COURT OF APPEALS
DECISION
DATED AND FILED

February 3, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP998 **Cir. Ct. No. 2004FA551**

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

JOHN JOSEPH BUETTGEN,

PETITIONER-APPELLANT,

V.

ELIZABETH ANN BORSCH, F/K/A ELIZABETH ANN BUETTGEN,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed in part; reversed in part and cause remanded for further proceedings.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. John Buettgen appeals his judgment of divorce. Buettgen alleges numerous errors concerning child support, maintenance, property division and a finding of multiple violations of the temporary order. Buettgen also

contends the circuit court erred by requiring him to contribute toward his ex-wife's attorney fees. We affirm in part, reverse in part and remand for further proceedings.

FACTUAL BACKGROUND

¶2 Buettgen and Elizabeth Borsch were married in 1984. The marriage produced four children, two of whom were adults at the time of the divorce.[1] The parties owned a marital residence and three businesses, Hayden Buettgen Funeral Home, JB Enterprises and Buettgen Properties. The marital home was awarded to Borsch and the businesses awarded to Buettgen. The court did not order an equalization payment.

¶3 The court found Borsch's earning capacity was $21,600, and that Buettgen had the ability to earn a salary of $61,000 per year. Further, the court found the businesses could make a profit of $124,000 annually and disbursements to shareholders of $55,000 yearly were appropriate. Because the businesses were awarded to Buettgen, the amount of the annual disbursements was attributed to his income. Additionally, Buettgen lived rent-free in living quarters at the funeral home, so $4,200 annually was attributed to his income. In sum, the court determined $120,000 of income was available to Buettgen annually for child support. The court awarded child support of $1,600 monthly for two children, which would be reduced to $1,200 monthly when Borsch was supporting only one minor child.

[1] It appears only one child is currently subject to the child support order. That child will turn eighteen years old on November 1, 2009.

¶4 The court awarded maintenance of $2,000 monthly for twenty-two years, increasing to $2,500 monthly after the youngest child's support obligation ceased. The court also ordered Buettgen to contribute $12,000 toward Borsch's attorney fees. Buettgen now appeals.

STANDARD OF REVIEW

¶5 The division of property, calculation of child support, and determination of maintenance in divorce actions are decisions entrusted to the circuit court's discretion, and are not disturbed on appeal unless the court has erroneously exercised its discretion. ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We generally look for reasons to sustain the circuit court's discretionary decisions. ***Loomans v. Milwaukee Mut. Ins. Co.***, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968). "[W]e may search the record to determine if it supports the court's discretionary determinations." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We will sustain discretionary decisions if the circuit court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion a reasonable judge could reach. ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2). The circuit court is also the ultimate arbiter of the credibility of witnesses. ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

DISCUSSION

I. Income Available for Child Support

¶6 Buettgen first argues the circuit court erred in determining his income available for child support. Buettgen does not dispute the court's finding that he had the ability to earn a salary of $61,000 annually. However, Buettgen challenges the finding that the businesses had the ability to make a profit of $124,000 annually, and $55,000 per year should be attributed to him. He also challenges the court's finding that an additional $350 per month, or $4,200 per year, should be attributable because he lived rent-free in an apartment at the funeral home.

¶7 Buettgen relies upon ***Evjen v. Evjen***, 171 Wis. 2d 677, 685, 492 N.W.2d 361 (Ct. App. 1992), where we stated a circuit court is authorized to pierce the corporate shield if it is convinced the obligor's intent is to avoid financial obligations arising from the marital relationship. However, we also emphasized it is for the circuit court to determine on a case-by-case basis whether retained earnings are a business necessity or a pretext to avoid a marital obligation. ***Id.*** at 684-85. We urged courts to monitor and control deceptive corporate arrangements which affected financial arrangements arising from the dissolution of a marriage. ***Id.***

¶8 Buettgen insists the court failed to make an explicit finding of intent to avoid his financial obligations and, therefore, it was error for the court to pierce the corporate veil and attribute corporate income to him. Although intent to hide income was found in ***Evjen***, it does not follow that such a finding is necessary in order to include corporate income in the gross income of a shareholder for child support purposes. Nowhere in the language of WIS. ADMIN. CODE §§ DWD

40.02(13) or 40.03(4) (Jan. 2004), is there a requirement that there be such a finding. Rather, once "an ownership interest sufficient to individually exercise control or to access the earnings of the business" has been found, the question becomes whether the assets are underproductive and the parent has diverted income to avoid financial obligations. *See* §§ DWD 40.03(4)(a), 40.02(13)(a)9.

