

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 26, 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. 01-2427**  
**STATE OF WISCONSIN**

**Cir. Ct. No. 92-FA-301**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**PAMELA E. WAUTIER,**

**PETITIONER-APPELLANT,**

**V.**

**GALEN H. WAUTIER,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Marathon County:  
RAYMOND THUMS, Judge. *Affirmed.*

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

¶1 PER CURIAM. In this post-divorce proceeding, Pamela Wautier appeals an order determining that she is obligated to her former husband, Galen Wautier, for one-half of his debt to his employer. Under the terms of the divorce

judgment, the debt was deemed to be a marital obligation. The post-judgment order permits Galen to offset Pamela's share of the debt against his maintenance obligation.

¶2 Pamela argues that the trial court erroneously ruled on her discovery motion and denied her a review of the validity of her obligation under the divorce judgment. She also argues that the divorce judgment should be reformed based upon mutual mistake or bad faith. In addition, she contends that the trial court miscalculated a \$9,380.70 payment. Because the record supports the trial court's ruling, we affirm the order.

#### BACKGROUND

¶3 At the time of the parties' 1994 divorce, Galen was a partner in Hawkins, Ash, Baptie & Co. (HABCO), an accounting firm, against which an "MCS lawsuit" was pending.<sup>1</sup> Galen's financial disclosure statement recited that his partnership interest in HABCO was subject to the lawsuit and calculated exposure for the partners between \$1.6 and \$4.5 million.

¶4 Because little was known at the time how the lawsuit would ultimately be resolved, Galen and Pamela entered into the following stipulation:

The parties stipulate that any liability on the MCS lawsuit remains a marital obligation and that the court retains jurisdiction of the same. The parties specifically stipulate that each party will pay one-half of the proportional share of the net liability on any settlement, verdict or disposition associated with the partnership interest of Galen Wautier in Hawkins, Ash, Baptie & Company or its subsidiaries. ...

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<sup>1</sup> In their briefs, the parties do not define an "MCS" lawsuit.

In the event the Petitioner does not pay her half of the MCS obligation as provided for herein, an amount equal to the Petitioner's portion of the MCS obligation shall at the Respondent's option be a set-off against the family maintenance to be paid by the Respondent to the Petitioner herein after adjustment upward in consideration of the tax impact of family maintenance versus the payment of after tax dollars contemplated in the settlement of the parties' portion of the MCS obligation.

¶5 The parties stipulated that Pamela would receive maintenance in the sum of \$50,000 a year for six years, \$25,000 a year of the next three years and \$15,000 a year for the next nine years. The divorce judgment incorporated the parties' stipulation.

¶6 In 1997, Galen paid \$31,289 toward his portion of the firm's liability incurred as a result of the lawsuit.<sup>2</sup> Galen requested that Pamela pay a similar amount. When she declined, the parties stipulated that Pamela's obligation would bear interest at the same rate that Galen's obligation bore interest. Galen testified that because Pamela did not pay when requested, the only portion of the obligation that bore interest was her unpaid one-half.

¶7 In 1998, the Wisconsin Supreme Court issued its decision resolving the HABCO lawsuit. Pamela and Galen were unable to agree on the amount of Pamela's obligation pursuant to their divorce judgment. In 1999, Galen brought a motion stating that his obligation to HABCO had been determined and seeking payments from Pamela by way of an offset against his maintenance obligation. Pamela contested the amount due. Pending resolution of their dispute, the court

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<sup>2</sup> Although the lawsuit was still in the appellate courts at that time, HABCO began its process of collecting payment from its partners to create a fund to cover its liability.

permitted Galen to deduct a portion of his maintenance payments and place them in trust. At the time of the hearing, \$13,328 was in the trust account.

¶8 At the hearing on his motion in May 2001, Galen testified that Pamela's one-half share of his HABCO liability as of October 1, 2000, was \$47,922.30. Pamela offered a variety of defenses. She contended that because Galen was not a partner at the time of the lawsuit, he bore no personal liability for the debt. She asserted that because Galen had no personal liability, she owed nothing. She also claimed that the obligation was not a marital obligation, and because the court retained jurisdiction of the dispute, the judgment did not require Pamela to pay one-half. Pamela claimed that she had received four different sets of numbers regarding the amount owed and required discovery of documents from HABCO to determine the correct amount.

¶9 The court ruled that unless there was fraud, it would not retry property division but would only determine "what amount, if any, this man owes to his company and divide it in two and create an obligation for one half of ... whatever [Pamela] owes."

