COURT OF APPEALS
DECISION
DATED AND FILED

January 15, 2002

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. 01-0540

Cir. Ct. No. 99-FA-159

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

IN RE THE MARRIAGE OF:

MELONNIE RAE SUNDBERG,

PETITIONER-RESPONDENT,

V.

JOHN MARK SUNDBERG,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Oconto County: LARRY L. JESKE, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. John Sundberg appeals his judgment of divorce. He challenges the unequal property division, arguing that there is no evidence as to the value of the marital assets; he claims there is insufficient evidence to support the court's finding of bad faith, and maintains that the court's findings

with respect to real and personal property are contrary to the evidence. He further contends that the court's erroneous exercise of discretion in valuing the assets and unequally dividing the property requires a new trial in the interest of justice. We conclude that the court's findings are supported by the testimony and that the record reveals a rational basis for the unequal property division. We therefore reject his arguments and affirm the judgment.

¶2 John and Melonnie Sundberg were married in 1976 and have no minor children. At the time of their divorce, the parties were in their forties and had spent many years building a family trucking business, Sundberg Trucking, Inc., that they started some sixteen years earlier. John handled dispatch and maintenance, and Melonnie took care of the financial matters and bookkeeping. The business was run adjacent to the family home. Several months after the parties separated in July 1999, Melonnie was granted sole control of the trucking business operations.

¶3 At trial, the court adopted Melonnie's proposed property division. It awarded Melonnie the trucking business, with a value of $1,347,063 and liabilities of $1,438,755. It also awarded her a residence, other real estate, a timeshare, savings, her 401K and personal property. Including the trucking business, the value of the assets to Melonnie equals $1,735,532. Her total liabilities equal $1,500,286, making her net award $235,246. The court awarded John a residence, a timeshare, personal property, and his 401K, for a total of $163,801. John's debts were $22,871, making his net award $140,930.

¶4 The trial court stated that its intention was to enter an unequal property division based upon John's lack of good faith in his financial dealings

with Melonnie and his mismanagement of the trucking business. The court explained:

> I find that John Sundberg did not act in good faith in the operation of the trucking business and his financial dealings with his wife. While he was in charge of the business he did not operate the trucks at anywhere near full capacity. He sold company assets and kept the money for himself. He used company money for personal expenditures. He diverted company income into his own pocket. He failed to pay numerous business expenses and loan obligations. This has directly caused a decline in business net worth of more than a quarter million dollars.
>
> … This is not an equal division and I do not intend it to be equal because of the bad faith exhibited by [John].

¶5 On appeal, John challenges the unequal property division. He argues that he "will demonstrate that there is insufficient evidence to support the findings, and that there is evidence submitted by Melonnie, or admitted by her, which, in fact, contradicts her allegations that John's actions amounted to bad faith." He captions his challenges to the court's findings with the heading "Untried Issues As To The Value Of Marital Assets." For the reasons that follow, we conclude that the record supports the court's assignment of values and unequal property division.

1. Legal standards

¶6 Although an equal division of property is presumed, WIS. STAT. § 767.255,[1] the family court may deviate from an equal division after considering other factors enumerated in § 767.255. The court may consider each party's contribution to the marriage, § 767.255(3), and more particularly, "each party's

[1] All statutory references are to the 1999-2000 edition unless otherwise noted.

efforts to preserve marital assets …." ***Anstutz v. Anstutz***, 112 Wis. 2d 10, 12, 331 N.W.2d 844 (Ct. App. 1983). "We conclude that this provision allows the court to consider each party's efforts to preserve marital assets and to require a party to pay the debts caused by the squandering of the parties' assets, or the intentional or neglectful destruction of property." ***Id.***

¶7 Property division is committed to the discretion of the trial court. ***Peerenboom v. Peerenboom***, 147 Wis. 2d 547, 551, 433 N.W.2d 282 (Ct. App. 1988). We will uphold a property division if the court gave rational reasons for its decision and based its decision on facts in the record. ***Id.*** The valuation of a given asset, however, is a factual determination. *See* ***Siker v. Siker***, 225 Wis. 2d 522, 532, 593 N.W.2d 830 (Ct. App. 1999). When reviewing fact finding, appellate courts search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court did not but could have reached. ***In re Dejmal***, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980).

