

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 18, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**Nos. 95-0527
95-1966
95-3418**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

95-0527

In Re the Marriage Of:

**Margaret J. Schwartz, n/k/a
Margaret J. Kozlowicz,**

Petitioner-Respondent,

v.

Jeffrey D. Schwartz,

Respondent-Appellant.

95-1966

In Re the Marriage Of:

**Margaret Jane Kozlowicz, f/k/a
Margaret Jane Schwartz,**

Petitioner-Respondent,

v.

Jeffrey David Schwartz,

Respondent-Appellant.

95-3418

**Margaret Jane Kozlowicz, f/k/a
Margaret Jane Schwartz,**

Petitioner-Respondent,

v.

Jeffrey David Schwartz,

Respondent-Appellant.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: FRANCIS T. WASIELEWSKI and DOMINIC S. AMATO, Judges. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Jeffrey D. Schwartz appeals from the judgment of divorce and post-judgment orders. He brings numerous challenges to the trial court's factual findings and to several of the trial court's post-judgment determinations. We affirm.

On October 5, 1994, following a two-day bench trial, the trial court granted a judgment of divorce to Jeffrey and Margaret Schwartz. The trial court concluded, among other things, that Jeffrey had a gross imputed monthly income of \$4,116.00, which included the \$50,000 value of stock in his father's company where Jeffrey was employed. Jeffrey objected to Margaret's proposed findings of fact and conclusions of law, and requested that the trial court make specific factual findings. The trial court denied Jeffrey's request and, instead, ordered that its oral decision be incorporated in the judgment in lieu of a

separate statement of specific findings. Jeffrey moved for reconsideration. The trial court granted Jeffrey's requests relating to a saving account and an IRA account, but denied his other requests for reconsideration.

In granting the judgment of divorce, the trial court stated, among other things:

I am going to give [Margaret] an opportunity until May 1, 1995, to seek to obtain financing to buy out the interest of Jeffrey. If she is able to do that, then the house is hers and Jeffrey will be required to sign over the necessary deed upon receipt of a check buying out the value of his interest in the house. She will be then solely responsible for the payment of the mortgage; [t]he house will be in her name. Failing that, the house will be placed on the market and sold.

Margaret, in reaction to what she viewed as Jeffrey's interference with her efforts to obtain financing, brought a motion to enforce the divorce judgment. After taking additional testimony, the trial court concluded that Jeffrey had interfered and, therefore, divested Jeffrey of his interest in the homestead and awarded the entire interest to Margaret.

Subsequently, because Jeffrey refused to execute a quit claim deed and other documents affecting ownership of the home, Margaret brought an action to enforce the judgment. The trial court found Jeffrey in contempt and ordered him jailed until he would sign the quit claim deed and other documents relating to the home. Jeffrey then signed the necessary papers but did so inserting, "This release is given as a purge of a contempt ordering incarceration of the undersigned...." Thus, in yet another action to enforce the judgment, the trial court again found Jeffrey in contempt "for not making a good faith compliance with the court's purge order." The trial court ordered Jeffrey jailed "until he signs a Quit Claim Deed and release of lis pendens approved by this court as a purge of his contempt." Ultimately, Jeffrey did so and was released.

These consolidated appeals encompass challenges to several sets of orders and judgments: (1) the findings of fact, conclusions of law, and judgment of divorce; (2) the post-judgment order denying Jeffrey's motion for specific factual findings; (3) a portion of the trial court order denying certain requests in Jeffrey's motion for reconsideration; (4) the post-judgment order awarding the homestead to Margaret; and (5) the two contempt orders.¹

Jeffrey challenges the factual findings and legal conclusions with respect to (1) the ownership and value of stock he received from his father; (2) the gift status of the stock; (3) the marital debt and its impact on the computation of the marital estate in three respects: the debt against the corporate stock, \$12,000 in overdrafts of his salesman's salary against commissions, and a \$2,489 VISA debt; (4) the award of \$10,000 attorney's fees; and (5) the child support and maintenance computations based on the alleged erroneous findings regarding the stock value and marital debt.

We will uphold a trial court's factual findings, including its valuation of a marital estate, unless they are clearly erroneous. Section 805.17(2), STATS.; *Liddle v. Liddle*, 140 Wis.2d 132, 136, 410 N.W.2d 196, 198 (Ct. App. 1987). "A property division rests with the sound discretion of the trial court." *Friebel v. Friebel*, 181 Wis.2d 285, 293, 510 N.W.2d 767, 770 (Ct. App. 1993). Most of Jeffrey's arguments quickly collapse because his contentions regarding the stock ownership and value are undermined by his fraudulent conduct and lack of credibility.

