COURT OF APPEALS
DECISION
DATED AND FILED

May 29, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2874 **Cir. Ct. No. 2009FA474**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE MARRIAGE OF:

ROGER A. GLENN,

JOINT-PETITIONER-APPELLANT-CROSS-RESPONDENT,

V.

ANN C. GLENN,

JOINT-PETITIONER-RESPONDENT-CROSS-APPELLANT.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Outagamie County: PHILIP M. KIRK, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Roger Glenn appeals a divorce judgment, and Ann Glenn cross-appeals. The parties argue various issues concerning maintenance, property division and attorney fees. We affirm.

¶2 The parties filed a joint divorce petition without minor children on June 9, 2009, after more than thirty-three years of marriage. Roger is a practicing attorney who has represented himself in the proceedings. At the time of the divorce, he was fifty-seven years old and had an income of approximately $105,000. Ann is approximately one year younger than Roger and is employed as a schoolteacher with an income of approximately $56,400.

¶3 The circuit court conducted a three-day contested divorce hearing, and issued a partial oral decision on January 6, 2011. The court issued an oral ruling on remaining issues on May 29, 2011. An amended judgment was filed on November 3, 2011. The parties now appeal issues concerning maintenance, property division and attorney fees.

¶4 Maintenance and property division are issues that rest in the sound discretion of the circuit court. ***LaMere v. LaMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will sustain a discretionary decision if the court examined 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). It need not be a lengthy process. While reasons must be stated, they need not be exhaustive. ***Burkes v. Hales***, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). Findings of fact will be affirmed unless clearly erroneous. WIS. STAT.

§ 805.17(2).[1] Where there is conflicting testimony, the circuit court is the ultimate arbiter of the witnesses' credibility. ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶5 Roger argues it was an "abuse of discretion"[2] for the circuit court to award ongoing maintenance to Ann. He also contends a lump-sum amount "should be returned to the marital estate and given to Roger."

¶6 At the outset, we emphasize Roger violates the requirements of WIS. STAT. RULE 809.19. With the exception of several citations to the circuit court's oral decisions, Roger's principal brief to this court generally lacks any citation to the record on appeal.[3] *See* WIS. STAT. RULE 809.19(1)(c), (d), (e). It should be clear to all lawyers that appellate briefs must give reference to the record for each statement and proposition made. In addition, much of Roger's statement of the case and "procedural history" appear to be Roger's opinion stated as fact. It is axiomatic that argument does not belong in the fact section of an appellant's brief.[4]

¶7 The record in this case is voluminous. The final hearing was conducted over three days, consisting of hundreds of pages of transcripts, together

[1] References to Wisconsin Statutes are to the 2011-12 version unless noted.

[2] Both parties improperly use the phrase "abuse of discretion." We have not used the phrase "abuse of discretion" since 1992, when our supreme court replaced the phrase with "erroneous exercise of discretion." *See, e.g.*, ***Shirk v. Bowling, Inc.*** 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

[3] Providing minimal citations to the record in his reply brief does not ameliorate the deficiency.

[4] Roger also violates WIS. STAT. RULE 809.19(1)(i), which requires reference to the parties by name, rather than by party designation.

with numerous exhibits. Roger acted as his own counsel and his "direct examination" of himself comprises a sixty-seven page monologue.

¶8 Roger's briefs to this court have unnecessarily and onerously complicated our review in this case. The rules of appellate practice are designed in part to facilitate the work of the court. We have a very high caseload and this court cannot continue to function at its current capacity without requiring compliance with the rules of appellate procedure. Moreover, this court is not an advocate. Quite simply, we will not sift through the record for facts to support Roger's contentions of error. *See* ***Siva Trucking v. Kurman Distribs.***, 166 Wis. 2d 58, 70 n.32, 479 N.W.2d 542 (Ct. App. 1991). Accordingly, we shall not specifically address Roger's unsupported arguments. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶9 In any event, an adequate basis exists in the record to support the circuit court's determinations and its findings are not clearly erroneous. *See* WIS. STAT. § 805.17(2). The court considered sufficient statutory factors in awarding $1,000 monthly maintenance. While the reasons for the court's determination on maintenance may not have been exhaustive, they need not have been. It is apparent from the court's decision that fairness was a primary objective in awarding maintenance. *See* ***LaRocque v. LaRocque***, 139 Wis. 2d 23, 33, 406 N.W.2d 736 (1987). The court also observed the length of the marriage in this case was "far and away the most influential of the statutory factors, in my opinion." However, the court also considered other factors and applied a reasoned mental process. Roger may not agree with the court's maintenance determination, but it properly exercised its discretion.

¶10 An adequate basis also exists in the record concerning property division. The court considered proper statutory factors warranting an equal division of the marital assets. The court gave lengthy explanations concerning why it treated the assets and debt in the manner in which it did.

