COURT OF APPEALS
DECISION
DATED AND RELEASED

June 7, 1995

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-0882

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

In re the Marriage of:

DOLORES L. GILBERT,

Petitioner-Respondent,

v.

RAYMOND L. GILBERT,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Manitowoc County: DARRYL W. DEETS, Judge. *Affirmed*.

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Raymond L. Gilbert appeals pro se from the judgment divorcing him from Dolores L. Gilbert. We affirm.

On appeal, Raymond protests the trial court's refusal to adjourn the December 21, 1993, divorce trial. On December 7, Raymond's attorney sought an adjournment because Raymond, who had relocated to Florida for the

winter months on the advice of a physician, could not afford to return to Wisconsin for the trial. In an order denying Raymond's motion, the trial court stated that Raymond's "medical needs did not outweigh [Dolores's] right to have this matter heard since it has been adjourned a number of times before."

At the beginning of the trial on December 21, the court denied Raymond's renewed motion to adjourn the trial and stated that it had afforded Raymond the option of appearing by telephone. Raymond's counsel advised that Raymond would not appear by telephone. Thereafter, evidence was taken, a judgment of divorce was entered, and Raymond brought this appeal.

Raymond complains that it was unfair to hold a trial when he was unable to travel to Wisconsin. It is within the trial court's discretion to adjourn a trial. *See* ***Schwab v. Baribeau Implement Co.,*** 163 Wis.2d 208, 216, 471 N.W.2d 244, 247 (Ct. App. 1991). The absence of a transcript of the hearing on Raymond's December 7 motion hampers our review of the trial court's decision. As the appellant, Raymond is responsible for presenting a complete record for this appeal, and any material omissions from the record will be construed against him. *See* ***State v. Smith***, 55 Wis.2d 451, 459, 198 N.W.2d 588, 593 (1972). The absence of a transcript limits our review to those parts of the record available to us. ***Ryde v. Dane County Dep't of Soc. Servs.,*** 76 Wis.2d 558, 563, 251 N.W.2d 791, 793 (1977).

Based upon the record available to us, we discern no misuse of the trial court's discretion. Raymond's motion emphasized that he was financially unable to return to Wisconsin for trial. However, on appeal Raymond emphasizes the poor state of his health as the reason he was unable to attend. We acknowledge that Raymond's December 7 motion was accompanied by a physician's letter indicating that Raymond is unable to "exercise outside in cold weather" and had "been advised to move to a warmer climate during the winter months ...." However, the trial court found that Raymond's health concerns did not outweigh the need to go to trial after several previous adjournments. Because Raymond does not provide a transcript of the hearing on his motion to adjourn, we must assume the transcript supports the trial court's balancing of

the competing interests. *See* ***Suburban State Bank v. Squires,*** 145 Wis.2d 445, 451, 427 N.W.2d 393, 395 (Ct. App. 1988).[1]

The balance of the issues Raymond presents on appeal relate to the property division. At the outset, we observe that Raymond's challenge to the property division is undermined because he did not appear at trial or avail himself of the opportunity to appear by telephone. *See* ***Laribee v. Laribee,*** 138 Wis.2d 46, 51, 405 N.W.2d 679, 681 (Ct. App. 1987).

We further observe that the manner in which Raymond presents his appellate issues also works against him. He raises numerous complaints about the trial court's property division without crafting arguments under the law to substantiate his claims of error. The right to proceed pro se does not excuse compliance with relevant rules of procedural and substantive law. ***Waushara County v. Graf,*** 166 Wis.2d 442, 452, 480 N.W.2d 16, 20, *cert. denied,* 113 S. Ct. 269 (1992). These rules include the requirement that an argument be presented in a form which can be addressed by this court.

Property division is within the trial court's discretion. ***Brandt v. Brandt***, 145 Wis.2d 394, 406, 427 N.W.2d 126, 130 (Ct. App. 1988). We will uphold the trial court's findings of fact unless they are clearly erroneous. *See* § 805.17(2), STATS. Raymond challenges the division of deposit accounts, litigation proceeds, the marital home, and personal and business property.