¶9 Here, the record supports the conclusion that Buettgen diverted income to avoid paying financial obligations. Among other things, the court found Buettgen paid legal fees and child support related to a nonmarital child from the business accounts, charged personal items on the business credit cards, and deposited business checks in his personal checking account. These actions depleted the businesses' value.

¶10 Buettgen suggests that even if imputation of income from the corporation was appropriate, the amount of income attributed to him was not supported by the record. Buettgen concedes the businesses showed a profit of $124,942 in 2005. However, Buettgen contends the projection for the first three quarters of 2006 indicated a profit of only $113,476 for the year. According to Buettgen, "[t]his averages to $119,209.00, and with the most recent year being the lowest, it was error for the court to use $120,000.00." We conclude this difference is de minimus and reject Buettgen's argument.

¶11 Buettgen insists that even if this difference is de minimus, the court erred by determining it was appropriate to disburse to shareholders 44% of the business profits.[2] According to Buettgen, the undisputed expert testimony at trial

[2] The ratio of $55,000 attributed as shareholder disbursements to the businesses' $124,000 annual profits is 44%.

was that a well-managed business "ideally" should have cash on hand in an amount equal to two times its liabilities, and that "it is a 'judgment call' as to whether it would be prudent for a business to have cash available equal to three times its debt." Buettgen therefore asserts, "the most the court should have attributed to him as undistributed income from the business was 33% of the net profits of the business, which would leave the business with the desired two-to-one ratio."

¶12 Buettgen mischaracterizes the testimony. Buettgen's former accountant John Hack testified that a two-to-one ratio of current assets to current liabilities would be ideal. However, Hack's reference to current assets was not limited to cash on hand. Rather, he testified the components of current assets included cash, account receivables and inventory. Hack also testified the funeral home's final balance sheet for 2005 showed current assets of $249,000 and current liabilities of $68,000, resulting in a ratio of approximately 3.2 to one. Therefore, even after a shareholder distribution of $55,000, the ratio of assets to liabilities would exceed the ideal ratio of two-to-one. More importantly, Hack also testified on cross-examination it "would be a standard procedure to make distributions of profit" from subchapter S corporations, such as the funeral home. The following exchange then occurred:

> Q: What would be a conservative distribution, in your mind?
>
> A: Rule of thumb, I usually use – I try to distribute 50 percent of the profit to shareholder and retain 50 percent for the need of the business.

The court's decision to impute income from a 44% distribution of the businesses' $124,000 profit was not an erroneous exercise of discretion.

¶13 Buettgen also claims it was error for the court to attribute income from the $350 monthly rental value of the apartment above the funeral home. Buettgen argues there was no evidence of the apartment's fair market value, and further asserts because the apartment "does not meet code" it cannot be rented out and therefore has no rental value.

¶14 We need not decide the effect of the purported code violations because Buettgen does not provide citations to the record indicating the issues of code violations, or any effect thereof, were preserved below. Moreover, Buettgen does not contest the fact that he lived in the apartment rent-free and thus received a personal benefit from the businesses. The apartment has three bedrooms, one bath and kitchen facilities. Buettgen testified the apartment has water, electricity and heat, and those utilities were paid by the business. Buettgen admitted under cross-examination that he listed $200 as a personal monthly expense for utilities on his financial disclosure statement.

¶15 However, we were provided no record citation establishing evidence of the apartment's rental value. The circuit court stated, "based upon many other cases I've encountered in Marathon County, I reasonably infer that, at the very least, the value of the rent is $350 per month." We conclude this is an inadequate basis to sustain the court's conclusion regarding rental value and therefore reverse and remand for further proceedings on that issue. Upon remand, the court may in its discretion determine whether it is appropriate to set forth more complete reasoning on the record, or allow both parties an opportunity to supplement the record concerning the fair rental value. *See* ***Button v. Button***, 131 Wis. 2d 84, 100, 388 N.W.2d 546 (1986).

