tina’s list *were* in his possession. The trial court deducted \$900 for specific items that Bruce identified as having been purchased for others or listed on the appraisal of his other personal effects. The trial court’s finding that Bruce had \$3,102 in property that had not been appraised is not clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶5 Finally, Bruce argues that the trial court erred by ordering him to pay \$1,500 of Tina’s attorney’s fees. “The award of attorney’s fees is within the discretion of the trial court and is subject to reversal only upon the trial court’s misuse of that discretion.” *Johnson v. Johnson*, 199 Wis. 2d 367, 377, 545 N.W.2d 239 (Ct. App. 1996). Tina incurred additional fees because Bruce was unresponsive to discovery requests and ill-prepared. His actions caused Tina’s attorney to spend additional time on communication, preparation and at court hearings. Although the trial court did not make an explicit finding that the fees charged were reasonable, when a trial court exercises its discretion without making explicit findings, we search over the record to see if such findings are supported by the record. *Schmid v. Olsen*, 111 Wis. 2d 228, 237, 330 N.W.2d 547 (1983). We do so here and conclude it supports a finding that the fees were reasonable. Furthermore, under these circumstances, the trial court properly

exercised its discretion in ordering Bruce to contribute to the fees because the nature in which Bruce pursued the litigation caused additional fees to be incurred. *See Ondrasek v. Ondrasek*, 126 Wis. 2d 469, 483-84, 377 N.W.2d 190 (Ct. App. 1985). Contrary to Bruce's assertion, there is no requirement that the trial court make a finding of intentional “overtrial” to award fees.

By the Court.—Judgment affirmed.

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

