

RULE 809.21. We affirm the judgment of divorce; determine that the appeal is frivolous; award Sloan attorney fees; and remand to the circuit court for a determination of the reasonableness and amount of the attorney fees.

The circuit court made the following findings of fact, which were supported by testimony and other evidence at the contested divorce hearing and are not clearly erroneous. The parties were married in Texas in 2018, when both were in their mid-thirties, and they separated sometime between March 2020 (when Sloan moved to Wisconsin by herself) and September 2021 (when Villatoro last traveled to Wisconsin to visit Sloan). They do not have any children.

As to income, both parties were self-supporting at the time of the divorce. Neither party had contributed to the education, training, or earning power of the other. Sloan was working as a spa technician prior to the marriage, and Villatoro was working as a jet mechanic. Sloan opened her own spa after she moved to Wisconsin. By the time of the divorce in 2023, Sloan had a monthly gross income of \$10,035 from her self-employment at her spa, while Villatoro had obtained employment with a new airline and had a monthly gross income of \$6,880.

As to property, Sloan's parents gifted her real estate in Wisconsin during the marriage, that was not subject to division. The parties had purchased a freestanding camping dome that was located on Sloan's property. Villatoro had assisted in clearing an area and an unpaved access road on the property and in building a deck to support the dome, but those efforts had not significantly increased the value of the underlying property. Villatoro also helped renovate the space Sloan leased for her spa, but any increased value to the property from those improvements went to the landlord. The parties had maintained separate finances throughout the marriage, and each party had a vehicle, personal bank accounts, a retirement account, and credit card debts in

their own names. In addition, Sloan had bank accounts and a business loan related to her spa, while Villatoro had an additional pension, cryptocurrency, and unspecified joint accounts with his parents.

After methodically discussing each of the statutory factors for property division set forth in WIS. STAT. § 767.61(3)—and repeatedly emphasizing the short length of the marriage, the lack of children, and the separate finances maintained by the parties throughout the marriage—the circuit court concluded that it was equitable to deviate from an equal property division and award each party the assets and liabilities that were in their own names.

In addition to the gifted property excluded from the marital estate, the circuit court awarded Sloan personal and business assets worth \$66,439.60 and assigned her personal and business debts in the amount of \$125,300.60. It awarded Villatoro personal assets worth at least \$28,184.66 (plus the unvalued or unaccounted-assets of his pension, cryptocurrency, and some joint accounts or property held with his parents) and assigned him personal debts in the amount of \$61,033.96. Thus, the division of the marital assets and debts was at least \$26,011.70 in Villatoro's favor, and Villatoro would have been required to make an equalization payment of at least \$13,005.85 to Sloan if the court had made an equal property division.

Sloan sought an award of \$3,354 in attorney fees based upon Villatoro's inadequate provision of discovery related to his pension and other accounts or property. Although the circuit court found that the record would support an award of attorney fees to Sloan, it decided not to award attorney fees in order to compensate Villatoro for whatever time and financial efforts he had made with respect to Sloan's property.

On appeal, Villatoro seeks a cash payment of \$25,000 from Sloan or a remand for further proceedings. The argument section of his brief consists of two sentences asserting that the circuit court’s distribution of assets constituted an inequitable deviation from the presumption of an equal property division set forth in WIS. STAT. § 767.61 and the court’s division failed to account for contributions that Villatoro made to Sloan’s property and to the leased spa premises. Sloan moves for an award of attorney fees as a sanction for filing a frivolous appeal, asserting that Villatoro should have known that the appeal was “without any reasonable basis in law or equity.” See WIS. STAT. RULE 809.25(3)(c)2. We agree with Sloan that the appeal is frivolous.

We award attorney fees under WIS. STAT. RULE 809.25 only when the entire appeal is frivolous. *Thompson v. Ouellette*, 2023 WI App 7, ¶30, 406 Wis. 2d 99, 986 N.W.2d 338. An appeal is frivolous in its entirety “if any element necessary to succeed on the appeal” is supported solely by an argument that was brought in bad faith or without a reasonable basis in law. WIS. STAT. § 895.044(5). An “element” (which includes an issue or argument) is “necessary to succeed on appeal if the appellant cannot secure a reversal, a remand, or another form of relief without prevailing on that element.” *Thompson*, 406 Wis. 2d 99, ¶36.

Here, Villatoro has no reasonable basis in law to challenge the property division. The division of the marital estate lies within the discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will uphold a court’s exercise of discretion so long as the court rationally discussed and applied the proper standard of law to the relevant facts to reach a reasonable result. *Id.*

Villatoro’s assertion that the circuit court failed to consider his contributions to Sloan’s property is belied by the record. To the contrary, the court explicitly relieved Villatoro of the

obligation to pay Sloan for her discovery-related attorney fees to compensate him for those efforts. Villatoro's assertion that he contributed to the value of the spa by helping to renovate the leased premises is also belied by the record, which included uncontroverted testimony that the benefit of any improvements to the leased space accrued to the landlord. Villatoro does not identify any other factor in Wis. STAT. § 767.61(3) that the court failed to consider.

Moreover, Villatoro's assertion that the division was inequitable does not even acknowledge that the property division was in his favor because it assigned the lion's share of the marital debt—which far exceeded the known marital assets—to Sloan. Villatoro similarly fails to acknowledge that his refusal to provide information about his pension—which is very often one of the most significant assets in a marriage—could have a significant impact on the equity of the property division.

In addition to failing to develop any reasonable argument supported by the record that the circuit court failed to consider a relevant factor or that the resulting property division was inequitable, we note that the sole case that Villatoro cites in his table of authorities appears to be fictitious. Villatoro also fails to identify, much less apply, the applicable standard of review for his claim.

While Villatoro is self-represented, any lack of knowledge of the law does not constitute a defense to a claim that the appeal was frivolous. Rather, we apply an objective standard as to what a reasonable person in the position of a pro se litigant should have known about the facts and the law relating to the arguments presented. *Holz v. Busy Bees Contracting, Inc.*, 223 Wis. 2d 598, 608, 589 N.W.2d 633 (Ct. App. 1998). A pro se litigant is required to make a

reasonable investigation of the facts and the law before filing an appeal, just as an attorney would need to do. *Id.* We therefore conclude that the appeal was frivolous in its entirety.

Upon the foregoing,

IT IS ORDERED that the judgment of divorce is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that respondent Katherine Sloan is awarded attorney fees pursuant to WIS. STAT. RULE 809.25(3) as a sanction for appellant Wilber Villatoro's filing of a frivolous appeal. This matter is remanded to the circuit court for a determination of the amount of the attorney fees Katherine Sloan reasonably incurred in defending this appeal.

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

Samuel A. Christensen
Clerk of Court of Appeals