¶8 The weight and credibility to be given to testimony is uniquely within the province of the trial court. ***Siker***, 225 Wis. 2d at 527-28. "[W]hen the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of credibility of the witnesses. When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." ***Id.*** at 528 (citation omitted).

2. Unequal property division

¶9 John argues that the evidence fails to support an unequal property division. We disagree. The record reveals the following evidence to support the trial court's determinations. The business was run adjacent to the family's home

and, after the parties separated, Melonnie attempted to handle bookkeeping matters from her new apartment. In May 2000, Melonnie complained that John was not cooperating in running the company, and the court granted her motion to take charge of the financial matters. In July, Melonnie was granted sole control of the business.

¶10 Melonnie testified that she used the company records to prepare a graph showing approximate monthly gross sales from January 1995 through September 2000, marked Exhibit 7. The graph indicates that from 1995 to 1999, when the parties were working together, monthly sales ran between a low of $220,000 and a high of $350,000. In 2000, monthly sales fell to between $120,000 and $220,000. Melonnie testified that the low sales figures represented "the deterioration of our company at the hands of Mr. Sundberg."

¶11 Melonnie claimed that sales started to steadily decline in January 2000. She stated that John would not cooperate with her in running the company and that he told the court commissioner "the company was totally not functionable," and repossession of the tractors and trailers was imminent. In May 2000, Melonnie discovered that John had not made payments on any of the obligations for the tractors and trailers since January. There was never a time before when payments had not been made for months at a time.

¶12 When Melonnie took charge of the company in July, she found that there were just ten trucks on the road and nine sitting empty in the yard. She testified that from October 1999 to April 2000, John had made no attempts to obtain drivers for the trucks that were in the yard. Robert Stearns, a mechanic at Sundberg Trucking, also testified that from the first of the year 2000, the number of trucks on the road had been reduced. He testified that since Melonnie had taken

over operation of the business in July 2000, nearly every truck was out on the road. He stated that when John was running the business, many of the trucks were not being used and, at one point, some of the trucks had been repossessed. Under Melonnie's management, however, the trucks had been returned and the business returned to the levels of previous years.

¶13 Melonnie testified that John had basically asked the court to remove him from the operation of the company: "[H]e was asked if he even particularly cared about the company, and he said, 'No, not particularly,' so he was removed …." In July, six trucks were repossessed and, after Melonnie took over, she negotiated to get them back. However, as a result of John's failure to make payments for seven months, the company accumulated $106,480.59 in interest and penalties.

¶14 Nonetheless, on February 4, 2000, at a time when financial obligations were not being met, John gave himself a raise, telling the court commissioner that his duties had greatly increased. Melonnie doubted that his duties increased, however, because "he was hardly ever at the office after two o'clock." Melonnie stated that this greatly impacted their business because the company has drivers on the west coast, and "[y]ou negotiate rates. You have the drivers call back sometimes on an hourly basis until they find a load. There was [sic] several drivers that were left on Fridays that had to deadhead in because he was not in the office. … It's real hard to run a company that way when it's 24-7 when you have produce involved." Melonnie testified that she usually stayed until eight or nine o'clock at night with the west coast trucks.

¶15 Melonnie also explained that the year before she received an offer to purchase the company that would have netted $185,000 each to John and her. The

most recent offer she received would not even cover the company's liabilities. Because the company's debts exceeded its assets, she believed the company had a negative net worth.

¶16 In support of her contention that the company's net worth suffered at John's hands, Melonnie relied on a letter from her lender that stated that it received no cooperation from John and, if it were not for Melonnie's cooperation, "the loans at this bank would have been in very serious delinquent situation and/or in foreclosure." Melonnie also offered a letter from an insurance account representative, stating that she has been an agent for Sundberg for the past four years and "[d]uring Melonnie's absence we had a number of lapse payments, claims issues, and drivers that did not meet insurance requirements."

