

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 31, 2001

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. 01-0380-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

ROGER A. OLIGNEY,

PETITIONER-APPELLANT,

v.

NANCY M. OLIGNEY N/K/A NANCY M. CORONADO,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Waushara County:
LEWIS MURACH, Judge. *Affirmed and cause remanded with directions.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Roger Oligney appeals an order denying his motion for relief from a judgment divorcing him from Nancy Coronado and another order finding him in contempt for failing to comply with the divorce

judgment. He claims the trial court: (1) erroneously included assets he had acquired prior to the marriage in the marital estate; (2) erroneously exercised its discretion by imposing a 60/40 property division; and (3) refused to allow Roger to present evidence that he was unable to comply with the equalization provision due to financial hardship. Nancy claims the appeal is frivolous and requests costs and attorney's fees under WIS. STAT. RULE 809.25(3) (1999-2000).¹ We agree that the appeal is frivolous. Accordingly, we affirm the trial court's orders and remand for a determination of the amount of costs and attorney's fees.

Relief from the Judgment.

¶2 WISCONSIN STAT. § 806.07(1) allows the trial court to reopen an order or judgment based upon:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15(3);
- (c) Fraud, misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released or discharged;
- (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
- (g) It is no longer equitable that the judgment should have prospective application; or

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

(h) Any other reasons justifying relief from the operation of the judgment.

We review the trial court's decision whether to reopen a judgment under the standard for discretionary decisions, considering only whether the trial court reasonably considered the facts of record under the proper legal standard. *Nelson v. Taff*, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (Ct. App. 1993).

¶3 Roger has offered no authority to show that a trial court's alleged misapplication of law or erroneous exercise of discretion falls within any of the statutory grounds for relief from judgment, and we are aware of none.² Rather, an appeal is the proper method by which to obtain review of a trial court's legal rulings, and this court has no jurisdiction to review alleged deficiencies in the original judgment after the time to appeal has expired. *See* WIS. STAT. RULE 809.10. Therefore, Roger has failed to present any factual or legal basis for this court to conclude that the trial court erroneously exercised its discretion in denying Roger's motion for relief from the judgment based on the composition of the marital estate or the 60/40 property division.

Contempt Order.

¶4 Intentional disobedience of a court order constitutes contempt of court. WIS. STAT. § 785.01(1)(b). A court may impose a remedial or punitive sanction for contempt. WIS. STAT. § 785.02.

² To the contrary, there is case law holding that the trial court could not relieve a party from a judgment which was based on the trial court's mistake of law under WIS. STAT. § 269.46, 1975, the predecessor to WIS. STAT. § 806.07. *Sikora v. Jursik*, 38 Wis. 2d 305, 309, 156 N.W.2d 489 (1968).

¶5 Roger was ordered to pay Nancy \$50,950 to balance the property division. He was given the option of paying the entire sum within two months or paying monthly installments of \$775, with 10% interest on the unpaid balance. Roger does not dispute that he failed to make the equalization payment within two months and failed to make installment payments in a timely manner. He claims, however, that the trial court refused to consider information which would show that his failure was due to financial hardship, rather than intentional. The record does not support his assertion.

¶6 The transcript of the motion hearing shows that the only evidence Roger offered regarding financial hardship was his own testimony that he did not feel he could pay the ordered amount. Counsel later informed the court during argument that Roger was prepared to offer a new financial disclosure statement to support his contention that the ordered payment represented a financial burden. However, it was Roger's burden to present the information during his presentation of evidence if he wished to have it considered. See *State v. Williams*, 198 Wis. 2d 516, 538, 544 N.W.2d 406 (1996) (an offer of proof is required to preserve an issue for review). The trial court made no ruling preventing Roger from presenting evidence of financial hardship, and properly made its determination based on the original financial disclosure statements which were before it. The trial court's finding that Roger had the ability to pay was not clearly erroneous given his income and the value of the property which he was awarded in the divorce.

Costs and Attorney Fees.

¶7 WISCONSIN STAT. RULE § 809.25(3)(a) authorizes this court to award costs and attorney fees when an appeal is frivolous. We may conclude that

an appeal is frivolous if it was brought in bad faith or if the appellant or his attorney should have known that it had no reasonable basis in law. WIS. STAT. RULE 809.25(3)(c). We have already explained why we believe that none of the issues raised in this appeal have any reasonable basis in law. We further conclude that counsel should have known that there was no reasonable basis for raising any of the issues.

¶8 With regard to the requested relief from judgment, counsel should have been aware from this court's prior dismissal of Roger's attempted appeal of the original judgment of divorce that we had no jurisdiction to consider issues relating to it. Counsel's failure to even cite the applicable statute for relief from judgment in his opening brief reinforces our view that this appeal is an attempt to obtain review of the original judgment. With regard to the contempt ruling, we have no difficulty concluding that counsel should have known that the trial court does not erroneously exercise its discretion by "refusing" to consider evidence which is not presented to it.

¶9 We award Nancy her costs and reasonable attorney fees for this appeal, and remand the matter to the trial court to determine the amount of the award and the assessment thereof against Roger, his counsel or both. *See* WIS. STAT. RULE 809.25(3)(b).

By the Court.—Orders affirmed and cause remanded with directions.

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