II. Borsch's Earning Capacity

¶16 Buettgen next argues the circuit court erred in determining Borsch's earning capacity. The court found Borsch's earning capacity was $21,600 per year, based upon what it characterized as "in essence, uncontroverted testimony offered by Mrs. Buettgen." The court noted that Borsch obtained a bachelor's degree in marketing in 1982 and worked one year before she married and then was a "stay-at-home mom pretty much until the funeral home was purchased." Borsch worked at the funeral home from February 2000 until late 2004. Since the commencement of divorce proceedings, she worked at a coffee shop, a scrapbook studio, and "delivered papers for City Pages." At the time of trial, she was employed full time at Rib Mountain Travel Center doing bookkeeping with an approximate monthly income of $1,800. Based on this testimony, the court found Borsch's annual earning capacity to be $21,600.

¶17 Buettgen claims that "if the trial court believed the above testimony was essentially uncontroverted, its findings were clearly in error." Buettgen insists the court ignored Borsch's testimony that she was capable of running the funeral home, and therefore it was error to set Borsch's earning capacity at any figure less than Buettgen's. According to Buettgen, "If anything, her earning capacity is higher than Buettgen's."

¶18 However, the testimony indicated Borsch was paid a salary of $12,000 yearly when she worked at the funeral home. Borsch did not claim at trial that she was capable of being a funeral home director and there is no evidence in the record that any prospects exist for her to be hired as a funeral home director.

The court did not erroneously exercise its discretion by establishing Borsch's earning capacity at $21,600.

III. Child Support Determination

¶19 Buettgen next argues the circuit court erred in determining child support. Buettgen concedes the court "ordered less child support than suggested by the [WIS. ADMIN. CODE ch.] DWD 40 guidelines…." Nevertheless, Buettgen contends the court "used too high of a starting point before it discounted the award."

¶20 At the outset, the court applied the reduction for a high-income payer[3] to the $10,000 available monthly for child support,[4] pursuant to WIS. ADMIN. CODE § DWD 40.04(5).[5] The court concluded, "The total obligation then under [§] DWD 40.04 is $2,350 per month."

¶21 However, the court then considered various factors under WIS. STAT. § 767.25(1m)[6] to further reduce the child support award. The court considered "maintenance received by either party" under § 767.25(1m)(bj). The court also

[3] Buettgen does not dispute the high-income payer reduction.

[4] If the circuit court determines, upon remand, that the income available monthly to Buettgen for child support would be reduced as a result of findings regarding the apartment's rental value, the court shall review the child support determination.

[5] We observe that WIS. ADMIN. CODE ch. DWD 40 was revised and renumbered, effective January 1, 2004. The Note to § DWD 40.01 indicates that "[a] modification of any provision of this chapter shall apply to orders established after the effective date of the modification." Our references to ch. DWD 40 are thus to the current version.

[6] References to Wisconsin Statutes are to the 2007-08 version unless otherwise noted. However, WIS. STAT. ch. 767 was substantially renumbered and revised by 2005 Wis. Act 443. Because the parties use the prior numbering scheme, we utilize the 2003-04 version of ch. 767.

considered "[t]he needs of any person, other than the child, whom either party is legally obligated to support" under § 767.25(1m)(bz). In this regard, the court specifically noted Buettgen's $1,200 child support obligation for his nonmarital child. The court then ordered child support in the present case at $1,600 monthly, which would be reduced to $1,200 monthly when Borsch was supporting only one minor child.

¶22 Buettgen argues the court erred by not applying the serial-payer reduction at the outset, pursuant to WIS. ADMIN. CODE § DWD 40.04(1). According to Buettgen, this would reduce the $10,000 monthly available for support by the $1,200 monthly support obligation for the nonmarital child, leaving $8,800 subject to the high-income payer reduction in this case. After the high-income payer reduction is applied, the court would then have a total of $2,110 as a "starting point" for further discounts rather than $2,350. Buettgen insists that if the court then applied the same discounts under WIS. STAT. § 767.25(1m) to the lower "starting point," it would result in $240 less child support monthly.