¶10 The managing partner for HABCO, Roy Campbell, testified regarding the basis for Galen's debt to the firm. Campbell explained that in 1986, HABCO was sued for using and copying software. After appeals, HABCO was found liable for approximately \$1.9 million in damages and \$1.3 million in interest.

¶11 Campbell testified that the partners ended up bearing those costs. HABCO raised approximately \$2 million from current and retired partners that was denominated as loans from the partners. HABCO borrowed another \$1.4

million from the bank. The partners' loans were reimbursed only to the extent that their loan amount exceeded their proportionate share of the liability.<sup>3</sup>

¶12 Campbell testified that each partner's share of the liability was calculated according to a formula based upon the equity ownership of each partner at the time of the acts from which HABCO's liability arose, ending in March 1991. The formula excluded some partners who came in as partners after the lawsuit was filed. The formula calculated Galen's obligation to be 5.1386% of HABCO's liability. Based upon HABCO's total liability of \$3.6 million, Galen's proportionate share amounted to \$82,022.

¶13 Campbell testified that Galen made a variety of payments on his obligation. In April 1997 Galen paid \$31,289. In June 2000 Galen made another payment of \$9,145. These payments represented only one-half of the obligation that he was requested to pay at that time. Campbell stated that if Galen had made the entire payment when requested, he would owe nothing at the present time. However, Campbell testified that as of September 10, 2000, there remained the sum of \$47,922 owing. Because the unpaid balance incurred interest, the amount owed increased over time. Galen further testified that in addition to paying his one-half of the debt, he also made seven payments of \$1,340. Campbell stated that if Galen did not pay the remainder of his obligation, it would be deducted from future draws.

¶14 The trial court, as noted, concluded that it would not retry property division or disturb the divorce judgment. It found that the debt represented "a

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<sup>3</sup> The trial court found accordingly: "[HABCO] only paid him the difference between what he owed as his allocation and the difference that he overpaid."

partnership obligation incurred by the partnership by some acts of members of that partnership for which the partnership was found to be responsible.” The court determined that HABCO apportioned liability among the partners and came up with a percentage of debt that Galen was required to pay, with interest. HABCO charged Galen interest because it was charged interest on the loan it incurred to finance its obligation. The court found that Galen agreed to pay the obligation because he thought it was in the best interests of his continuing job with the partnership. The court determined that despite suffering from leukemia, Galen managed to continue to pay his \$50,000 annual maintenance obligation as well as make payments on the firm’s lawsuit obligation. The court determined that there was no showing of fraud or any basis to question the validity or reasonableness of Galen’s obligation to his partnership. The court ruled that Galen’s debt to HABCO was a marital obligation within the meaning of the divorce judgment.

¶15 The court accepted as accurate Galen’s exhibit showing the calculations of his liability. The trial court determined that Pamela’s initial share of the obligation was \$47,922. However, after compensating Pamela for certain tax advantages Galen received by deducting his payments to the partnership and crediting Galen for additional payments he made on the obligation, the court found that the remaining sum due from Pamela to Galen was \$44,396. The court ordered that the \$13,328 held in trust be paid immediately to Galen. In addition, the court ordered that the remaining balance Pamela owed be offset against her maintenance over a six-year period.<sup>4</sup> Pamela appeals the order.

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<sup>4</sup> Galen explained that the first five years of maintenance was non-modifiable because it represented both support and property division payments. The offset was to begin in year eight.

## DISCUSSION

¶16 Pamela argues that the trial court erroneously denied her discovery demand. She claims that at Campbell's deposition, he refused to provide a number of relevant documents pertaining to HABCO's lawsuit and how it was handled within the firm. She contends that at a May 7, 2001, teleconference, the court erroneously denied her motion to compel discovery and refused to permit her to see the underlying documents that "support or refute" Galen's allegations concerning how his share of liability was determined. Pamela's argument is without merit.

¶17 Pamela's argument section of her brief lacks record citation in violation of WIS. STAT. RULE 809.19(1)(e). Inadequate compliance with rules of procedure hampers our ability to address the issues. Accordingly, we may reject Pamela's argument on this ground alone. See *Tam v. Luk*, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990).

¶18 Our review of the record fails to uncover an order denying Pamela's discovery motion or a transcript of the court's ruling. Also, the record does not contain a transcript of Campbell's deposition wherein he allegedly refused to produce documents. Additionally, Pamela's argument fails to identify even in a general way what documents she sought and what they might prove. WISCONSIN STAT. § 804.01(2)(a) is an expansive grant of pre-trial discovery. Anything that is "relevant to the subject matter involved in the pending action" is fair game even though what is sought to be discovered would not itself be admissible at trial if discovery "appears reasonably calculated to lead to the discovery of admissible evidence." WIS. STAT. RULE 804.01(2)(a).

