

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 2012

Diane M. Fremgen
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. 2011AP155
STATE OF WISCONSIN**

Cir. Ct. No. 2007FA247

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

NANCY LYNNE FRITZ,

PETITIONER-RESPONDENT,

V.

MICHAEL GORDON FRITZ,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: ANDREW T. GONRING, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

¶1 PER CURIAM. Michael Fritz appeals pro se from the judgment divorcing him from Nancy Fritz. We affirm because Michael has not established that the circuit court erred.

¶2 We start with the circuit court’s posttrial observations.¹ The circuit court found that the parties’ overtried their divorce and wasted the circuit court’s time with the minutiae of their many disputes. The court found that Michael was largely not credible and that an “air of suspicion” surrounded everything he said owing to his demeanor and the extremely complicated and confusing manner in which he accounted for his income and various business interests.² The circuit court, as the trier of fact, properly determined the weight and credibility of the witnesses. *Artis-Wergin v. Artis-Wergin*, 151 Wis. 2d 445, 450, 444 N.W.2d 750 (Ct. App. 1989).

¶3 The circuit court found that the parties stipulated to their postdivorce incomes for purposes of calculating child support and maintenance: Michael’s imputed income was \$50,000 per year, and Nancy’s imputed income was \$15,000 per year. Based on that income, the court set child support for the parties’ remaining minor child at \$708 per month and maintenance of \$250 per month. The court calculated that these obligations would result in monthly income to Nancy of \$2317 and to Michael of \$2209. The court intended to equally divide the parties’ postdivorce income in recognition that the parties had a thirty-one-year marriage during which Nancy did not work outside the home and homeschooled the children. Michael does not challenge any of these rulings on appeal.

¶4 On appeal, Michael argues that the circuit court erred when it required him to reimburse the marital estate for \$7000 in rental income and security deposits

¹ The court later modified its December 17, 2009 oral ruling in response to Michael’s reconsideration request. We recite the ruling as modified by the court’s March 4, 2010 decision on reconsideration.

² Michael does not challenge this finding on appeal.

Michael removed from the bank accounts for the parties' rental properties. Michael argues that he should not have to repay those funds because the court commissioner previously ruled that he had accounted for the \$7000. We reject this argument for three reasons. First, we do not review the court commissioner's rulings in this appeal. See *Milwaukee Cnty. v. Louise M.*, 196 Wis. 2d 200, 206, 538 N.W.2d 550 (Ct. App. 1995),³ *aff'd in part and rev'd in part*, 205 Wis. 2d 162, 555 N.W.2d 807 (1996).

¶5 Second, Nancy responds that she testified at trial that these funds were missing from the rental properties' account and she submitted an exhibit to support her testimony. The weight of the evidence and the credibility of the witnesses was for the circuit court to determine.

¶6 Third, after the circuit court made its posttrial rulings, Michael, by his counsel, filed a motion for reconsideration alleging various circuit court errors.⁴ However, Michael did not include in his reconsideration motion his claim that the circuit court should not have required him to reimburse the marital estate for \$7000 in rental income and security deposits. The reconsideration motion was the time and place for Michael to draw attention to that alleged error. Because he did not do so, the circuit court did not have the opportunity to revisit this issue and correct an error allegedly committed due to "oversight, omission, or miscalculation." *Schinner v. Schinner*, 143 Wis. 2d 81, 92, 420 N.W.2d 381 (Ct. App. 1988). We do not consider this issue further. See *id.* at 93.

³ Even though we do not review the court commissioner's rulings, we note that the court commissioner did not decide on September 29, 2009, at the pages cited by Michael, that Michael had accounted for funds he allegedly withdrew from the rental properties' bank account.

⁴ On reconsideration, the circuit court corrected several errors.

¶7 Michael complains that the circuit court erroneously precluded the parties' use of the income generated by the parties' rental properties. Michael cites no authority for his claim that the circuit court erred, and we agree with Nancy that the circuit court did not make the ruling Michael attributes to it. The court ordered the rental income applied to the properties' mortgages, which were not current, and to utilities and taxes pending a court-ordered sale of the properties. The court directed Nancy to continue managing the properties and authorized a \$150 monthly fee to compensate her for those services. The court ordered that no proceeds from the sale of the properties would be distributed to the parties until the parties' debts were paid. That Michael wanted to use the rental income for his living expenses does not mean that the circuit court erred in requiring the rental income to be applied to the expenses of the properties.