¶23 However, Buettgen's proposed outcome would have the circuit court apply a reduction twice for the nonmarital child. The court applied a reduction for the nonmarital child when it considered the various factors under WIS. STAT. § 767.25(1m)(bz). It would be inappropriate to apply the serial-payer reduction for that child's obligation before reaching a "starting point," and then apply the same discount for the nonmarital child's support obligation under § 767.25(1m)(bz).

¶24 We conclude that although the court did not apply a serial-payer reduction under WIS. ADMIN. CODE § DWD 40.04(1), the court considered the amount paid in support to the nonmarital child under WIS. STAT. § 767.25(1m). In

addition, as Buettgen concedes, the amount awarded by the court as child support in this case was less than suggested by the § DWD 40.04 guidelines. Any perceived error in not applying the serial-payer reduction at the outset under § DWD 40.04(1) was therefore harmless.[7]

IV. Violations of Temporary Order

¶25 Buettgen next challenges the circuit court's findings that he violated the temporary order by underpaying the mortgage obligation by $7,725.42 and depositing into his personal account at least $7,000 of business checks. Buettgen contends Borsch agreed in writing to the reduced mortgage payments. However, this argument is essentially a collateral attack on the conditions of the temporary order, which are not before us. Buettgen also contends that had he made higher mortgage payments, the outstanding principal on the mortgage would have been reduced, thus requiring the court to reduce the property division credits given to Borsch. We are unpersuaded. The temporary order was an attempt to equalize the income needed to support both parties, in addition to the anticipated distribution from the businesses. Family support was based in part upon a mortgage payment of $1,212.19, which Buettgen listed on his personal financial disclosure statement. Underpaying the mortgage obligation provided Buettgen an additional $7,725.42 on which to live, contrary to the intent of the temporary order.

¶26 Buettgen also contends his undisputed testimony demonstrates that business checks were erroneously deposited in his personal account and

[7] Buettgen argues WIS. ADMIN. CODE § DWD 40.04(1)(b)4 requires the court to subtract the serial-payer reduction at the outset. Borsch responds that § DWD 40.04(1) does not apply, as Buettgen's two marital children are considered his first support obligation. Because we conclude any perceived error in the child support calculation was harmless, we need not reach that issue.

subsequently withdrawn and deposited into the funeral home account. However, the court was not obligated to accept Buettgen's testimony in that regard. Witness credibility is the province of the fact-finder. *See* ***Estate of Dejmal***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980).

¶27 Buettgen also argues that Borsch admitted she violated the temporary order by adding charges to jointly held credit cards, and he should be credited accordingly. Our review of the testimony does not support Buettgen's contention that Borsch admitted violating the temporary order. The court's findings that Buettgen violated the temporary order are not erroneous and Buettgen has not sufficiently demonstrated the circuit court erred in the amount of its remedial order.

V. Amount to be Distributed from Businesses

¶28 Buettgen also argues the circuit court erred in determining the amount of money the temporary order required to be distributed from the businesses on a quarterly basis. Under that order, distributions were to be split equally between the parties. However, Buettgen violated the temporary order by not causing quarterly payments to be made to Borsch from the businesses. The court therefore ordered a portion of the businesses' profits to be imputed to Buettgen's earning capacity. For the reasons recited previously, we reject Buettgen's argument that the court erred by rejecting his expert's testimony in ordering disbursement of 44% of the profits rather than the 33% Buettgen believes is appropriate.

VI. Property Division

¶29 Buettgen next argues the court erred by failing to divide the marital estate equally. An equal property division is presumed under WIS. STAT. § 767.255. ***Preiss v. Preiss***, 2000 WI App 185, ¶10, 238 Wis. 2d 368, 617 N.W.2d 514. A court may deviate from the presumptive equal division of property after consideration of statutory factors. *See* WIS. STAT. § 767.255(3).[8]

¶30 Buettgen insists the court erroneously considered marital misconduct as a factor in its refusal to order equalization. Buettgen relies upon the court's statement that it was giving "very significant weight" to the fact that Buettgen fathered a child with an employee during the marriage.