¶19 Here, however, Pamela provides no suggestion what further discovery may reveal and her argument is entirely speculative in nature. She asserts no more than that some fact supporting or not supporting Galen’s motion might be divulged should she “conduct a ‘fishing expedition’ of unknown length and in unknown waters.” See *Just v. Land Reclamation, Ltd.*, 155 Wis. 2d 737, 772, 456 N.W.2d 570 (Ct. App. 1989). We conclude that Pamela fails to show that the court erroneously denied her discovery motion.

¶20 Next, Pamela argues that the trial court erroneously denied her review of the validity of her obligation as provided in the divorce judgment. She contends that the trial court erred by merely calculating the sum owing. She complains that the court should have reconsidered the provisions of the divorce judgment that determined that Galen was indebted to his firm and whether his obligation was a marital obligation. We disagree.

¶21 WISCONSIN STAT. § 767.32 provides for the revision of divorce judgments with respect to support and maintenance, but states that “the provisions of a judgment or order with respect to final division of property” shall not be subject to revision or modification. Parties may not confer jurisdiction upon the court by stipulation. WIS. STAT. § 801.04(1). As a result, the extent of the trial court’s jurisdiction was limited to enforcing the divorce judgment and modifying maintenance.<sup>5</sup> We conclude that the trial court properly exercised its jurisdiction not to alter, but to effect the property division contained in the judgment.

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<sup>5</sup> The court has authority to reserve jurisdiction to effect the property division under WIS. STAT. § 767.01(1):

(continued)



¶22 A judgment is to be construed as of the time of its entry. *Wright v. Wright*, 92 Wis. 2d 246, 255, 284 N.W.2d 894 (1979). Judgments are to be construed in the same manner as other written instruments. *Id.* A judgment that is clear on its face is not open to construction. *Id.* Because a judgment is to be construed like any other instrument, resort to the subjective intent of the court and parties is unnecessary. *Id.*

¶23 Because the judgment is unambiguous, the trial court correctly determined that the extent of its jurisdiction was to enforce it as written.<sup>6</sup> Because the trial court enforced it through making adjustments to maintenance, the court operated wholly within its power. Pamela's claim that, in effect, the court should have relitigated the property division, is without merit.

¶24 Finally, Pamela argues that the judgment should be "reformed" based upon mutual mistake or bad faith. Pamela's argument fails to take into account that WIS. STAT. § 806.07 provides that a motion for relief from judgment on the basis of mistake or misrepresentation must be made within one year after the judgment was entered. The court correctly rejected Pamela's argument as untimely.

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The circuit courts have jurisdiction of all actions affecting the family and have authority to do all acts and things necessary and proper in such actions and to carry their orders and judgments into execution as prescribed in this chapter. All actions affecting the family shall be commenced and conducted and the orders and judgments enforced according to these statutes in respect to actions in circuit court, as far as applicable, except as provided in this chapter.

<sup>6</sup> Pamela makes no assertion that the judgment is ambiguous.

¶25 Even if made timely, the court was entitled to reject her arguments on their merits. Pamela claimed that the representations Galen and Campbell made before the final divorce hearing were untrue. The trial court determined that Pamela misinterpreted Galen's and Campbell's testimony, not that either party had lied. Credibility assessments are for the trial court, not this court, to determine. WIS. STAT. § 805.17(2). Pamela's allegations fail to demonstrate reversible error.

¶26 Pamela further argues that the debt is not marital because Galen was not named as a party and therefore has no liability either personally or under partnership law for HABCO's liability in the MCS lawsuit. This argument ignores the court's finding that Galen had agreed to bear a portion of the liability as a condition of his employment in the partnership. Because the court's finding renders Pamela's contention irrelevant, we do not address it further.

¶27 Next, Pamela argues that the trial court miscalculated the amount owing. She claims that the trial court erred when it added \$9,380.70 to Pamela's obligation because that sum was counted twice. We disagree. Galen testified that he paid his half of the obligation in two installments of \$31,289 and \$9,145. In addition to paying his share of the debt, he also made seven monthly payments of \$1,340. The total of these seven monthly payments equal \$9,380.

¶28 The trial court correctly determined that Pamela should be responsible for payment of the \$9,380 that was above and beyond Galen's one-half share of the debt. In ordering it to be included in her obligation, the court counted it once. Pamela may be confusing Galen's second payment of \$9,145 with the seven monthly installment payments. Because she fails to show that the court erred, we do not disturb the court's ruling.

*By the Court.*—Order affirmed.

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