¶17 John first challenges the trial court's finding that when John controlled the company after the separation, he did not operate the trucks at full capacity. We reject this argument. Melonnie testified that when she took charge of the company in July, there were ten trucks on the road and nine sitting empty in the yard. She testified that from October of 1999 to April of 2000, John had made no attempts to obtain drivers for the trucks that were in the yard. In addition, Stearns testified that when John controlled the company, the number of trucks on the road was greatly reduced. We conclude that Melonnie's and Stearns' testimony supports the court's finding that when John controlled the company, he did not operate the trucks at full capacity.

¶18 Next, John claims that the court erred when it found that his activities caused a decline in the business' net worth of more than a quarter million dollars. He complains that Melonnie failed to submit comparative net worth statements or corporate tax returns. He argues that there was no evidence to

support the court's finding. We conclude there was sufficient evidence without comparative net worth statements or corporate tax returns. Melonnie testified to the effect that John's refusal to put trucks on the road and pay obligations in a timely manner caused a decrease in sales revenue and an increase in obligations, including $106,480.59 in interest and penalties. She testified that he used company money for personal charges. She stated that he was using company funds for personal items at a time when payments were not being made on the tractors and the trailers.

¶19 Melonnie also testified that before John took control of the company, the parties were offered a sum for their company that would have netted them each $185,000. This testimony was unchallenged. She further testified that after John's control of the company, its liabilities exceeded its assets and the most recent offer would have resulted in a net loss. The weight and credibility of the evidence is for the trial court to determine. WIS. STAT. § 805.17(2). The court's finding is not clearly erroneous.

¶20 John further argues that there was no evidence of a decrease in sales or that John caused the company fines or penalties. We disagree. Melonnie submitted Exhibit 7, showing significant decreases in sales. Also, Melonnie testified that John's failure to make payments when due cost the company $106,480.59 in interest and penalties. This testimony undercuts John's argument.

¶21 Next, John challenges the court's finding that he sold company assets and kept the money for himself, used company money for personal expenditures and diverted company income into his own pocket. His argument acknowledges that there is evidence that he issued checks directly to himself, took

a used computer for himself, traded a company truck in for a personal vehicle and sold a company truck for $1,400 and kept the money.

¶22 John argues, nonetheless, that Melonnie admitted on cross-examination that she also used company funds for personal reasons. For example, Melonnie agreed that she used company funds for some personal expenses, but she also testified that John had withheld a paycheck from her. John is essentially challenging the court's assessment of weight and credibility. The weight of the testimony and the inferences to be derived are uniquely a trial court function. We do not search the record for evidence to support findings the trial court did not but could have reached. ***In re Dejmal***, 95 Wis. 2d at 154.

¶23 Here, the court rejected the inference that John seeks to draw, that Melonnie's management of the company amounted to bad faith. The trial court instead believed Melonnie's dealings were in good faith and that the problems she encountered meeting company obligations were attributable to John's mismanagement. Its credibility assessments will not be overturned on appeal unless they are inherently or patently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts. *See* ***Chapman v. State***, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975). Because the record demonstrates support for the trial court's conclusion, we do not overturn its determination on appeal.

¶24 Next, John attacks Melonnie's testimony that he was in the office only until 2 or 3 o'clock when in fact he came in at 6 or 6:30 a.m. He argues that he worked a full eight-hour day, which is perfectly adequate, and that Melonnie did not come in until 9 a.m. What his argument neglects to mention is that Melonnie testified that she often worked until 8 or 9 p.m. due to her efforts with

the west coast drivers. Thus, her testimony permits the inference that she worked an eleven- or twelve-hour day. In any event, Melonnie's allegation was made in the context of her testimony that John wrongfully gave himself a raise when he was working minimum hours and the number of trucks on the road was greatly reduced.

¶25 The problem with John's argument is that it attempts to build factual inferences. This is not an appellate argument, but is one more appropriately addressed only to the trial court. *See* ***Siker***, 225 Wis. 2d at 527. When more than one reasonable inference can be drawn from the evidence, an appellate court is bound by the inference drawn by the trial court. ***Id.*** at 528. Consequently, John fails to demonstrate reversible error.

¶26 Next, John challenges the court's finding that he failed to pay numerous business expenses and loan obligations. Again, he concedes evidence in the record to support the finding, but claims, in effect, that "she did too." John points to Melonnie's cross-examination testimony that certain payments had not been timely made after Melonnie took control of the company. John neglects to acknowledge, however, that Melonnie explained that the decrease in sales while John controlled the company resulted in a cash flow shortage and that she was in the process of refinancing the entire company to resolve the problem.

