

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 11, 2000

Cornelia G. Clark  
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-0093**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN RE THE MARRIAGE OF:**

**DONNA WRIGHT-BAUER, N/K/A DONNA M. WRIGHT,**

**PETITIONER-APPELLANT,**

**v.**

**LAUREN A. BAUER,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MICHAEL P. SULLIVAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Donna Wright-Bauer n/k/a Donna M. Wright appeals from an order converting a judgment of legal separation from her husband, Lauren A. Bauer, into a judgment of divorce, and ordering Wright to pay a money

judgment and a portion of Bauer's attorney fees as a sanction for her violation of the judgment of legal separation. Wright argues that the trial court erred in: (1) finding her in contempt of the judgment of legal separation; (2) ordering her to pay a portion of Bauer's attorney fees; (3) allegedly failing to find Bauer in contempt; and (4) denying her request for maintenance. We affirm.<sup>1</sup>

## BACKGROUND

¶2 Wright and Bauer married on September 29, 1990. On September 6, 1996, Wright filed a petition for divorce, which she later amended to a petition for legal separation. After hearings on October 7 and 8, 1997, the trial court granted a judgment of legal separation.<sup>2</sup>

¶3 The trial court found, among other things, that the parties' mobile home, which was located in Arizona, had been purchased with marital funds and was thus a marital asset subject to division. The trial court also found that the mobile home had a fair market value of \$65,000. The judgment of legal separation provided that the mobile home and its contents were to be sold and the

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<sup>1</sup> Within these main arguments, Wright raises various other issues. We do not address those issues that lack sufficient merit to warrant individual attention. See *Libertarian Party v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424, 430 (1996) (appellate court need not address issues that "lack sufficient merit to warrant individual attention"); *State v. Waste Management, Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147, 151 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

<sup>2</sup> WISCONSIN STAT. § 767.09(1) (1997-98) provides:

When a party requests a legal separation rather than a decree of divorce, the court shall grant the decree in that form unless the other party requests a divorce, in which case the court shall hear and determine which decree shall be granted. A decree of separation shall provide that in case of a reconciliation at any time thereafter, the parties may apply for a revocation of the judgment. Upon such application the court shall make such orders as may be just and reasonable.

net proceeds were to be divided equally between the parties. The judgment further provided that Bauer would be permitted to live in the mobile home until it was sold, and that he was to pay to Wright maintenance of \$225 per month until the mobile home was sold, at which time maintenance would terminate. The trial court ordered Bauer to vacate the mobile home on June 1, 1998, if it was not sold by then.

¶4 On October 26, 1998, Bauer filed a motion to convert the judgment of legal separation into a judgment of divorce.<sup>3</sup> Bauer also filed a motion to hold Wright in contempt for violating the terms of the judgment of legal separation, and to order Wright to pay the attorney fees that Bauer incurred in pursuing the motion. In support of the motion, Bauer, by counsel, filed an affidavit averring that, in April of 1998, Wright had sold the mobile home to her friend for \$58,000; that Wright received \$29,000 from the sale, but Bauer had not and, pursuant to the terms of the sale, would not receive his share of the proceeds unless he met several of Wright's conditions; and that Wright had moved into the mobile home with her friend in October of 1998. Bauer's motion also requested reimbursement from Wright for a \$3,000 overpayment of maintenance.<sup>4</sup>

¶5 On November 2, 1998, Wright also filed a motion to convert the judgment of legal separation into a judgment of divorce. On November 13, 1998, she filed a motion to hold Bauer in contempt for allegedly refusing to cooperate in the sale of the mobile home. In her affidavit in support of the motion, Wright

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<sup>3</sup> WISCONSIN STAT. § 767.09(2) (1997-98) provides: "By stipulation of both parties, or upon motion of either party not earlier than one year after entry of a decree of legal separation, the court shall convert the decree to a decree of divorce."

<sup>4</sup> The excess maintenance payments were erroneously paid to Wright under an assignment of income that had been in effect prior to the judgment of legal separation.

admitted that she had sold the mobile home for \$58,000; that she had received the full \$58,000, but that she had not given Bauer his share of the proceeds because he had not met the terms and conditions recited in the contract of sale; and that she was living in the mobile home with the person to whom she had sold it. Wright's motion also asked the court to continue the order for maintenance.

