

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 7, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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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.

**Appeal No. 2005AP191**

**Cir. Ct. No. 2003FA89**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**PATTI JO HENDRICKS F/K/A PATTI JO THIEME,**

**PETITIONER-RESPONDENT,**

**V.**

**GREGORY A. THIEME,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Price County:  
DOUGLAS T. FOX, Judge. *Affirmed in part; reversed in part and cause  
remanded for further proceedings.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Gregory Thieme appeals from various terms of a judgment divorcing him from Patti Jo Hendricks. Thieme challenges the portions of the judgment that divide the property of the parties, and orders Thieme to pay a portion of Hendricks' attorney fees for "over-litigating." Thieme also claims the trial court erroneously exercised its discretion by rejecting his request for an adjournment without a hearing. We reverse the judgment as it pertains to the value of non-business personal property. We also reverse that portion of the order awarding attorney fees.

¶2 On February 6, 2004, the trial court conducted a scheduling conference and set the final hearing for April 16. On that same day, Thieme discharged his attorney. Thieme then requested an adjournment of the final hearing date, claiming that as a pro se litigant he had insufficient time for preparation. The trial court denied the motion by letter dated March 10. The final hearing commenced on April 16, but because the presentation of the evidence had not been completed, the trial court adjourned the hearing until July 2. The court issued a decision and order on September 22. A motion for reconsideration was denied on October 19. The final judgment was dated October 21. This appeal followed.

¶3 Thieme argues that the trial court erroneously exercised its discretion in the property division. The two most significant assets are the marital residence known as the "Flambeau property," and another property known as the "Argyle property," at which Hendricks had previously operated a day-care business. The Flambeau property was awarded to Thieme, and the Argyle property was awarded to Hendricks. Thieme claims the findings of fact as to the values of these properties were unsupported by any evidence. Thieme contends the trial court excluded from evidence on hearsay grounds the tax statements introduced by

Hendricks, but then subsequently relied upon the tax statements as the basis for the valuation of the properties. Thieme also claims that the trial court improperly denied Thieme's attempts to cross-examine Hendricks as to the value of non-business personal property, including vehicles.

¶4 We disagree that the real estate valuation was unsupported by any evidence. During trial, Hendricks sought to introduce into evidence Exhibit 27 as the real estate tax bills with the assessments from the tax listing office for each residence. The trial court sustained a hearsay objection. The trial court later relied upon the tax bills in valuing the two residences.

¶5 However, the record reveals that the "Petitioner's Financial Disclosure Statement" also included copies of the tax bills. The tax bills were received into evidence as an attachment to this financial disclosure statement, which was identified as Exhibit 1. Therefore, although the court later sustained a hearsay objection to a separate exhibit identified as Exhibit 27, the fact remains that evidence of the value of the real estate had already been admitted as part of the financial disclosure statement identified and received as Exhibit 1. Although Hendricks had no independent opinion as to the value of the real estate, she testified that she was satisfied with using the tax-assessed valuation. The trial court did not erroneously exercise its discretion in determining that the estimated fair market valuation by the taxing authority was the best indicator of the value of the real estate. We therefore affirm the judgment with regard to the property division concerning the two parcels of real estate.

¶6 However, we agree with Thieme that he was erroneously prohibited from cross-examination and otherwise addressing the value of the non-business personal property. The trial court rejected Thieme's attempts to cross-examine

Hendricks as to the value of non-business personal property, including vehicles. The court apparently did so on the basis that the value of the non-business personal property would be determined by a “private auction” in which the two parties would participate. Accordingly, the court considered evidence as to the value of the non-business personal property irrelevant. However, in its decision and order, the trial court subsequently concluded that such a “private auction” would be impractical in this case, and went on to make findings as to the respective value of the personal property. These findings of value were based, at least in part, upon the arguments contained in post-trial briefs, at which time the court also apparently determined which evidence it was considering. We conclude that Thieme was erroneously prohibited from addressing the value of those assets, and the valuation of the non-business personal property was therefore determined on the basis of an incomplete record. We reverse and remand the matter for a retrial of the value of the non-business personal property, including vehicles.<sup>1</sup>

¶7 We note in this regard the trial court also found that an examination of the factors relevant to the division of the marital estate supported the presumption that the property be divided equally between the parties. *See* WIS. STAT. § 767.255(3).<sup>2</sup> We do not discern Thieme’s arguments to be contesting the

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<sup>1</sup> Although the record contains evidence as to the value of the vehicles, including “Blue Book” valuations contained in Exhibit 1, and the trial court initially indicated that it would exclude vehicles and a clock repair business from the personal property auction, it appears the court later decided that the vehicles should be included in the personal property auction and thus prohibited certain cross-examination on the value of the vehicles. Accordingly, we conclude the value of the vehicles should be included in the issues on remand. Thieme has not cited any references to the record that would reveal the trial court prohibited cross-examination on the value of the clock repair business, nor do we interpret his arguments as requesting a remand with regard to that issue. Therefore, the remand will not include the value of the clock repair business.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

findings with regard to the equal division of the property, or with regard to findings concerning gifted or inherited property under WIS. STAT. § 767.255(2). But in any event, it does not appear the trial court prohibited cross-examination on these issues and the record does not establish the trial court's findings in these regards to be clearly erroneous. While we recognize that a retrial on the value of the personal property may result in an adjustment by the trial court with regard to the equal division of the property among the parties, we do not consider it necessary upon remand to retry the findings regarding the presumption of equal distribution under § 767.255(3), or findings of the trial court with regard to marital property under subsection (2).