¶31 We conclude the circuit court did not consider Buettgen's actions as marital misconduct. Rather, the court appropriately considered Buettgen's actions as producing waste of marital assets by spending over $60,000 in legal fees and child support payments arising from his nonmarital affair with an employee. As the court indicated, if Buettgen had not had a child with his employee while he was married to Borsch, there would have been $60,000 more in the businesses, a financial responsibility Borsch should not have to bear.

¶32 Buettgen also argues the court erred by considering contributions Borsch's father made to the purchase of the funeral home. Although Buettgen

[8] The circuit court found "there normally would have to be an equalization payment of $77,831.58." After crediting amounts for violations of the temporary order and funds expended regarding the nonmarital child, the court stated "the equalization payments would be down to $31,412.71." The court then indicated, "based upon the remaining factors which I now address, there will be no equalization payment." These remaining factors included Borsch's father's substantial contribution to the business purchase, the parties' respective earning capacities and significant mold problems in the home. If the court determines on remand that imputation of income would be reduced as a result of findings regarding the apartment's rental value, it shall review what effect, if any, such a determination would have on its decision to decline to order an equalization payment.

does not dispute Borsch's father contributed $180,000 toward the purchase of the funeral home, Buettgen insists this was not a gift,[9] and even if it was, there is no evidence Borsch's father gifted it to Borsch alone and not to the parties jointly. In addition, Buettgen contends the contribution was "hopelessly co-mingled" by 2006. We conclude the circuit court appropriately evaluated the issue under WIS. STAT. § 767.255(3)(d) as the contribution of each party to the marriage. Testimony indicated the contribution was meant to be a gift and Borsch testified she considered the contribution as her inheritance. This issue is simply one of credibility and we will not disturb the court's credibility determination. ***Estate of Dejmal***, 95 Wis. 2d at 151. Buettgen's argument that the contribution was comingled is undeveloped and will not be considered. *See* ***M.C.I., Inc. v Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶33 Accordingly, we reject Buettgen's argument that the court erroneously exercised its discretion by declining to order Borsch to make an equalizing payment to Buettgen. Our review of the record demonstrates the court considered the proper statutory factors warranting a deviation from an equal division of property. The court employed a process of reasoning based upon the facts of record and reached a conclusion based on a logical rationale.

[9] Buettgen contends the contribution by Borsch's father was not a gift "because he received shares of stock in the business for his payment." Buettgen cites testimony from his former accountant John Hack, "My understanding was, he just cut a check and received his shares." This cited testimony is unclear and inconsistent with other evidence indicating Buettgen and Borsch owned the businesses. This evidence includes the temporary order providing that quarterly distributions be "shared equally with the Respondent," as well as Buettgen's financial disclosure statement indicating the ownership of all business interests as "H&W." Furthermore, Buettgen provides no citation to documentary evidence demonstrating shares in the business were provided to Borsch's father. As a result, we do not consider the cited Hack testimony undercuts the court's finding.

VII. Maintenance

¶34 Buettgen next argues the maintenance award was improper. He insists the award does not meet either the support or fairness objective. Buettgen bases his argument regarding the fairness objective upon "Judge Mac Davis's TAXCLC," which Buettgen sets forth in his appendix. However, Buettgen cites only to his appendix and provides no record citation to demonstrate this document was presented for the circuit court's consideration. We have frequently held that we will not consider arguments unsupported by references to the record. *See*, *e.g.*, ***Dieck v. Antigo Sch. Dist.***, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990), *aff'd*, 165 Wis. 2d 458, 477 N.W.2d 613 (1991).