¶6 After a hearing on November 16, 1998, the trial court converted the judgment of legal separation into a judgment of divorce and held both Wright and Bauer in contempt of the earlier judgment of legal separation. The trial court found that Wright had violated the order to sell the mobile home and divide the profits equally because she did not sell the property in an arm's length transaction, but instead sold it to her friend for less than its fair market value, and she failed to give Bauer his share of the proceeds. The trial court, therefore, ordered Wright to pay Bauer one-half of the fair market value of the mobile home as a remedial sanction. The trial court also ordered Wright to pay a portion of the attorney fees that Bauer incurred in pursuing the contempt motion.

¶7 The trial court also found that Bauer had violated the order to sell the contents of the mobile home and divide the profits equally because Bauer had sold all of the contents for only \$800, and retained all of the proceeds from the sale. As a remedial sanction for this contempt, the trial court refused Bauer's motion to recover his overpayment of maintenance.

## DISCUSSION

A. The trial court did not erroneously exercise its discretion in finding Wright in contempt.

¶8 Wright asserts that the trial court erred in finding her in contempt for violating the terms of the judgment of legal separation. In support of this

argument, she maintains that the trial court erred in concluding: (1) that the mobile home was marital property rather than Wright's individual property; and (2) that Wright did not sell the mobile home in an arm's length transaction, but sold it to a friend at a cost below its fair market value.

¶9 “[A]ll courts in this state have an inherent power to hold in contempt anyone who disobeys a lawful order.” *Larsen v. Larsen*, 159 Wis. 2d 672, 676, 465 N.W.2d 225, 227 (Ct. App. 1990). “This power exists as a necessary incident to the exercise of judicial power and is reasonably to be implied from the grant of such power.” *Id.* (internal quotation marks and quoted source omitted).

¶10 A trial court's use of its contempt power is discretionary, and the trial court's determination of whether to hold a party in contempt will not be reversed unless the trial court erroneously exercised its discretion. *See State ex rel. N.A. v. G.S.*, 156 Wis. 2d 338, 341, 456 N.W.2d 867, 868 (Ct. App. 1990). “We will generally look for reasons to sustain a trial court's discretionary decision.” *Haeuser v. Haeuser*, 200 Wis. 2d 750, 765, 548 N.W.2d 535, 542 (Ct. App. 1996). “It is sufficient if the record demonstrates that the trial court undertook a reasonable inquiry and examination of the facts and had a reasonable basis for its decision.” *Id.*

1. The mobile home was marital property.

¶11 We must reject Wright's assertion that the trial court erred in concluding that the mobile home was marital property both because Wright did not timely appeal the judgment of legal separation and because Wright has failed to provide a record sufficient to review this issue on appeal.

¶12 First, the judgment of legal separation was a final, appealable judgment. *See Holschbach v. Holschbach*, 30 Wis. 2d 366, 141 N.W.2d 214 (1966). Therefore, under WIS. STAT. RULE 808.04(1), Wright had 90 days from the entry of the judgment to initiate an appeal. The judgment of legal separation was entered on February 9, 1998. Wright did not initiate her appeal until January 8, 1999. Issues relating to the judgment of separation are thus not properly before us.

¶13 Second, Wright has not provided the complete transcript of the hearing upon which the judgment of legal separation was based.<sup>5</sup> We are, of course, bound by the record as it comes to us. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). It is the appellant's burden to ensure that the record is sufficient to address the issues raised on appeal. *See State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219, 225 (Ct. App. 1986); WIS. STAT. RULE 809.15(1)(a)(13) (the record on appeal shall include a transcript of reporter's notes). Indeed, when the record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling. *See Duhame v. Duhame*, 154 Wis. 2d 258, 269, 453 N.W.2d 149, 153 (Ct. App. 1989). We therefore reject Wright's assertion that the trial court erred in finding that the mobile home was marital property subject to division.<sup>6</sup>

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<sup>5</sup> Wright provided only the portion of the transcript containing her cross-examination of Bauer and the trial court's oral decision.

<sup>6</sup> Moreover, the parties' marital property agreement, which Wright asserts establishes that the mobile home is her individual property, specifically identifies the mobile home as real estate titled in the names of both Bauer and Wright. This agreement supports the trial court's determination that the mobile home was marital property subject to division.

2. The record supports the trial court's conclusion that Wright violated the order to sell the mobile home and split the profits equally with Bauer.