Jeffrey maintains that the stock was not worth \$50,000 and, in any event, should not have been included in the marital estate because it was gifted property from his father. The evidence established, however, that Jeffrey deposited \$20,000 from his father in a joint account with Margaret from which she paid \$10,000 to purchase the stock. The trial court rejected Jeffrey's version, "disregarding his testimony at trial inasmuch as it conflicts with his earlier [deposition] testimony." Additionally, Margaret's expert witness, CPA David Franklin, testified that the stock's actual value, at the time of divestiture, was \$50,000. The trial court accepted Franklin's valuation. Thus, the trial court's

¹ The first four judgment/orders were entered by Judge Francis T. Wasielewski; the contempt orders were entered by Judge Dominic S. Amato.

factual findings were not clearly erroneous; they supported the inclusion of the \$50,000 stock value in the marital estate.

Moreover, the trial court found that Jeffrey and his father had colluded to conceal Jeffrey's assets and defraud the court by back-dating a document to make it appear that Jeffrey had rescinded his acquisition of the stock more than one year prior to the divorce action. As Margaret argues:

After the commencement of the divorce action the appellant and his father colluded and lied in back-dating a document in an effort to substantially reduce the divisible marital estate and thus perpetrate a fraud upon the court.

Father and son did not just back-date the document to before the filing of the divorce, they back-dated the document just more than "one year prior to the filing of the petition" so as to avoid the recovery statute [§ 767.275, STATS.], a statute applicable only in family law cases and seldom used by even family law practitioners.

Who would think that two salesmen from Sheboygan would be that clever?

They were caught.

Not easily ... but inescapably.

In the process they forfeited their credibility before the trial court.

Indeed, the trial court even commented that, had this case been tried before a jury, "the jury would be entitled to an instruction that the Court may disregard all of [Jeffrey's] other testimony except insofar as it's corroborated by other evidence in this record." The trial court's assessment of Jeffrey's credibility was amply supported by the evidence. Accordingly, we

appreciate that the trial court viewed Jeffrey's allegations through an appropriately-skeptical lens and resolved virtually every factual dispute against him.

Many of Jeffrey's challenges relate to the trial court's imputation of income based on his earning history. Although Jeffrey offers what otherwise might have been plausible explanations for his reduced income at the time of the divorce, the trial court reasonably concluded that Jeffrey had been shirking. Given Jeffrey's collusion with his father, and given that Jeffrey's income came primarily from his commissions and sales in his father's business, it was reasonable for the trial court to conclude that Jeffrey had been manipulating his income in an attempt to reduce his financial liability at the point of divorce.

Arguing that the trial court's "failure ... to make specific findings of fact require[s] the reversal and remand of the judgment and all subsequent orders predicated upon it," Jeffrey challenges the trial court's denial of his motion for specific factual findings. He contends that "the trial court is silent in its judgment as to [his] requests ... for rulings as to gift aspects of stock payments, whether the stock was ever paid for in the first place, and the validity of the outstanding promissory note for his purchase." Although the trial court decision does not go into detail in all respects, and although the trial court acknowledged that in some instances it was uncertain how one would "separate the wheat from the chaff ... to only include those portions [of the oral decision] which are in the nature of actual findings or orders," we conclude that the trial court's pronouncements and order are adequate.

A trial court may satisfy the requirement for a statement of findings and conclusions through an oral decision that, in this case, filled thirty-nine transcribed pages and was incorporated in the written order and judgment. *See* § 805.17(2), STATS.² Here, the trial court articulated numerous specific findings including many related to the stock, its value, Jeffrey's collusion with his father, Jeffrey's financial arrangements with his parents, and

² Section 805.17(2), STATS., states, in part: "The court shall either file its findings and conclusions prior to or concurrent with rendering judgment, state them orally on the record following the close of evidence or set them forth in an opinion or memorandum of decision filed by the court."

Jeffrey's shirking. Jeffrey's desire for the trial court to provide added specificity regarding the stock and promissory note again collide with the trial court's reasonable determination that Jeffrey and his father attempted to manipulate Jeffrey's income and perpetrate a fraud with respect to the stock. The trial court did not need to ascertain every detail of their scheme or delineate its exact terms in order to determine its overall character. Further factual findings were unnecessary.³

Jeffrey also challenges the trial court's order denying his motion for reconsideration. He has failed, however, to separately brief this issue, apparently relying on his arguments addressing the trial court's primary decision. Accordingly, having addressed Jeffrey's challenges to that decision, we need not further consider his assertion regarding the trial court's denial of his motion for reconsideration. Similarly, aside from mentioning the trial court's determinations regarding the \$12,000 draw against commissions and the \$2,489.80 VISA debt, Jeffrey fails to elaborate his challenges to the trial court's rulings on these subjects. We will not develop Jeffrey's arguments for him. *See Barakat v. DHSS*, 191 Wis.2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (appellate court need not consider "amorphous and insufficiently developed" arguments).