¶35 Regardless, we reject Buettgen's contentions regarding maintenance. Here, the circuit court properly evaluated the multiple statutory factors within WIS. STAT. § 767.26, and gave a very lengthy and thorough explanation concerning both the support and fairness objectives. Specifically, the court considered this a long marriage of twenty-two years. It considered the age and health of the parties. It considered the child support obligation in this case,[10] and the preexisting child support obligation to the nonmarital child. It also considered the division of property and the effect of the property division upon the parties. The court stated, "what is of greatest import to me is that Mr. Buettgen is being awarded the businesses, which give him the potential to make increased profits;

[10] If the court determines upon remand that the child support obligation in this case would be reduced as a result of findings regarding the apartment's rental value, it shall review what effect, if any, such a determination would have on maintenance.

Ms. Buettgen is not similarly situated." The court discussed the parties' educational levels at the time of the marriage and at the time the action was commenced. The court noted Borsch contributed to Buettgen's education, training and increased earning power, specifically noting Borsch "subordinated her career in marketing and devoted time and energy to the family, thus allowing Mr. Buettgen an opportunity to advance his career in the funeral business area." The court also specifically noted the infeasibility of Borsch becoming self-sufficient at the standard of living the parties enjoyed during the marriage. The record demonstrates the court considered the proper statutory factors regarding the amount and duration of maintenance, employed a process of reasoning based upon the facts of record, and reached a reasoned conclusion.

VIII. Contribution Toward Attorney Fees

¶36 Finally, Buettgen argues the circuit court erred by ordering him to contribute $12,000 to Borsch's attorney fees. Under WIS. STAT. § 767.262(1)(a), after considering the financial resources of both parties, a court may order a contribution of a reasonable amount of the costs and attorney fees. An award of attorney fees is discretionary. ***Van Offeren v. Van Offeren***, 173 Wis. 2d 482, 499, 496 N.W.2d 660 (Ct. App. 1992). In a family court proceeding, the circuit court may award attorney fees against a party who causes needless litigation. ***Ondrasek v. Ondrasek***, 126 Wis. 2d 469, 484, 377 N.W.2d 190 (Ct. App. 1985).

¶37 Here, the circuit court considered the parties' financial resources and the record amply supports the conclusion Buettgen needlessly lengthened the litigation. Nevertheless, Buettgen argues the court "made no finding as to what the total attorney fees were and whether they were reasonable." In this regard,

Buettgen insists Borsch "submitted no documentation or other evidence of the hours worked to justify the claim of $22,155.50 in fees …."

¶38 However, the record contains a detailed work-in-progress report from the law firm representing Borsch, in the amount of $22,825.88.[11] The testimony at trial indicated this amount represented fees and costs expended in this case, but did not include the three-day trial. Subsequently, during closing argument Borsch's attorney indicated fees totaled $28,284. The record is unclear, however, as to whether any evidence was submitted to substantiate fees beyond the amount of $22,825.88. We cannot determine from the record to what extent the circuit court determined the amount of the total fees, or whether the court considered the reasonableness of the fees. We therefore reverse and remand for further proceedings regarding the fees. Upon remand, the court may consider whether supplemental evidence will be admitted pertaining to Borsch's final bill.[12]

By the Court.—Judgment affirmed in part; reversed in part and cause remanded for further proceedings. No costs on appeal.

[11] Buettgen mischaracterizes the record by stating, "The only documentary evidence in the record as to her fees is a billing statement from her attorney in the amount of $10,121.09." Buettgen cites "R.48:Ex. 32"as support for this statement. However, exhibit 32 shows attorney fees of $22,155.50 together with expenses of $536.13 and advances of $134.25, for a total of $22,825.88.

[12] Buettgen's counsel, Kent Tess-Mattner, as required by WIS. STAT. RULE 809.19(8)(c)2., certified in his reply brief on appeal that he complied with the length limitation. The length of a reply brief is limited to thirteen pages if a monopspaced font is used or 3,000 words if a proportional serif font is used. *See* WIS. STAT RULE 809.19(2)(b). However, the reply brief is eighteen pages and the word length is 3,396 words. The brief therefore exceeds the length limitation and the certification is false. We therefore strike the reply brief as a sanction. *See* WIS. STAT. RULE 809.83(2) ("Failure of a person to comply … with a requirement of these rules … is grounds for … imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.").

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