

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 2005

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. 03-2418
STATE OF WISCONSIN**

Cir. Ct. No. 01FA001536

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE ANNULMENT OF:

RICHARD F. KRZTON, F/K/A RICHARD F. STRICKLAND,

PETITIONER-RESPONDENT,

V.

GLORIA D. STRICKLAND,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
KATHRYN W. FOSTER, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Gloria D. Strickland appeals from a judgment annulling her marriage to Richard F. Krzton. She challenges the property division

and the requirement that she contribute to Richard's attorney fees because of "overtrial." We affirm the judgment.

¶2 The parties were married on February 5, 1998. Richard then owned farm property in Mukwonago, Wisconsin, and a vacant lot and a condominium in Colorado. Gloria owned a home in West Bend, Wisconsin. In September 1999, Gloria sold her home. Shortly after the marriage, Richard ceased working and was not employed during the remainder of the marriage. Gloria's work as a private care nurse ended during the first year of the marriage, and she then worked as a real estate sales agent. In 2000, the parties campaigned to elect Gloria President of the United States and neither was otherwise employed during that time.

¶3 Richard filed for divorce on December 6, 2001. A temporary order of March 27, 2002, provided that Richard would collect rents and pay expenses on rental properties and pay one-half the net rental, less the cost of health insurance, to Gloria for living expenses. The payment was set at \$940 per month. In September 2002, Gloria, proceeding pro se, moved to change the action from one for divorce to one for annulment of the marriage. A stipulation and order entered on April 9, 2003, amended the action as a joint petition for annulment.

¶4 Gloria proceeded pro se at trial. The pretrial discussion indicated that the property division goal was restoration of property brought to the marriage and the real issue at trial was the cash equalization payment that would be due. Richard admitted that during the marriage proceeds from the sale of Gloria's home had been used to pay off a mortgage on his farm property in the approximate sum of \$85,000. Gloria claimed that she was owed \$550,000 for funds expended during the marriage, including maintenance and improvement of the farm and Colorado property, costs of the honeymoon, which Richard promised to pay,

payment of his credit card debt, compensation for English lessons she provided, car repairs, finder's fees for rental properties, unpaid medical expenses, travel, clothing, and grooming expenses.

¶5 The circuit court found that Richard owed Gloria \$84,387 for retiring the mortgage on the farm. It found that during the course of the marriage, Richard had made payments to Gloria used in furtherance of the marriage and their support. It rejected Gloria's claim that Richard was unjustly enriched by her efforts in improving the farm property and providing English instruction and personal grooming/haircuts. The court found that Gloria had expenses related to improvements at the farm and the Colorado condominium but that they were offset by payments from Richard and the \$12,185 Gloria received under the temporary order. The court found that because maintenance was not at issue, the payments under the temporary order should not have been ordered. It rejected Gloria's claim that she had substantial earned income during the marriage which was expended to support the parties. Finally, it found that Gloria's disorganized approach to presenting her claims and the late production of documents requested at earlier discovery depositions had needlessly prolonged the completion of the trial. Gloria was required to pay \$4,387 towards Richard's attorney fees. With that sum offset against what Richard owed Gloria for paying off the farm mortgage, the resulting judgment required Richard to pay Gloria \$80,000.

¶6 Gloria first argues that the circuit court failed to effectuate a fair and equitable property division since she only received a fraction of her premarital worth. "Under Wisconsin law, a judgment of annulment is treated like a judgment of divorce for maintenance and property division purposes." *Falk v. Falk*, 158 Wis. 2d 184, 189, 462 N.W.2d 547 (Ct. App. 1990) (citation omitted). We review the circuit court's property division for an erroneous exercise of discretion. The

determination will be sustained if the circuit court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *McLaren v. McLaren*, 2003 WI App 125, ¶8, 265 Wis. 2d 529, 665 N.W.2d 405.

¶7 The division of the marital estate is governed by WIS. STAT. § 767.255 (2003-04).¹ Two tenets normally constitute the starting point of property division: the marital estate includes all of the property and obligations of either party which were acquired before or during the marriage unless acquired by gift, bequest, devise, or inheritance, § 767.255(2); and there is a presumption that all property is to be divided equally between the parties. *See Mack v. Mack*, 108 Wis. 2d 604, 607, 323 N.W.2d 153 (Ct. App. 1982). Here, however, when the action was amended to one for annulment, the parties agreed that the goal would be to restore them to their premarital status. Although Gloria now suggests that she did not intend to trade her marital property rights or her right to maintenance for an annulment instead of divorce, and that she did not authorize her attorney to do so, she never objected at trial to the circuit court's description of the issue at trial or recitation that the parties agreed that the property division goal was restoration to premarital status. At trial, Gloria only sought compensation for the money she expended during the marriage. That became the basis on which the

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

whole case was tried.² Gloria waived the right to argue on appeal that the marital estate should include all property brought to the marriage and be equally divided.³ *See First Interstate Bank v. Heritage Bank & Trust*, 166 Wis. 2d 948, 954, 480 N.W.2d 555 (Ct. App. 1992) (“When a party fails to object to a circuit court’s characterization of the underlying facts, that party has waived the right to argue the issue on appeal.”).