DEPOSIT ACCOUNTS

Raymond asks us to address the division of the parties' savings account. He contends that Dolores transferred $7500 from the account to an account titled solely in her name. Dolores testified that $4695 of that amount was split with Raymond and the balance of the funds, $2805, was used to pay marital and business obligations. On appeal, Raymond claims one-half of that balance, or $1402.50.

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[1] Because Raymond's appellate brief does not develop his claim that he could not afford to return to Wisconsin for trial, we do not address it.

The trial court found that the parties divided the account at the time of the temporary order and that it and other personal bank accounts were balanced out by a $900 payment from Dolores to Raymond. Raymond has not demonstrated that these factual findings are clearly erroneous or that the $2805 should have been divided equally notwithstanding Dolores's testimony that the funds were applied to marital and business obligations.

Raymond also questions the disposition of a money market fund into which Dolores transferred funds from a joint account. Dolores testified that the funds were used solely for business purposes and none of the funds were used for personal purposes. As stated earlier, the trial court found that the parties' personal bank accounts were divided at the time of the temporary order. On appeal, Raymond argues that Dolores testified inaccurately because at least two checks were written on the account to pay Dolores's rent. Raymond does not direct us to that portion of the record on appeal that supports his contention that Dolores wrote checks on the account to cover her personal expenses. We will not sift the record to locate facts to support a litigant's contentions. *See* ***Keplin v. Hardware Mut. Casualty Co.,*** 24 Wis.2d 319, 324, 129 N.W.2d 321, 323 (1964).

LITIGATION PROCEEDS

Next, Raymond challenges the trial court's decision to equally divide the proceeds of litigation Raymond commenced against Leede Research and its refusal to give him credit for the $1000 retainer because the retainer was paid out of marital property. On appeal, Raymond argues that because Dolores declined to participate in the litigation or pay one-half of the retainer, the litigation proceeds should not be divided equally and he should have received credit for the retainer in the property division.

We disagree with Raymond's analysis. The parties were still married at the time Raymond commenced the Leede Research suit. The divorce was commenced on May 29, 1991, and the suit was brought on December 3, 1991. Wisconsin law presumes that all property owned by spouses is marital. *See* § 766.31(2), STATS. Therefore, in the absence of evidence that the parties reclassified their property under § 766.31(10), the trial court correctly concluded that the funds used to pay the retainer were marital property. Each spouse has an undivided one-half interest in marital property. Section 766.31(3). Thus,

Dolores contributed to financing the litigation and the trial court did not err in awarding her one-half of the proceeds therefrom and declining to give Raymond a credit for the retainer.

MARITAL HOME

Raymond next contends that he should have been reimbursed for real estate taxes he paid on the marital home. Under the temporary order entered at the outset of the divorce, Raymond was awarded temporary possession of the marital home and was required to pay real estate taxes and insurance on the property.[2] After the trial, the court held Raymond responsible for real estate taxes through the end of 1993 and ordered that he pay them and insurance until the property was sold. Raymond's appellate challenge to these rulings is without merit. He was in possession of the home, was awarded the home in the property division and was therefore responsible for these related obligations.

The trial court valued the home at $68,000 and awarded it to Raymond with a lien in favor of Dolores to secure her $38,662.52 balancing payment on the property division. The trial court ordered Raymond to sell the home by July 1994 and required that Dolores's balancing payment accrue interest at the rate of one percent per month because Raymond had unreasonably delayed selling the home. Raymond states that he did not delay the sale but does not refer us to that portion of the record on appeal which supports his statement. We will not comb the record to locate support for a litigant's contentions on appeal. *See* ***Keplin***, 24 Wis.2d at 324, 129 N.W.2d at 323.

