

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 5, 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. 2005AP2738**

**Cir. Ct. No. 2005FA4**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**ROBBYN BOWMAN F/K/A ROBBYN PEKKALA,**

**PETITIONER-RESPONDENT,**

**V.**

**GREGORY PEKKALA,**

**RESPONDENT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Burnett County:  
MICHAEL J. GABLEMAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Gregory Pekkala appeals his judgment of divorce, arguing that the trial court erroneously exercised its discretion by failing to

consider certain marital debt in the property division. We reject Gregory's argument and affirm.

¶2 Gregory and Robbyn Pekkala were married less than three years. At the time of their divorce, they owned various marital assets, including a homestead, a thirty-five-acre parcel, and a business called "Spooner Fish and Cheese." The trial court awarded all the real estate to Gregory, subject to its debt. The parties stipulated that the value of the homestead and thirty-five-acre parcel was \$336,000, less debt of \$249,000, for a net equity of \$87,000. The court found that the value of the business was \$65,000. The parties also had very substantial credit card debt that the court assigned to Robbyn. The court assigned to Gregory all other debt the parties incurred. The court awarded Robbyn an equalization payment of \$64,189.30.

¶3 The division of property rests within the sound discretion of the circuit court. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will sustain a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). When reviewing fact findings, we search the record for reasons to sustain the circuit court's discretionary decision, not for evidence to support findings the court could have but did not reach. See *Steiner v. Steiner*, 2004 WI App 169, ¶18, 276 Wis. 2d 290, 687 N.W.2d 740. Findings of fact will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2). The valuation of assets is a factual determination. *Liddle*, 140 Wis. 2d at 136. When there is conflicting testimony, the trial court is the ultimate arbiter of the credibility of witnesses. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 249-50, 274 N.W.2d 647 (1979).

¶4 Gregory insists that the court erred by failing to consider certain marital debt in its property division, which if considered Gregory contends would result in “a negative net worth.” Gregory claims the court ignored “nearly \$160,000 of marital debt,” including “nearly \$138,000 in IRS tax liability.” This argument is contrary to the record.

¶5 First of all, in its oral decision, the court specifically indicated it was considering the tax liabilities when explaining to the parties its mathematical calculations and how it reached the net assets. As the court stated: “I have considered the tax liabilities, I’ve considered all of what I think has been proved as far as the valuations of the assets.”

¶6 Furthermore, although Gregory asserts that the circuit court ignored “nearly \$160,000” in marital debt, he fails to specify what this debt consists of. Gregory merely cites generally to his “Demonstrative Net Worth Statement,” Exhibit 8 at trial. However, this exhibit contains only Gregory’s position regarding the value of the assets and debts of the parties, and Gregory neither delineates which items within Exhibit 8 he contends the circuit court ignored nor provides specific citations to the record to support his assertions of circuit court error. Assertions of fact in an appellate brief which are not demonstrated to be part of the record on appeal are not considered. *Nelson v. Schreiner*, 161 Wis. 2d 798, 804, 469 N.W.2d 214 (Ct. App. 1991). Moreover, the debt was disputed at trial, and the circuit court appeared troubled with the financial proof presented. As the court stated:

The decision I am going to give is no doubt going to not satisfy either party, but I will indicate in all candor that the way that the financial house was kept here has not exactly lent itself to an easy determination. I have done my best with the evidence that’s been given to me.

¶7 Additionally, the statement of debt contained in Exhibit 8 is, at least in part, contrary to the parties' stipulation of the value of the homestead and the thirty-five acres. The parties stipulated, in open court at trial, as follows:

MR. GRINDELL: Your honor, at this time I would like to advise the court that we have a stipulation as to the marital home value and a vacant 35-acre parcel totaling \$336,000.

THE COURT: All right. And what I need to know is at some point what the breakdown is.

MR. GRINDELL: I can give you that. The marital home is 280,000, 35 acres is 56,000.

THE COURT: Okay. Mr. Norine, is that accurate?

MR. NORINE: Yes, Judge.

THE COURT: Okay, so noted.

¶8 In its ruling, the circuit court indicated that the parties had agreed that the value of the homestead and thirty-five acres was "a positive \$87,000." Neither party disputed the court's representation in this regard. This \$87,000 net value corresponds to the net value on Robbyn's "Property Summary," which indicated the value of the homestead and thirty-five acres at \$336,000, subject to debt of \$249,000, resulting in a net value of \$87,000. The \$249,000 in debt is obviously more than the "nearly \$160,000" which Gregory claims the court ignored, but neither party explains how the \$249,000 in debt was arrived at in their briefs to this court.

¶9 It is also evident that the \$65,000 value attributed by the circuit court to the Spooner Fish and Cheese Shop was a net value because both parties testified the value of the business was in excess of \$65,000. Robbyn claimed a value of \$169,900. Even Gregory's value of \$74,000 is higher than the court's value of \$65,000, indicating the court accepted a value somewhere between the values

attributed by the respective parties and deducted the debt. Moreover, in its ruling the court refers to “total positive marital assets,” which in the context of the court’s discussion clearly refers to net values.

¶10 Accordingly, we conclude that Gregory has not sufficiently demonstrated how the circuit court allegedly erred, and we decline to sift through the record for evidence to support Gregory’s contentions of error.<sup>1</sup> Our review of the record demonstrates that the court considered the proper statutory factors and gave appropriate weight to factors warranting a deviation from an equal division of the marital assets. The court employed a process of reasoning based upon the facts of record and reached a conclusion based on a logical rationale. The court also specifically indicated that it considered various equitable considerations. We are not convinced the court ignored marital debt. The court’s decision was an appropriate exercise of discretion.

*By the Court.*—Judgment affirmed.

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

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<sup>1</sup> Gregory contends in his reply brief that Robbyn failed to provide appropriate citations to the record to support her representations regarding the circuit court’s findings of fact. We conclude that the briefs of both parties fail to conform to the requirements of WIS. STAT. RULE 809.19. For example, Gregory asserts that there is “undisputed equity” in the homestead of “\$100,000.” Gregory cites “R.17” as support for this contention, which is the court’s Findings of Fact, Conclusions of Law, and Judgment of Divorce. Gregory often cites generally to his Demonstrative Net Worth Statement, which was marked for identification as Exhibit 8 at trial. Gregory also claims the circuit court divided the marital assets “on a 64-40 basis in Greg Pekkala’s favor” and provides no record citation whatsoever. Robbyn’s entire argument section is less than one and one-half pages in length and contains insufficient citation to the record. It should be clear to all lawyers that appellate briefs must give references to pages of the record on appeal for each statement and proposition made in the appellate brief. *Haley v. State*, 207 Wis. 193, 198-99, 240 N.W. 829 (1932); see also §§ 809.19(c), (d), and (e).