¶8 Gloria’s real claim is that the circuit court failed to adequately reimburse her for money she expended during the marriage. We begin with the proposition noted by the circuit court—not every expense during the marriage can be accounted for and divided equally between the parties. Marriage, even in the face of annulment, remains a partnership in which joint efforts, monetary or otherwise, mix to support marital activities. Expenses for vacations, personal grooming, clothing and the simple benefits of combined living are by-products of marriage and cannot be recouped. There can be no recompense “for housekeeping or other services unless the services are linked to an accumulation of wealth or

² Gloria contends that Richard’s failure to produce an appraisal of the farm property is not moot and that merely changing the action from one of divorce to annulment did not eliminate the need for an appraisal of the property. Because Gloria sought compensation for actual sums expended on the property, the value of the property was not relevant. The failure to obtain an appraisal of the farm property was harmless. WIS. STAT. § 805.18(2) (no judgment shall be reversed or set aside or a new trial granted “unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party”).

³ One argument section of the appellant’s brief initially asserts: “‘Full play’ was not given to the dual objective of maintenance in the case of annulment so as to result in support and maintenance for Strickland” The argument section following that assertion does not address maintenance. Maintenance was not requested, the issue was not tried, and it is waived. *See Evjen v. Evjen*, 171 Wis. 2d 677, 688, 492 N.W.2d 361 (Ct. App. 1992) (it is the party’s responsibility to direct the family court’s attention to issues that are being submitted for determination). We do not address Gloria’s undeveloped claim regarding maintenance.

assets during the relationship.” *Waage v. Borer*, 188 Wis. 2d 324, 330, 525 N.W.2d 96 (Ct. App. 1994).

¶9 The circuit court found that Gloria had not met her burden of proof on her claim that she expended enormous sums of money during the marriage. With respect to the increased value of Richard’s properties, the circuit court found that Gloria had spent money on the farm and Colorado properties, just not to the extent that she claimed. The court further found that Gloria had been compensated by payments Richard made to her during the marriage and under the temporary order. The court’s factual findings are not clearly erroneous and are based, in part, on the court’s credibility determination, to which we defer.⁴ *Jacquart v. Jacquart*, 183 Wis. 2d 372, 386, 515 N.W.2d 539 (Ct. App. 1994). Thus, there was no uncompensated retained benefit which permits Gloria to recover under an unjust enrichment theory. *See Watts v. Watts*, 137 Wis. 2d 506, 531, 405 N.W.2d 303 (1987) (unjust enrichment requires proof that the benefit was retained under circumstances making it inequitable to retain the benefit).

¶10 In arguing the equities of the situation, Gloria enumerates the misconduct she believes Richard to be guilty of. Her list includes Richard’s “bad faith” in not disclosing bank accounts during the marriage, his secret purchase of property in Poland while she was gravely ill in the United States, his concealment

⁴ The circuit court specifically found Gloria’s testimony that she has expertise as a translator, English teacher, hairdresser/barber, manicurist, real estate broker, leasing agent, tile layer, decorator, presidential candidate, and Christian Science nurse to be incredible. It rejected her claim that through her personal efforts she single-handedly increased the value of Richard’s properties.

of adulterous relationships, and his renegotiation of leases on rental properties.⁵ She argues that misconduct should have been considered in making a property division. It is sufficient to say that marital misconduct is not a factor in property division. *See Dixon v. Dixon*, 107 Wis. 2d 492, 501, 319 N.W.2d 846 (1982) (fault is not relevant in deciding the financial settlement between the parties); WIS. STAT. § 767.255(3) (court may divide the property “without regard to marital misconduct”).

¶11 Finally, Gloria challenges the contribution to Richard’s attorney fees. She fails to discuss the appropriate standard of review and applicable law with respect to the contribution. This court need not consider an argument unsupported by citations to legal authority. *State v. State ex rel. Campbell*, 156 Wis. 2d 329, 334, 456 N.W.2d 870 (Ct. App. 1990). Despite Gloria’s inadequate briefing of the issue, we consider whether the contribution because of “overtrial” was a proper exercise of the circuit court’s discretion. *See Johnson v. Johnson*, 199 Wis. 2d 367, 377, 545 N.W.2d 239 (Ct. App. 1996). The court found that Gloria’s presentation of her case was unnecessarily long and that her attempt to recover the value of certain services or expenses was without a justifiable basis. It determined that a reasonable hourly attorney fee was \$165 and awarded fees for three days of trial. The court was not required to make findings on need and ability to pay to support the contribution for “overtrial.” *Id.* We conclude the contribution was a proper exercise of discretion.

⁵ The statement of facts in the appellant’s brief discusses at length Gloria’s belief that on the marriage license application Richard misrepresented that he had not been married before when in fact he had a common law wife by virtue of years of cohabitation in Colorado. Whether or not their marriage was premised on fraud is of no consequence to the decision we review here.

¶12 Pursuant to WIS. STAT. RULE 809.25(3), Richard moves for an award of costs and attorney fees in responding to a frivolous appeal. Although we agree that Gloria's pro se brief is not well written and we have rejected her claims on appeal, we cannot conclude that the appeal is entirely frivolous. Gloria challenged a discretionary determination and presented sufficient argument to cause this court to review the record for a proper exercise of discretion. All doubts about whether an appeal is frivolous must be resolved in favor of the appellant. *See Rabideau v. City of Racine*, 2001 WI 57, ¶46, 243 Wis. 2d 486, 627 N.W.2d 795. We decline to declare the appeal frivolous.

By the Court.—Judgment affirmed.

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