¶8 Thieme next argues that the trial court erred in ordering him to pay a portion of Hendricks' attorney fees for over-litigating. However, the court determined that even if not over-litigated by Thieme, the divorce still would have accounted for significant attorney fees given the depth of discord between the parties and the number of legitimate issues. As a result, the trial court ordered Thieme to contribute \$4,500 toward Hendricks' fees, after concluding her fees were reasonable.

¶9 Because we reverse on the personal property division, we are unable to determine whether, or to what extent, Thieme over-litigated. As the trial court noted, both the court and Hendricks were required to expend numerous hours reviewing and responding to various unnecessary and unreasonable motions, letters, and discovery disputes. The court found this was brought about by Thieme's mistaken belief that "if he inundated the court file with enough entreaties and motions, some of them would prove to be meritorious by the law of averages."

¶10 The trial court also concluded that the second day of trial was unnecessarily incurred by Thieme's examination of witnesses and presentation of evidence. We sympathize with the plight of the trial court in this proceeding, as it is apparent this matter consumed public resources by litigation that was intended to be disruptive and costly. Indeed, review of the record and exhibits upon appeal has been extremely tedious and time-consuming. Thieme argued at trial that he suffered from attention deficit disorder, and thereby manifested an inability to focus and organize his thoughts at trial. In this regard, the trial court found that Thieme had not been determined to be disabled, and was unable to establish that he had been placed on any work restrictions by a physician. These findings are not clearly erroneous.

¶11 Thieme also contends that he was compelled by financial necessity to proceed pro se. However, even though a court is entitled to grant pro se litigants greater latitude in judicial proceedings, government resources face extreme pressures, especially in this current climate. As a matter of sound policy, a message may be sent in the proper case that over-litigating will not be tolerated in the context of divorce proceedings. See *Johnson v. Johnson*, 199 Wis. 2d 367, 376-79, 545 N.W.2d 239 (Ct. App. 1996). The matter of allowance of attorney fees in a divorce case is discretionary with the trial court. *Ondrasek v. Ondrasek*, 126 Wis. 2d 469, 483-84, 377 N.W.2d 190 (Ct. App. 1985).

¶12 Nevertheless, because we conclude that the trial court erroneously exercised its discretion in the personal property division, it is also necessary to reverse on the issue of attorney fees primarily because the personal property division issues consumed a large amount of the trial time and we are unable to discern on the basis of this record how much, if any, of the over-trial was incurred because of Thieme's unreasonably litigious actions, or whether Thieme's pretrial

filings were unnecessary in light of our opinion. On remand, the trial court may in its discretion revisit the issue of attorney fees if it deems it appropriate to do so.<sup>3</sup>

¶13 Finally, Thieme argues that the trial court erroneously exercised its discretion by denying his request for an adjournment without a hearing. Thieme acknowledges that a request for a continuance rests in the sound discretion of the trial court. *See State v. Echols*, 175 Wis. 2d 653, 680, 499 N.W.2d 631 (1993). The exercise of discretion upon an application for a continuance is the weighing of the rights and interests of the appellant against the prompt and efficient administration of justice. *Id.* Prejudice must be shown before the trial court's ruling will be set aside. *Allen v. Allen*, 78 Wis. 2d 263, 275, 254 N.W.2d 244 (1977).

¶14 In its letter denying the request for an adjournment, the trial court pointed out that the date for the final hearing was selected at the February scheduling conference after consultation with counsel, who assured the court that the proposed final hearing date allowed sufficient time for trial preparation. The court was not persuaded that Thieme's decision to discharge his attorney on that date prejudiced Thieme's interests. The court emphasized that Thieme had already engaged in extensive pretrial discovery after the discharge of his attorney. The court concluded that sufficient time remained before trial for Thieme to

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<sup>3</sup> We would in any event summarily reverse on the issue of attorney fees based on Hendricks' default in filing a responsive brief. Following the submission of Thieme's brief, this court granted a request by Hendricks for an extension of time for filing her brief. On June 30, 2005, we notified Hendricks that she was delinquent in filing her brief, and allowed an additional five days in which to file a brief. On July 18, 2005, after Hendricks had neither filed a brief nor shown good cause for granting an extension, we ordered that the appeal be taken under submission without further briefing, and reserved the right to summarily reverse based upon her default. We deem a responsive brief necessary on this issue, and will not craft an argument for Hendricks.

accomplish any further discovery he saw fit to conduct. Furthermore, the final hearing was adjourned for nearly three months after the first day of testimony. In addition, as previously mentioned, the trial court found that Thieme had not been determined to be disabled, and that Thieme was unable to establish that he had been placed on any work restrictions by a physician. These findings are not clearly erroneous. The trial court did not erroneously exercise its discretion in denying Thieme's request for a continuance.

*By the Court.*—Judgment affirmed in part; reversed in part and cause remanded with directions.

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



