

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 21, 2004

Cornelia G. Clark
Clerk of Court of Appeals

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.

**Appeal No. 03-1963
STATE OF WISCONSIN**

Cir. Ct. No. 02FA000023

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

KIMBERLY M. SKOMAROSKE,

PETITIONER-RESPONDENT,

v.

DENNIS N. SKOMAROSKE,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Price County:
PATRICK J. MADDEN, Judge. *Reversed and cause remanded with directions.*

Before Deininger, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Dennis Skomaroske appeals a judgment of divorce from Kimberly Skomaroske. The issues relate to property division and

maintenance. We reverse as to one asset in the marital estate and as to maintenance, and remand with directions.

¶2 The above issues were decided after trial to the court. The court divided the marital estate equally. It appears that Dennis's arguments on appeal are directed either to the valuation of certain items or to the inclusion of certain items in the marital estate. He does not appear to be arguing that the court erred by dividing the estate equally.

¶3 Dennis makes several arguments related to the valuation of the family business. We review the valuation of a business using the "clearly erroneous" test. *Siker v. Siker*, 225 Wis. 2d 522, 527-32, 593 N.W.2d 830 (Ct. App. 1999). An expert who testified for Kimberly placed the value at approximately \$250,000. Dennis testified that it had no value beyond its real estate and personal property, which were stipulated to total approximately \$204,000. The court found that the expert's testimony was "more reliable," and set the value at \$250,000.

¶4 Dennis makes arguments that point out alleged flaws in the expert's conclusion, such as the expert's use of limited information, and the shortcomings of the expert's method of analyzing the financial information. However, these arguments somewhat miss the point. The question is not whether the expert's analysis is less than perfect, but why the evidence offered by Dennis was so much *better* than the expert's that the trial court's finding was clearly erroneous. Here, Dennis's own evidence suffered from significant flaws. For example, Dennis is not a financial expert and is obviously self-interested in the outcome. His proposed valuation relies on the dubious assumption that the business name, customer base, recipes, and similar elements add no value to the business. Dennis

conceded on cross-examination that an appraisal he obtained in 1996 valued the business at \$236,000.

¶5 Dennis also argues that the expert erred by ignoring the fact that Dennis would be required to take money out of the business or obtain a loan to make an equalization payment to Kimberly, thus lowering the value of the business. We reject this argument. The fact that some of the value may later be transferred to the ex-spouse has no effect on the value of the property when computing the marital estate.

¶6 Dennis argues that the expert erred by failing to deduct from the business value a \$70,000 mortgage that Dennis took out on the marital residence, but which he argues was more properly attributable to the business. This argument has no significance in the broader context of this case, because Dennis does not dispute that the residence, like the business, is marital property. As a result, if the mortgage is attributed to the business, the effect would be to increase by \$70,000 the equity in the residence, leaving no net difference to the marital estate, a fact Dennis himself acknowledged on cross-examination. For the above reasons, we conclude that the court's finding of the value of the business was not clearly erroneous.

¶7 Dennis also argues that the court erred by including, or not including, various items in the marital estate, and in its valuation of certain property. The court did not attempt an item-by-item discussion, but adopted Kimberly's exhibit setting out and dividing the assets and debts, after stating that it was most credible and "more reliable" than Dennis's similar exhibit. While Dennis identifies a number of possible errors as to specific items, his argument again suffers from the same flaw as one above: whatever the shortcomings of

Kimberly's exhibit, Dennis has not shown why his own evidence, on the whole, was plainly superior. For example, Dennis argues that Kimberly failed to acknowledge that she had taken possession of marital estate property such as jewelry, glass, and prints. However, Dennis never asked her about these items on cross-examination, and his own testimony as to their value was cursory and with minimal foundation.

¶8 There is one item, however, on which Dennis makes a persuasive argument. Kimberly acknowledged on cross-examination that a Visa bill she submitted as a marital debt included \$1,400 to \$1,500 of attorney fees. The court denied each party a contribution for attorney fees, but by accepting Kimberly's Visa bill as a marital debt, the court essentially granted a contribution toward the attorney fees on that bill. Our review of the bills shows two billings from her law firm, for a total of \$1,394.45. This amount should not be included as a debt against the marital estate, and we order the judgment amended as to that item.

¶9 Turning to the question of maintenance, Dennis argues that the court's decision on maintenance, consisting of one long sentence, is an inadequate exercise of discretion. We agree. The court awarded maintenance of \$500 per month for potentially twenty-one years. To be sustainable, such an award requires more discussion than the court provided here. It should be supported by findings as to the parties' available incomes or earnings capacities, and include a more clearly stated consideration of the relevant statutory factors under WIS. STAT. § 767.26 (2001-02),¹ and the objectives of fairness and support, as discussed in

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

well-established case law. *See, e.g., Finley v. Finley*, 2002 WI App 144, ¶¶10-18, 256 Wis. 2d 508, 648 N.W.2d 536. Findings regarding the parties' incomes may become particularly important with an award of long duration because of the likelihood that one or both parties will at some point argue that a change of circumstances has occurred that warrants adjustment of the award. Without such findings at the time of the award, it may be difficult to determine whether a change has indeed occurred.

¶10 In summary, we conclude that the judgment must be amended as to the attorney fees in Kimberly's credit card bill, and that the court must redetermine maintenance.

By the Court.—Judgment reversed and cause remanded with directions.

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