Jeffrey next argues that "[t]he trial court abused its discretion in awarding Margaret \$10,000.00 in attorney fees." He maintains that the trial court improperly awarded attorney fees generated by related litigation in Sheboygan County. The record belies his claim. The trial court referred specifically to pretrial proceedings in the Milwaukee County case and concluded:

The bottom line is that the Court hearings and court time was [sic] necessitated in order to make determinations. Orders were made and there was far more litigation here than was necessary in order to get this case in the posture it is. This court is satisfied that much of

³ Section 805.17(2), STATS., also provides, in part: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

that—or a substantial part of the overlitigation was caused by positions taken by [Jeffrey] here. Under those circumstances it's the view of the Court that a contribution for attorney's fees is appropriate.

In a divorce action, “[t]he award of contribution to attorney fees rests within the discretion of the trial court and will not be altered on appeal unless an [erroneous exercise] of discretion is shown.” *Ondrasek v. Ondrasek*, 126 Wis.2d 469, 483, 377 N.W.2d 190, 196 (Ct. App. 1985). Although ordinarily each party would pay his or her own attorney fees, a party's “overtrial” of the matter provides a proper basis for a trial court to order one party to pay attorney's fees of the other. *Id.* We are satisfied that the trial court exercised reasonable discretion in ordering Jeffrey's contribution for Margaret's attorney fees in this case.

Jeffrey argues that “the trial court erroneously exercise[d] its discretion in setting child support and maintenance.” His arguments, however, are premised on his challenges to the trial court's determinations of his imputed income and the marital estate. Having rejected his challenges, we need not further address his arguments on child support and maintenance. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

Jeffrey also argues that the “trial court abuse[d] its discretion and violate[d] [his] rights to procedural and substantive due process by its prejudgment taking of his property interest in the homestead prior to ruling upon the merits of his defenses.” He contends that the trial court, by awarding the home to Margaret, improperly modified the divorce judgment. Margaret responds that “the trial court made a point of distinguishing between Jeffrey's claim that it was changing a property division versus issuing of orders for the enforcement of the original judgment.” Margaret is correct.

Section 767.01(1), STATS., states that circuit courts “have authority to do all acts and things necessary and proper in such actions and to carry their orders and judgments into execution.” Because Jeffrey had failed to comply with its earlier directions, the trial court reasonably acted in furtherance of its orders by awarding Margaret ownership of the homestead.

With respect to the contempt orders, Jeffrey asserts: (1) the trial court had no basis on which to find him in contempt because neither the divorce judgment nor the subsequent order awarding the home to Margaret required him to sign a quit claim deed or any other document related to the home; (2) the trial court had no authority to even consider contempt given that he had already filed an appeal challenging the divorce judgment and the subsequent order; (3) the “order divesting him of any interest in the homestead is in excess of [the trial court's] jurisdiction and violates [his] constitutional rights ... because a party cannot be adjudged guilty of contempt for disobeying an order ... which the court had no power or jurisdiction to make;” and (4) the contempt orders were improper because they “provided for indefinite incarceration ... until the documents were signed,” contrary to the six month limitation under § 785.04(1)(b), STATS. He asks that both contempt orders be vacated and dismissed.

We reject Jeffrey's argument. Section 767.305, STATS., provides a trial court with enforcement and contempt authority to assure compliance with orders to satisfy a variety of “financial obligation[s],” including those relating to property division under § 767.255, STATS. Further, § 808.075(4)(d)10., STATS., provides that “the circuit court may act ... despite the pendency of an appeal.” Thus, the trial court's exercise of enforcement and contempt authority was proper.⁴

Therefore, to summarize, we conclude (1) the factual findings and divorce judgment were supported by the evidence; (2) the factual findings were sufficiently specific; (3) the challenges to the denial of the motion for reconsideration, the draw against commissions, and the VISA debt were inadequately briefed; (4) the subsequent order awarding the home to Margaret was a proper order in furtherance of the original judgment; and (5) the contempt orders entered during the pendency of this appeal were appropriate and necessary to enforce the judgment and orders.⁵

⁴ We need not address Jeffrey's assertion regarding the potential indefinite length of the contempt incarceration. Upon purging the contempt he was released, long before six months had passed. Thus, the issue is moot.

⁵ Margaret also “requests an opportunity to move this court, or upon remand, to move the trial

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By the Court. – Judgment and orders affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

(..continued)

court for an order directing compensation for the more than \$10,000 in fees incurred in post-judgment proceedings.” She has not, however, offered any argument to support her request or filed any motion pursuant to § 767.39, STATS. Accordingly, we do not address her request.