¶27 Conflicts and inconsistencies in testimony are for the trial court, not the appellate court to resolve. Appellate court deference considers that the trial court has the superior opportunity to observe the demeanor of witnesses and gauge the persuasiveness of their testimony. ***In re Dejmal***, 95 Wis. 2d at 151-52. Because Melonnie's testimony supports the trial court's findings, they are not clearly erroneous.

¶28 We are satisfied that the record supports the trial court's deviation from a presumed equal division. It could validly consider each party's contribution to the marriage, WIS. STAT. § 767.255(3), and, more particularly, "each party's efforts to preserve marital assets …." ***Anstutz***, 112 Wis. 2d at 12. The court was entitled to conclude that after the parties separated, John, through neglect or intentional mismanagement, depleted the company's assets and, once Melonnie gained sole control, she worked to maintain them. Because the trial court's decision is grounded in an accurate application of the law to facts of record and reflects a rational basis, we conclude that it represents an appropriate discretionary exercise.

¶29 Nonetheless, John argues that WIS. STAT. § 767.255 prohibits the trial court from considering marital misconduct as a factor in property division.[2] John fails to demonstrate this argument was raised at the trial court. ***Terpstra v. Soiltest, Inc.***, 63 Wis. 2d 585, 593, 218 N.W.2d 129 (1974). In any event, in a nineteen-year-old case that John omits from his brief, we rejected a similar argument:

> The prohibition against considering marital misconduct does not prevent consideration of a party's depletion of the marital assets. Marital misconduct, ordinarily consisting of adultery or abandonment, was previously a factor that the court could consider in dividing the marital assets. Under the current statute, misconduct that caused the failure of the marriage is not a factor to be considered in dividing the marital estate. We conclude, however, that the court's authority to consider the contribution of each party to the marriage allows it to consider destruction or waste of the marital assets by either party.

[2] WISCONSIN STAT. § 767.255(3) provides that: "The court shall presume that all property … is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct "after consideration of appropriate factors.

Anstutz, 112 Wis. 2d at 13. Based upon the controlling precedent of ***Anstutz***, we reject John's argument.

3. Values of personal and real property

¶30 Next, John challenges certain findings with respect to the values of personal property. Because of discrepancies in the appraisals and certain exhibits, John complains that he was awarded only $10,035 for his personal property at the Mill Street address, instead of $11,255 as the judgment indicates. Also, he claims that Melonnie actually received $2,855 in personalty, instead of $985 as indicated in the judgment. He also contends that another exhibit charges John with $84,050 in personal property instead of the $80,150 that he was awarded. We are unpersuaded that John's allegations of error support reversal.

¶31 The time and place to challenge the accuracy of appraisals and exhibits is at the trial court, not the appellate court. John fails to disclose whether he brought these discrepancies to the trial court's attention. Absent a demonstrable objection at trial, his claim of error is not preserved for appeal. A party must raise an issue with some prominence to allow the court to address the issue and make a ruling. *See* ***State v. Salter***, 118 Wis. 2d 67, 79, 346 N.W.2d 318 (Ct. App. 1984). A party who appeals has the burden to establish "by reference to the record, that the issue was raised before the circuit court." ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). As a general rule, this court will not decide issues that have not first been raised in the trial court. ***Terpstra***, 63 Wis. 2d at 593.

¶32 This precept serves several important objectives. "Raising issues at the trial court level allows the trial court to correct or avoid the alleged error in the first place, eliminating the need for appeal." ***State v. Huebner***, 2000 WI 59, ¶12,

235 Wis. 2d 486, 611 N.W.2d 727. It also gives the parties and the circuit court notice of the issue and a fair opportunity to address the objection. ***Id.*** Finally, the rule prevents parties from "sandbagging" errors, or failing to object to an error for strategic reasons and later claiming that the error is grounds for reversal. ***Id.*** For all of these reasons, this rule is essential to the efficient and fair conduct of our adversary system of justice. ***Id.*** Consequently, we do not address John's claim of error.

