

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 26, 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. 99-1235

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

DAWN D. GENDRICH,

PETITIONER-RESPONDENT,

V.

MICHAEL J. GENDRICH,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
GERALD P. PTACEK, Judge. *Affirmed.*

Before Brown, P.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Michael J. Gendrich appeals pro se from a judgment divorcing him from Dawn D. Gendrich. On appeal, Michael challenges the property division and complains that the circuit court did not permit him

adequate access to the court or require Dawn to file her final financial disclosure statement on a timely basis. We reject these challenges and affirm.

¶2 Dawn filed a divorce petition in September 1998. Michael has been incarcerated since October 1995. The parties have one minor child for whom custody and placement arrangements have not been challenged. Michael appeared at the divorce hearing by telephone from a Wisconsin prison. The court gave Dawn the property in her possession and gave Michael his construction tools and property in his and his parents' possession.

¶3 On appeal, Michael challenges the property division and argues that the court failed to consider Dawn's dissipation of marital assets or the value of those assets. In particular, Michael refers to vehicles that were disposed of by Dawn, the parties' 1995 income tax refund and construction tools which Dawn has stored at her parents' house.

¶4 The division of property at divorce is within the circuit court's discretion. See *Weiss v. Weiss*, 122 Wis. 2d 688, 692, 365 N.W.2d 608 (Ct. App. 1985). The term "discretion" encompasses a process of reasoning by the circuit court based on the facts in the record or those facts which can be reasonably derived by inference from the record and which produces a conclusion based on logic and founded on proper legal standards. See *Johnson v. Johnson*, 157 Wis. 2d 490, 497, 460 N.W.2d 166 (Ct. App. 1990).

¶5 Michael claims that Dawn disposed of several vehicles after he was incarcerated and that she squandered those assets. Dawn testified that a Camaro was destroyed in an accident, a white van was towed to a yard where it was transferred to the yard owner for storage fees, a gray van rusted and was towed to a junkyard, another vehicle stopped running and also went to the junkyard, and a truck was also

towed to a junkyard. The circuit court accepted Dawn's testimony that these vehicles were disposed of and were without value. This was the circuit court's province as the trier of fact. *See Village of Big Bend v. Anderson*, 103 Wis. 2d 403, 410, 308 N.W.2d 887 (Ct. App. 1981) (circuit court acts as the ultimate arbiter of the credibility of witnesses). Implicit in the court's treatment of the vehicles is a finding that Dawn did not squander these vehicles or negligently dispose of them as Michael claims on appeal. On this record, the court's findings regarding the vehicles are not clearly erroneous, *see* WIS. STAT. § 805.17(2) (1997-98),¹ and the court did not misuse its discretion in its treatment of the junked vehicles.

¶6 We turn to Michael's appellate claim regarding the parties' 1995 income tax refund. Dawn testified that she deposited the 1995 income tax refund in her account pursuant to a conversation she had with Michael. This deposit predates by at least two years the commencement of the divorce. Michael has not cited any authority for the proposition that Dawn was required to preserve those funds for his benefit, particularly since Michael has not contributed to the support of the parties' minor child since his incarceration. Moreover, there is no evidence in the record that these amounts remain in Dawn's possession because Michael did not question her about the disposition of these funds.

¶7 The parties did not dispute the value of Michael's tools, and Dawn testified that all of the tools were placed in her parents' garage. The court was also advised that Michael could retrieve his tools, either himself or via a designee. Michael conceded to the court that he had not asked anyone to retrieve his tools for

¹ All references to the Wisconsin Statutes are to the 1997-98 version

him. On appeal, he has concerns about access to his tools. If access problems arise, Michael can seek the appropriate relief in the circuit court at that time.

¶8 Michael complains that Dawn's financial disclosure statement does not give a value for her bank accounts. However, at trial Dawn testified that she has no assets of any significant value and no significant savings. She testified that her property is limited to the furniture, appliances and clothing in her home. Michael did not question Dawn about her bank accounts. The court obviously accepted Dawn's testimony. We see no prejudice to Michael.

¶9 Michael argues that neither he nor Dawn filed their financial disclosure statements on a timely basis. WISCONSIN STAT. § 767.27(2) requires the filing of financial disclosure statements within ninety days of the date the summons is filed and requires the parties to update their disclosures to the date of the hearing. Dawn testified that she filed a financial disclosure form at the time of the October 1998 temporary hearing and that her final disclosure form, which was filed on the date of the final hearing, was unchanged. Michael did not contest this testimony, although he complained that he never received the preliminary disclosure statement. The court then sent Dawn's final disclosure statement to Michael at the prison by facsimile. Before Michael received the disclosure statement, he cross-examined Dawn about their property, including items addressed in the disclosure statement. Michael did not seek to further examine Dawn regarding the information in the disclosure statement once he received it at the prison.

¶10 Michael argues that Dawn should have disclosed all of the assets she disposed of. However, the assets about which Michael complains—the vehicles and the 1995 income tax refund—were the subject of testimony at trial, and the

parties had a chance to develop the facts. Therefore, we decline to hold that issues relating to the parties' financial disclosure statements require reversal of the judgment of divorce.

¶11 Finally, Michael argues that he was deprived of meaningful access to the court. He claims that his placement in an out-of-state correctional facility hindered his ability to prepare for trial. However, we note that Michael was transferred back to a Wisconsin prison in early November 1998, three months before the February 1999 trial for which he appeared by telephone. Furthermore, the issues Michael raises on appeal relating to property division were litigated in the circuit court.²

By the Court.—Judgment affirmed.

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

² To the extent that we have not addressed an argument raised on appeal, the argument is deemed rejected. See *State v. Waste Management, Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1977), *cert. denied*, 439 U.S. 865 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