¶8 Michael next argues that the circuit court erred when it required him to reimburse Nancy for \$17,130.57 in expenses she had to cover after Michael did not comply with a court commissioner order to cover those expenses. Nancy refers us to those portions of the record where she testified that she had to cover expenses because Michael did not deposit sufficient sums into the parties' bank account, as the court commissioner had ordered him to do. Nancy submitted Exhibit 47 in support of her claim. Michael offers no basis for this court to conclude that the circuit court erred.

¶9 Michael contests the circuit court's unequal division of the parties' debt. The court assigned to Nancy \$28,047 of credit card debt. The court then assigned other unsecured debt, including other credit card debt, as follows: ninety percent to Michael and ten percent to Nancy. Michael urges that the circuit court's division of the debt should be revised to a fifty-fifty split because the circuit court should have believed him and not Nancy regarding the nature of the debt obligations.

The circuit court's credibility determinations are binding upon us, and the court clearly found Nancy credible on this issue. Furthermore, Michael does not offer either citations to the record substantiating that the circuit court erred or legal authority for his claim of error. For this reason, we do not address his claim because "[w]e cannot serve as both advocate and judge." *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶10 Michael challenges one aspect of the property division. Specifically, he complains that camera equipment should not have been divided evenly and all the equipment should have been awarded to him as part of his business property. Nancy responds with citations to the record that establish that Michael stipulated during the divorce trial that the assets of his companies would be valued and included in the marital estate. Michael also testified that he, not a company, owned the camera equipment used by his son in one of Michael's businesses, Magnificent Machines. The record does not support Michael's claim. Moreover, Michael's position on appeal is at odds with the position he took in the circuit court. A party cannot maintain inconsistent positions. *Siegel v. Leer, Inc.*, 156 Wis. 2d 621, 628, 457 N.W.2d 533 (Ct. App. 1990).

¶11 Michael complains about the Washington County Circuit Court's local rules governing requests for de novo hearings after court commissioner rulings. Specifically, he complains that his requests for a de novo hearing were not honored. From the record citations he provides, we gather that Michael complains about two instances in which he sought a de novo hearing. Michael sought de novo review of a September 2, 2009 court commissioner decision. Michael does not tell this court what steps he or counsel took to obtain a de novo hearing. We cannot make Michael's argument for him. Michael also appears to refer to his request for a de novo hearing of a March 1, 2011 court commissioner decision. The March 1

decision postdated the October 2010 judgment of divorce and the January 21, 2011 notice of appeal. This issue is outside the scope of this appeal.

¶12 Michael protests that the circuit court did not issue written orders after every hearing. Michael cites no authority for the proposition that the circuit court was so obligated. We note that “[t]he judicial act is complete when the order is announced from the bench. Reducing it to writing is only a ministerial act to preserve the evidence of the order.” *State ex rel. Hildebrand v. Kegu*, 59 Wis. 2d 215, 216, 207 N.W.2d 658 (1973).

¶13 Michael complains that the circuit court never held a hearing on a January 26, 2009 requirement that he vacate a rental unit. If Michael wanted a hearing, it was his responsibility to seek such a hearing. No relief is warranted on this issue.

¶14 Michael challenges various rulings of the court commissioner. We have no authority to review any of the court commissioner’s decisions. *Milwaukee Cnty.*, 196 Wis. 2d at 206.

¶15 Michael cites no authority for his claim that the circuit court erred when it referred to proceedings before the court commissioner. We do not address this issue. *See Pettit*, 171 Wis. 2d at 646.

¶16 We affirm the judgment of divorce.⁵

By the Court.—Judgment affirmed.

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

⁵ To the extent we have not addressed an argument Michael raises on appeal, the argument is deemed rejected. *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”). In this category we place the following arguments, among others: delay in the divorce proceedings, whether the case was a divorce or a separation, whether the restraining order should have been modified to allow contact outside the courtroom for legal purposes, and whether the divorce was more political than legal. None of these claims has merit, and we will not waste scarce judicial resources addressing them.