¶33 John further contends "the court made findings as to the values of real estate, based on nothing in the record." However, his argument acknowledges that both Melonnie and a real estate appraiser testified from exhibits of appraisals of the real property. Melonnie testified at trial that Exhibit 4 contained the appraisals of the parties' real estate, described as "a mobile home and property in Minnesota, vacant land in Minnesota, vacant land in Suring, your shop and home, the Groninger Street property and the North Street property." She testified that at a hearing before the court commissioner, it was stipulated and ordered that the appraisals represented the values for those parcels of property.[3]

¶34 Also, with respect to the parties' real estate and personal property, Dennis Cronce, an appraiser, testified as to the values he assigned the parties' property. His testimony was summarized in the form of a lengthy exhibit, marked as Exhibit 1, that itemized values for the Sundberg's numerous items of personal

[3] Exhibit 4 contained the following items: The Soderburg Realty, in Mora, Minnesota, appraisals of property located at 2157 Eden Street at $35,000 to $37,000 and Lots 2 and 3 at $13,000 to $15,000; an offer to purchase property described at 830 East North Street, Suring, Wisconsin, for $24,000 as well as an appraisal of $29,000 for the same property; an appraisal by Rupiper Appraisal Services of Suring for property located at 529 East Groninger Street, Suring, for $34,000; and an appraisal of vacant land at Barkman Street in Suring for $20,000.

property contained in their homes, a rental unit, their garage, shed, and trucking office.

¶35 Cronce testified that the personal property at the home located on Lake Drive in Shawano equaled $12,890. He valued the parties' guns at $1,230. Other guns that he did not personally view, but were described to him, were valued at $2,050 based upon his past experience at auctions.[4] Cronce testified that $11,435 was the fair market value of the trucking office equipment. He further testified that the parties owned $145,230 in vehicles, tools and recreational items and timeshares.

¶36 However, John summarily asserts that the exhibits "were not received into evidence." John does not elaborate. He fails to point out that the exhibits were offered without objection. He ignores the clerk's notes that indicate the exhibits were received into evidence. He fails to show that the values assigned to the properties were not accurate. He ignores Melonnie's testimony that the parties stipulated to the values contained in the appraisals. He does not address the court's admonition that it wanted to make sure it "had all the exhibits."

¶37 Johns' argument, unadorned of any record or legal citation, is merely tossed up, apparently in hopes that this court will fashion it into an acceptable legal argument. This appellate strategy is not persuasive. A party must do more than simply toss an idea into the air with the hope that the court will arrange it into a viable legal theory. ***State v. Jackson***, 229 Wis. 2d 328, 336-37, 600 N.W.2d 39 (Ct. App. 1999).

[4] We reject John's challenge to Cronce's value of the guns as a challenge to the weight of the testimony. *See* WIS. STAT. § 805.17(2).

¶38 Our unassisted review of the record reveals that John's argument lacks merit. At trial, Melonnie's counsel stated: "Your Honor, at this point I'd offer—I don't know that I've gone beyond—I'll offer up to ten, and if I could have a minute to sort through these couple of things." The trial court responded: "Why don't we take a ten-minute break? That will give you time to look through your paperwork."

¶39 After the break, testimony resumed. Later, counsel stated: "I'd offer 11 through 16, Your Honor." The court stated: "Received." After testimony was concluded, the court stated, "[A]ll of the evidence is concluded. I just want to make sure that before we part company today that I have all of the exhibits. Yes. Now we would be ready for some closing argument." After argument, the court stated: "I want to make sure that I have all of the exhibits, so nobody leave until we're all finished."

¶40 Honed to its essential element, John's argument is that the judgment must be reversed because the court erred by relying on appraisals that were marked as an exhibit, referred to by a witness, and offered into evidence without objection, without formally saying "received." We reject this proposition. First, John fails to support his proposition with any legal citation. Such short-cut briefing not only makes the briefs exceedingly difficult to evaluate, but violates the spirit and letter of appellate procedural rules, *see* WIS. STAT. § 809.19(1)(e), and is of little, if any, assistance to the reviewing court. Indeed, we have repeatedly held that arguments unsupported by such citations are "inadequate" and justifiably may be ignored on appeal. ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980).