¶11 Again, the court emphasized that the thirty-three year length of the marriage was the "primary determiner of what needs to happen in this case." The court also considered the need "to have as little financial dealings between the parties as is reasonably possible under the circumstances of their debts and assets." The court found "there's absolutely nothing that sways me one way or another in terms of credibility, and there's no marital waste as that term has been defined." The court stated:

> So, there is nothing specifically in terms of your respective credibilities that I think is particularly persuasive to me in adopting one of your respective positions. You both talked past each other and didn't pay attention. And more importantly, you didn't take any action to do anything to address the particular needs or concerns that you respectively had, other than whining and complaining about it.

¶12 In reviewing discretionary decisions, our task is to determine whether a court could reasonably come to the conclusion it reached. Here, the court's property division, as a whole, incorporates appropriate considerations. The court employed a process of reasoning based upon the facts of record and reached a conclusion based upon a logical rationale. The court's decision was an appropriate exercise of discretion.

¶13 Finally, the circuit court properly exercised its discretion by awarding Ann $7,500 in attorney fees. Roger insists "the court made it quite clear that the sole reason for awarding attorney fees was the appellant made a decision

to represent himself." Roger is incorrect. In fact, he concedes the court "suggests potentially an over trial [sic] issue …."

¶14 An award of attorney fees is discretionary. ***Van Offeren v. Van Offeren***, 173 Wis. 2d 482, 499, 496 N.W.2d 660 (Ct. App. 1992). The circuit court in a divorce action may award attorney fees to one party based on his or her financial resources, because the other party has caused additional fees by overtrial, or because the other party refuses to provide information which would speed the process along. ***Randall v. Randall***, 2000 WI App 98, ¶22, 235 Wis. 2d 1, 612 N.W.2d 737. When attorney fees are sought in an overtrial situation, there is no need to make findings of need and ability to pay. ***Johnson v. Johnson***, 199 Wis. 2d 367, 377, 545 N.W.2d 239 (Ct. App. 1996). The policy underpinning an overtrial attorney fees award is to compensate the overtrial victim for fees unnecessarily incurred because of the other party's litigious actions.

¶15 The circuit court was in the best position to determine if the facts warranted contribution. The court stated:

> [W]hile I certainly understand Roger Glenn's decision to represent himself and the financial or the money that it saved him in out-of-pocket attorney fees, I also appreciate the concept of when you're representing yourself it becomes a bit more personal. You want to make sure you're covering your bases to do whatever it is that's appropriate to attempt to protect what you believe is appropriate. In doing so, I think this case got a little bit out of whack, as I think I have probably alluded to earlier.

¶16 It is apparent from the circuit court's decision that it determined the matter could have been concluded with much less work and that Roger engaged in overtrial. The court appropriately exercised its discretion in requiring him to contribute $7,500 to Ann's attorney fees.

¶17 Ann's cross-appeal raises issues concerning the amount of maintenance, Roger's law firm's accounts receivable, and reimbursement for her adult daughter's tuition. Ann asserts the circuit court correctly awarded maintenance in this case, but she argues its award did not equalize the parties' income. It is reasonable for a circuit court to begin the maintenance analysis with the proposition that the dependent partner may be entitled to fifty percent of the total earnings of the parties. ***Bahr v. Bahr***, 107 Wis. 2d 72, 84-85, 318 N.W.2d 391 (1982). However, Ann essentially suggests the court's language in ***Bahr*** is not a starting point, but a nondiscretionary rule of law. Moreover, Ann neither tells us specifically why the maintenance amount ordered by the court was inappropriate, nor cites caselaw indicating the court could not consider her inheritance in setting the maintenance amount.

¶18 Ann also argues the circuit court erroneously failed to include Roger's law firm's accounts receivable as part of the marital estate. The court found the firm had no value. Without citation to the record, Ann contends "[t]he record supports that the [sic] Roger's firm is a cash-based tax payer …. The accounts receivable represents an asset that was not taken into account by the Court when the law firm was awarded to Roger at no value."

¶19 However, Ann concedes the court considered the accounts receivable for purposes of maintenance. She nevertheless insists they "need to be included in the property division." We conclude Ann's argument regarding accounts receivable is conclusory, circular and underdeveloped. We therefore will not consider it further. *See* ***M.C.I., Inc.***, 146 Wis. 2d at 244-45.

¶20 Finally, Ann argues the circuit court erroneously failed to reimburse her for a portion of her adult daughter's tuition after the divorce was granted. Ann

contends her argument "was addressed by Ann in response to Roger's brief, Section III." Roger had improperly addressed several issues in his principal brief to this court apparently in anticipation of Ann's cross-appeal. Ann asserts that her response to Roger's anticipated argument is incorporated into her cross-appellant's brief "by reference." We consider such "for-reasons-stated-elsewhere" arguments to be inadequate and decline to consider them. *See* ***Calaway v. Brown Cnty.***, 202 Wis. 2d 736, 750-51, 553 N.W.2d 809 (Ct. App. 1996).

By the Court.—Judgment affirmed.

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