

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 8, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-1209

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

HERBERT MORRIS SCHABO,

PETITIONER-APPELLANT,

v.

ARLENE MARIE SCHABO,

RESPONDENT-RESPONDENT.

APPEAL from judgment of the circuit court for Waupaca County:
PHILIP M. KIRK, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Roggensack, JJ.

PER CURIAM. Herbert Schabo appeals from a judgment divorcing him from Arlene Schabo. The issues relate to maintenance and property division. We affirm.

Herbert argues that the circuit court erroneously exercised its discretion by ordering him to pay Arlene monthly maintenance of \$1,500. He argues first that the court erred by not making a finding as to his income. Arlene does not dispute that no such finding was made, and we have not located a specific finding in the record; however, the circuit court's decision made it clear that Herbert, a dealer in hay and equipment, did not keep accurate records or respond to Arlene's attempts to obtain information that would allow an accurate estimate of his income. The court concluded that by operating this way, Herbert "forfeits" the right to present objective evidence about his business. The court further stated that it did not believe Herbert's testimony about how he reports his income, and that the figures advanced by Arlene were "much more reasonable," although it did not make a finding of a specific figure. Herbert does not dispute the court's view of the evidence or otherwise argue that the court erred by rejecting the income figures he offered. Therefore, we conclude that this was a sufficient basis from which to determine maintenance. Under these circumstances, any specific finding would only be an estimate.

Herbert next argues that the circuit court did not expressly consider the maintenance factors provided in § 767.26, STATS. However, the circuit court is obligated to consider only relevant statutory factors; it need not address every factor. *See Parrett v. Parrett*, 146 Wis.2d 830, 838, 432 N.W.2d 664, 667 (Ct. App. 1988). While Herbert notes several factors that would be in his favor for awarding maintenance, we are satisfied that the circuit court adequately considered the circumstances of the parties and arrived at a reasonable conclusion.

Herbert argues that the circuit court violated a rule against double-counting by including his hay as an asset that was subject to property division, even though he must now sell it to generate income to pay maintenance. In a

discussion of the history of this rule, the supreme court has stated that the rule is not inflexible, which would be contrary to the equitable nature of these determinations, but rather serves to warn against unfairness. *See Cook v. Cook*, 208 Wis.2d 166, 180, 560 N.W.2d 246, 252 (1997). Herbert cites no case with facts similar to the present ones in which a violation of the rule was found to exist. The hay was an asset purchased for the purpose of generating income. Arlene received a portion of its value through the property division, and will receive, through maintenance, a portion of the income generated by it. We see nothing unfair about this result.

Herbert argues that the court erred by ordering him to contribute \$5,000 to Arlene's attorney fees. He argues that this was error because the court failed to make a sufficient finding as to his income, an argument we rejected above. He also argues that the record does not support the circuit court's conclusion. However, we are satisfied that the award was appropriate under *Lellman v. Mott*, 204 Wis.2d 166, 175-76, 554 N.W.2d 525, 529 (Ct. App. 1996), in which we allowed the award of attorney fees against a party who had not fully cooperated in disclosure of his financial information. The circuit court found that Herbert did not cooperate in revealing his financial information, and he does not argue otherwise.

Finally, Herbert makes several arguments about property in Hortonville. The property consists of a house on a one-acre lot, with additional farmland of approximately twenty-five acres. The circuit court included the property in the marital estate. It valued the house and lot at \$120,000 and awarded it to Herbert, and it valued the farmland at \$140,000 and divided it evenly between the parties.

Herbert argues that the court erred by valuing the combined property at \$260,000. The evidence cited by the parties is sparse. Arlene testified that she believed the entire property was worth \$260,000, that it is “prime development land,” and that water and sewer services are being laid there “right now.” Herbert disagreed that it was prime development land, although he did not say why. He testified that the property had been appraised at \$117,000, apparently when he bought it from his father’s estate in the mid-nineties. He also cites a 1997 real estate tax bill on 26.4 acres in Hortonville that shows an assessed value of \$78,100. Based on this record, we conclude it was not clearly erroneous for the circuit court to accept Arlene’s estimate of the value as more accurate.

Herbert also argues that the court erred by accepting Arlene’s valuation of the house and lot, when separated from the farmland, at \$120,000. Arlene argues that the valuation is supported by certain real estate tax bills attached to her financial disclosure statement. Our review of that exhibit finds what appear to be eleven 1995 tax bills. Several of them are unreadable, none of them are clearly identifiable as relating specifically to the house and one-acre lot, and none of them have an estimated fair market value above approximately \$88,000. In the absence of further explanation, they provide no support. Arlene also argues that the valuation is supported by her testimony that the combined value of the property is \$260,000. However, she gave no testimony as to how that value should be apportioned among the parts. Herbert testified that the entire property was appraised for \$117,000, but he cites no testimony as to the value of the house and lot separately.

On this record, there is no evidence of the separate value of the house and lot. So far as we can tell, the circuit court was left to its own devices to determine their separate value, regardless of which party’s valuation of the entire

property it accepted. Once the court accepted Arlene's valuation of the entire property, it was not clearly erroneous on this record to apportion a value of \$120,000 to the house and lot.

Finally, Herbert argues that the court erred by separating the farmland from the house and lot. He argues that this property was his boyhood home, and the court gave no reason for dividing the property. The reason for the division appears to be to give Arlene an equal opportunity to hold property that will increase in value with approaching development. This is a reasonable division.

By the Court.—Judgment affirmed.

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