Raymond contends he should have been reimbursed or credited for expenses he incurred in maintaining and preparing the house for sale. The record does not support Raymond's contention. Dolores testified that she was aware that Raymond made some improvements to the house after divorce proceedings began. She believed some walls had been painted, part of the porch had been carpeted, the roof had been repaired and Raymond had paid real estate taxes and insurance. Dolores was unaware whether Raymond had the house cleaned for sale. Dolores did not know the cost of the work on the

[2] The temporary order recites that Dolores vacated the residence on April 10, 1991.

home. Although Raymond recites those costs in his appellant's brief, he does not direct us to that portion of the record on appeal which supports his recap of these expenses. We will not sift the record to locate support for Raymond's contentions. *See* ***id.***

Raymond also complains that the trial court's valuation of the home did not take into account the costs of sale. Raymond does not demonstrate that this issue was raised in the trial court. We normally do not consider issues raised for the first time on appeal. ***Seagall v. Hurwitz,*** 114 Wis.2d 471, 489, 339 N.W.2d 333, 342 (Ct. App. 1983).

Raymond claims that the interest on Dolores's balancing payment was improperly calculated. In support of this claim, Raymond appends a document dated May 19, 1994, which calculates the interest owed to Dolores. We will not consider this argument for several reasons. First, our review on appeal is limited to items included in the record on appeal. *See* ***State v. Aderhold,*** 91 Wis.2d 306, 314-15, 284 N.W.2d 108, 112 (Ct. App. 1979). This document does not appear in the record on appeal. Second, the document postdates the judgment of divorce and the March 25, 1994, notice of appeal in this case. This appeal does not embrace matters arising subsequent to the judgment and notice of appeal. ***Chicago & N. W. R.R. v. LIRC,*** 91 Wis.2d 462, 473, 283 N.W.2d 603, 609 (Ct. App. 1979), *aff'd*, 98 Wis.2d 592, 297 N.W.2d 819 (1980). Third, there is no indication that Raymond raised his complaint with the trial court. We do not consider issues raised for the first time on appeal. ***Meas v. Young,*** 138 Wis.2d 89, 94 n.3, 405 N.W.2d 697, 699 (Ct. App. 1987). Finally, we assume the home could not be sold in the absence of Raymond's agreement and signature on the transfer documents. To the extent Raymond disagreed with the amount Dolores was to receive from the proceeds of the sale, he would have had the opportunity to raise that matter prior to the real estate closing. There is no indication that he did so.

PERSONAL AND BUSINESS PROPERTY

Raymond disputes Dolores's valuation of a conference table, stereo and hanging plant. At trial, Raymond's counsel submitted a handwritten list which included these items and suggested a value for them. On cross-examination, Dolores testified that she did not know the stereo's value and disputed Raymond's valuation of the conference table and four chairs at $500

and the hanging plant at $50. Although Raymond disputes Dolores's testimony and seeks to be compensated for one-half of the values he offered, Raymond does not frame an argument as to why or how the trial court erred in this area. We will not independently craft a litigant's argument. *See* ***Vesely v. Security First Nat'l Bank,*** 128 Wis.2d 246, 255 n.5, 381 N.W.2d 593, 598 (Ct. App. 1981).

Raymond claims that he also should have been compensated for one-half the value of telephone equipment known as dialers. He refers to Dolores's testimony that the dialers were worth less than $6600. The trial court found that four boxes of business inventory had no value because attempts to sell the inventory had been unsuccessful. Raymond does not frame an argument as to why the trial court's findings are clearly erroneous. Therefore, we do not address this issue further.

Raymond submitted to the trial court proposed values for a computer, hard disk, reader and telephone equipment. Dolores testified that she did not know the fair market value of these items. The evidence was in conflict and it was the trial court's function to resolve this dispute. *See* ***Cogswell v. Robertshaw Controls Co.***, 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979). Again, Raymond does not demonstrate how or why the trial court erred.

Finally, we address Raymond's claim that he should receive one-half of a $400 payroll check Dolores wrote herself in June 1991. Raymond does not explain why this item would be subject to property division. Dolores filed a financial disclosure statement on June 18, 1991, in which she listed the balances in various cash and deposit accounts. Raymond does not contend that all or part of the $400 payroll is not disclosed here. Additionally, the trial court denied maintenance to the parties. Therefore, questions regarding income received by Dolores are not properly raised in this appeal from the trial court's property division.

By the Court.—Judgment affirmed.

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