¶14 As noted, the judgment of legal separation provided that the mobile home was to be sold and the proceeds were to be divided equally between Wright and Bauer. The record reveals that, while Bauer was living in the mobile home, Wright presented to the court an appraisal valuing the mobile home at \$65,000. Thereafter, Wright sold the mobile home to her friend for \$58,000, and then moved into the mobile home with her friend. Based upon this evidence, the trial court reasonably concluded that Wright had not sold the mobile home in an arm's length transaction, but had sold it below its established fair market value. *See State v. Clappes*, 136 Wis. 2d 222, 235, 401 N.W.2d 759, 765 (1987) (trial court's underlying findings of historical fact are upheld unless they are clearly erroneous); WIS. STAT. § 805.17(2) (1997-98).

¶15 Additionally, as Wright admitted in her affidavit in support of her contempt motion, she retained Bauer's half of the proceeds from the sale. Wright's actions directly violated the trial court's order. The record supports the trial court's finding that Wright was in contempt, and its decision to award Bauer one-half of the fair market value of the mobile home as a remedial sanction.

*B. The trial court did not erroneously exercise its discretion in ordering Wright to pay a portion of Bauer's attorney fees.*

¶16 Wright asserts that the trial court erred in ordering her to pay a portion of Bauer's attorney fees. As noted, the trial court ordered Wright to pay a portion of the attorney fees that Bauer incurred in litigating the contempt motion against Wright.

¶17 WISCONSIN STAT. § 785.04(1)(a) (1997-98) authorizes a court to impose, as a remedial sanction, "[p]ayment of a sum of money sufficient to

compensate a party for a loss or injury suffered by the party as a result of a contempt of court.” Attorney fees are recoverable under § 785.04(1)(a) as damages resulting from a contempt of court. See *Town of Seymour v. City of Eau Claire*, 112 Wis. 2d 313, 320, 332 N.W.2d 821, 824 (Ct. App. 1983). An award of attorney fees is discretionary and will be upheld absent an erroneous exercise of discretion. See *Van Offeren v. Van Offeren*, 173 Wis. 2d 482, 499, 496 N.W.2d 660, 666 (Ct. App. 1992).

¶18 The trial court determined that Wright’s contempt of court was egregious, and that she should therefore pay a portion of the attorney fees that Bauer had incurred in bringing the motion. The trial court did not order Wright to pay the full amount of Bauer’s attorney fees, however, because it found that Bauer was also in contempt of court, although to a much lesser degree than Wright. As noted, Wright directly violated the trial court’s order to sell the mobile home and split the profits. She deprived Bauer of a significant amount of money by retaining his share of the proceeds, and forced him to bring a contempt motion to enforce the trial court’s order. The record provides a reasonable basis to support the trial court’s discretionary decision to impose a portion of Bauer’s attorney fees on Wright.

C. The trial court found Bauer in contempt.

¶19 Wright also asserts that the trial court erred in allegedly failing to find Bauer in contempt of court. Contrary to Wright’s assertion, however, the trial court did find Bauer in contempt.

¶20 As noted, the trial court concluded that Bauer had violated the order to sell the contents of the mobile home and divide the proceeds equally because he had sold all of the property for only \$800, and kept the money for himself. As a

sanction for this contempt, the trial court denied Bauer's request to recover his overpayment of maintenance to Wright.<sup>7</sup>

*D. The trial court properly denied Wright's request for continued maintenance.*

¶21 Finally, Wright asserts that the trial court erred in denying her request for continued maintenance. A motion to extend a limited-term maintenance award must be made prior to the termination of the ordered maintenance payments. See *Dixon v. Dixon*, 107 Wis. 2d 492, 508, 319 N.W.2d 846, 854 (1982); *Lippstreu v. Lippstreu*, 125 Wis. 2d 415, 416–417, 373 N.W.2d 53, 54 (Ct. App. 1985).

¶22 The judgment of legal separation provided that Wright was to receive maintenance from Bauer until the date on which the mobile home was sold. Wright did not seek to extend the order for maintenance until after the mobile home had been sold and the maintenance order had been extinguished. Therefore, the trial court properly denied Wright's request for continued maintenance because she failed to seek an extension before the order for maintenance had expired.

*By the Court.*—Order affirmed.

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

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<sup>7</sup> Wright also complains that Bauer was in contempt of various orders that were entered either by the family court commissioner or by the trial court prior to the entry of the judgment of legal separation. Most of her complaints were addressed either by the family court commissioner or by the trial court in orders that also predate the judgment of legal separation. Wright has not established that her complaints were not adequately addressed or that the trial court erred in failing to find additional grounds to hold Bauer in contempt.