¶41 Second, it is apparent from the record that the court intended to and did receive the exhibits. The court stated twice that it wanted to make sure it had all the exhibits. This statement is tantamount to the court saying the word "received."[5] *See* ***State v. Echols***, 175 Wis. 2d 653, 672, 499 N.W.2d 631 (1993). There was no objection to the court's statement.

¶42 Here, Melonnie testified without objection that the parties stipulated to the values contained in the appraisals and counsel offered the exhibits without objection. Aditionally, the court stated that it wanted to make sure it had all the exhibits and the clerk's notes indicate that they were received. Thus, we are satisfied that the court's failure to say "received" is not reversible error.

¶43 Next, John continues with an argument similar to his preceding one, summarily arguing that there was no evidence of the fair market value of the trucking business. Melonnie testified that Exhibit 5 provided appraised values totaling $1,267,250 for the trucks and trailers owned by Sundberg Trucking.[6] She testified that her husband had no objection to those values and that the appraisers would be available to testify by telephone if John changed his mind. Melonnie also testified as to the debts of the business. Apparently, John believes that the exhibits supporting Melonnie's testimony should be disregarded because they

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[5] *See* WEBSTER'S THIRD NEW INT'L DICTIONARY, 1894 (Unabr. 1998), defining receive: "to take possession or delivery" or "to knowingly accept." In saying that the court wanted to make sure it had all the exhibits, the court essentially stated the equivalent of taking possession of all the exhibits. All the exhibits would include exhibit of the appraisals.

[6] Her testimony is supported by a 26-page exhibit containing a description of each tractor and trailer as well as photographs of many of them. The appraisals were provided by Peterbilt of Wisconsin and Trudell Trailers. The exhibit was offered without objection.

were not formally received. We summarily reject his contention for the same reason we rejected his previous argument.

¶44 John similarly contends that Melonnie submitted no financial statement or evidence of retirement accounts. We summarily reject his argument. For the reasons previously enumerated, we are satisfied that her financial statement and supporting testimony supports the judgment.

4. New trial in the interest of justice

¶45 John claims that "since the most important evidence is not in the record, a new trial is needed to fully try those issues and determine the value of the marital estate so that an equal property division can be achieved." It is unclear what evidence John would introduce at a new trial because he does not identify it. John does not demonstrate he objected to Melonnie's values or that the values are wrong.

¶46 When it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, an appellate court may reverse and order the entry of a proper judgment, or it may order a new trial. WIS. STAT. § 752.35. To establish a claim for a new trial based upon a miscarriage of justice, we must be convinced that there is a substantial probability that a new trial would produce a different result. ***State v. Cleveland***, 2000 WI App 42, ¶21, 237 Wis. 2d 558, 614 N.W.2d 543. Here, there is no showing that a new trial would produce a different result. Consequently, John is not entitled to a new trial based upon a miscarriage of justice.

¶47 To establish that the real controversy has not been tried, there is no requirement that the retrial would probably produce a different result. ***State v.***

Betterley, 191 Wis. 2d 406, 424-25, 529 N.W. 2d 216 (1995). Nonetheless, our power is exercised only in exceptional cases. *See **id.*** The appellant must be able to articulate a reason for a discretionary reversal. For example, we must be convinced that the fact finder was precluded from considering crucial evidence, or that the judge lacked impartiality, or that irrelevant evidence clouded the real issues. *See* ***Cleveland***, 2000 WI App 42 at ¶21. Here, the record fails to disclose that the real controversy has not been tried.

¶48 John begins his brief with the statement that he was not represented by an attorney and did not know where to start, how to respond, or how to question. With a lack of candor, however, John neglects to disclose that he was represented first by one, and then by a second, attorney during the course of the action but, for reasons unexplained, proceeded to trial without counsel. His lack of explanation undercuts his contention that the interest of justice calls for a new trial.

¶49 The structure of John's appellate arguments suggests anticipation that an overly burdened appellate court would not take the time to read through the record or independently research controlling precedent. Despite the misdirection, the record satisfies us that the court's findings have ample support and that its determination has a rational basis. We are not persuaded that the interest of justice calls for the exercise of our discretionary power of reversal.

By the Court.—Judgment affirmed.

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