



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT II

September 3, 2025

To:

Hon. Steven M. Cain
Circuit Court Judge
Electronic Notice

Rex Anderegg
Electronic Notice

Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
Electronic Notice

Joseph Seifert
Electronic Notice

Scott A. Small
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP1136

David C. Lindsey, Jr. v. Susanna Lindsey (L.C. #2004FA37)

Before Neubauer, P.J., Gundrum, and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

David C. Lindsey, Jr., appeals from a circuit court order denying his motion for a money judgment in which he alleged his former wife, Susanna (Lindsey) Stewart, never made the equalization payments the court ordered in the couple's original judgment of divorce. David argues that the court erred in placing the burden of proof on him instead of Susanna and that the court's finding that Susanna made the payments near the time of the divorce is clearly erroneous.¹ Based upon our review of the briefs and record, we conclude at conference that this

¹ We refer to the parties by their first names for the sake of clarity.

case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).² We summarily affirm.

The only fact in dispute in this appeal is whether Susanna made the court-ordered equalization payments to David. The remaining pertinent facts, set forth below, are undisputed.

David and Susanna were married in 1987 and divorced in 2004. They had no children together, and both had previously been divorced from other individuals. The circuit court incorporated the marital settlement agreement (MSA), which was signed by the parties just before their divorce hearing, into the judgment of divorce. As relevant to this appeal, the MSA provided that Susanna was to make equalization payments totaling \$54,500 to David as follows: “\$40,000.00 on or before May 26, 2004 and the remainder of \$14,500.00 on or before August 1, 2004.”

In 2007, the parties returned to the circuit court for a hearing on a motion to modify maintenance filed by David, who was receiving maintenance from Susanna pursuant to the original judgment of divorce. David sought an increase in the monthly maintenance amount. Throughout the proceedings related to the 2007 motion, and on his related financial disclosure statement to the court, David made no mention that Susanna had neglected to make the \$54,500 in equalization payments. The court entered an order in 2008 adjusting the maintenance schedule.

² All references to the Wisconsin Statutes are to the 2023-24 version.

In 2010, Susanna filed a motion to modify maintenance due to an increase in David's disability benefits, and David filed a cross-motion for modification. Again, David made no mention of a failure by Susanna to make the equalization payment. The parties stipulated to a new maintenance schedule in 2011.

In 2023, David filed the motion underlying this appeal. Claiming that Susanna never paid him the \$54,500 ordered at the original divorce hearing, David sought \$190,691 to account for the equalization payments ordered in the judgment of divorce plus 12% interest for each year since. In support of his position, David filed an affidavit with three exhibits attached—two demand letters drafted by David's attorney that had been sent to Susanna and a screenshot of a website showing the interest calculation.

The circuit court held an evidentiary hearing on David's motion over the course of two days. During the second day of the hearing, the court referred to this dispute as “a he said, she said,” which would come down to “a credibility determination 19 or 20 years after the fact ... with the consideration of these exhibits.” At the conclusion of the hearing, the court denied the motion.

In making its oral ruling, the circuit court “walk[ed] through some of the testimony [and] some of the highlights of the evidence as received” and discussed the various exhibits Susanna presented, finding that they corroborated her testimony. “[R]eally key in the [c]ourt's mind” was the fact that Susanna's testimony included specific, noteworthy details; for example, the court recounted that Susanna remembered how “aggravated” she was in 2004 when she tapped into her retirement account to pay David and also had to cover David's portion of the taxes on the withdrawal and the IRS penalties for early withdrawal from the account.

On the flip side, the circuit court found David’s testimony was “[n]ot clear.” The court further remarked that David did “[n]ot [have] a particularly good handle on events” and explicitly determined Susanna’s testimony to be “far more credible” than his. The court stated that “[David] carries the burden here. And he cannot meet his burden to show that he wasn’t paid. To the contrary,” the court determined, “the evidence supports [Susanna]’s position that she, indeed, did pay.” The court later entered a written order denying David’s motion. This appeal follows.

David raises two issues on appeal. He first argues that “the circuit court erred when it burdened David with proving a negative – that he was not paid the equalization payment – when Susanna should have been burdened with proving she did make that payment.” He next argues that “the [court’s] finding that Susanna actually paid the debt is clearly erroneous” and “[h]ad the circuit court applied the proper burden of proof, it could not have ruled” in Susanna’s favor. However, David doubles down and asserts that “it was clearly erroneous to [find Susanna had paid the debt] even if the burden of proof had remained with David.”

“When the [circuit] court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to be given to their testimony.” *Plesko v. Figgie Int’l*, 190 Wis. 2d 764, 775, 528 N.W.2d 446 (Ct. App. 1994). Here, the court’s findings demonstrate that it credited certain of David’s statements but found the bulk of his statements were not credible. In the end, the court found Susanna’s “testimony was far more credible in the [c]ourt’s mind” and decided “the evidence supports [Susanna]’s position that she, indeed, did pay.”

The circuit court, unlike this court, had the opportunity to observe the witnesses and their demeanors on the witness stand. See *Pindel v. Czerniejewski*, 185 Wis. 2d 892, 898-99, 519

N.W.2d 702 (Ct. App. 1994) (circuit court is in far better position than appellate court to make credibility determinations). This court will not overturn credibility determinations on appeal unless the testimony upon which they are based is inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts. ***Global Steel Prods. Corp. v. Ecklund Carriers, Inc.***, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. That is not the case here, and we therefore reject David’s argument that the circuit court erred when it did not find all of his testimony to be credible.

Because the circuit court is in a better position than this court to judge the credibility of witness testimony, we defer to the court’s finding that Susanna paid David the full equalization amount in 2004, which has ample support in the record, and reject David’s arguments on this issue.³ Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

³ Because our decision that the circuit court’s factual findings were not clearly erroneous is dispositive of this appeal, we need not reach the issue of the proper burden of proof in this case. *See Patrick Fur Farm, Inc. v. United Vaccines, Inc.*, 2005 WI App 190, ¶8 n.1, 286 Wis. 2d 774, 703 N.W.2d 707 (recognizing the court of appeals should decide cases on the narrowest possible grounds). As noted above, the court explicitly found that “the evidence supports [Susanna]’s position that she, indeed, did pay,” meaning that the court would have denied David’s motion even if the court had placed the burden of proof on Susanna.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals