COURT OF APPEALS
DECISION
DATED AND FILED

August 9, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1642 **Cir. Ct. No. 2009CV2722**

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

JOSEPH W. KARIUS,

PLAINTIFF-APPELLANT,

V.

LESLIE MEGANCK,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed*.

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Joseph W. Karius appeals from a judgment, entered after a court trial, awarding his ex-girlfriend, Leslie Meganck, $1885.59 plus costs. Karius argues that the trial court erred when it ordered Karius to

reimburse Meganck for certain expenses incurred during their relationship. We reject his arguments and affirm the judgment.

BACKGROUND

¶2 Karius and Meganck dated for about six years. In November 2007, Karius entered the Army. He went to Atlanta for training the first two weeks of November 2007 and the first two weeks of December 2007, returning to Milwaukee in between trainings to stay with Meganck. Next, Karius went to Kansas for training in January 2008, broke up with Meganck by telephone in either January or February, and returned home in early March 2008, at which time he married another woman and within a week left to serve in Iraq.[1]

¶3 In February 2009, Karius filed suit against Meganck, alleging that while he was serving in the military, Meganck had forged Karius's name on the title of his 2003 Chevrolet Tahoe, put the truck in her name and sold it for $16,500. He sought $16,500 in compensatory damages and another $16,500 in punitive damages.

¶4 Meganck filed an answer and counterclaim. She alleged that Karius had signed the title over to her and that she was entitled to retain the proceeds from the sale of the Tahoe to cover expenses that Karius had agreed to pay. Prior to trial, Meganck filed an itemization of damages that she was seeking, which included: (1) $5000 owed for a 2004 GMC Yukon that was purchased from Meganck's stepfather and titled in the names of both Meganck and Karius;

[1] Karius testified at trial that he also returned to Wisconsin on a three-day pass in February 2008, but he did not tell Meganck he was in Milwaukee.

(2) $4075 for one-half the cost of home siding; (3) $990.59 in interest on a home equity loan that Meganck took out to buy the Yukon for Karius; (4) $1000 rent for November and December 2007; and (5) $15,264 in compensation for child care and therapy that Meganck provided to Karius's son over several years.

¶5 Prior to trial, Karius's attorney indicated that Karius was abandoning his claim that Meganck had forged Karius's name on the Tahoe's title and that what remained was "simply a contract case for the proceeds of the sale" of the Tahoe, which Meganck sold for $12,800, rather than $16,500.

¶6 At trial, Karius testified that he believed he was entitled to $12,800 from the sale of the Tahoe and that he should not be responsible for paying anything toward the debt owed on the Yukon or any of the other expenses claimed by Meganck. He said that Meganck bought the Yukon from her stepfather[2] in 2007 and that Karius put his name on the title with Meganck because "she didn't have the money to title it." Karius denied that he had agreed to pay anything for the Yukon and said that he did not "exercise any ownership over the Yukon." He acknowledged, however, that he drove the Yukon to Atlanta for military training.

¶7 Prior to going to Atlanta in November 2007, Karius made arrangements for Meganck to try to sell the Tahoe. The Tahoe was placed at the home of Karius's friend Joe Roy's father-in-law, Robert Roeber, so that potential buyers could see it. Karius said the plan was that "if [Meganck] could find a buyer that was interested in the truck … and a price could be negotiated, when I returned from Iraq, I would be able to sign the title or if the title was sent to me in

[2] Karius referred to him as Meganck's father-in-law, but he was Meganck's stepfather.

Iraq I could sign it and send it back via mail." Karius said he gave Meganck the title so that she could show it to buyers, but he denied that he signed it.[3] He explained that he did not sign it because he wanted to have the "final say on what price that truck sold for."

¶8 On cross-examination, Karius acknowledged that he sent Meganck an email on February 9, 2008, while he was in Iraq, that discussed efforts to sell both the Tahoe and the Yukon. The email stated in relevant part:

> I looked on JSonline for vehicles for sale similar to the Yukon and Tahoe. The price for the Yukon at 21 K is lower than any listed and the Tahoe price should be at about 18,5 K.
>
> I did talk to Joe Roy while you were gone and he said that [two people] were both interested in the Yukon. They just need to know the price. Call Joe Roy and see if something can be worked out.

¶9 Karius testified that after he broke up with Meganck, she refused to give him the title to the Tahoe, so on March 5, 2008, two days after he got married, he obtained a replacement title. He did not, however, retrieve the truck from Roeber's house. In April 2008, Karius asked his new wife to go to the local police department to report that Meganck had taken the truck without permission.[4]

¶10 On May 20, 2008, Meganck provided Karius with a check for $1234.41, representing the proceeds from the sale of the Tahoe minus expenses she claimed he owed her, which she itemized for him. Karius said he did not cash

[3] Karius also denied having signed the title to the Yukon, which was titled in the names of both Karius and Meganck and was ultimately sold.

[4] Ultimately, the police department concluded that the issue was a civil matter and no criminal charges were filed.

the check because he did not accept that Meganck was entitled to pay him anything less than the full $12,800 from the sale of the Tahoe.[5]

¶11 Karius testified about each of the expenses Meganck was claiming. As relevant here,[6] Karius said he had agreed to pay one-half the cost of $15,390 in improvements to Meganck's house, which included the installation of new siding and repair of the roof. The work was performed by Karius's cousin's company in 2007. Karius said that he made payments for his half by giving Meganck $250 a month, but he provided no documentation of those payments at trial. Karius did provide documentation for a final payment of $3590 that he said he made directly to his cousin on April 28, 2008. Karius was cross-examined about the alleged payment and the fact that his cousin had not appeared in court in response to Meganck's subpoena.

¶12 With respect to the expenses incurred purchasing the Yukon, Karius said that the Yukon was not purchased for him and that he never agreed to pay any part of the home equity loan that Meganck obtained to purchase the Yukon. He also said that he never agreed to pay interest on the loan or the $5000 Meganck still owed her stepfather for the Yukon. On cross-examination, Karius acknowledged that he drove the Yukon sixty percent of the time, but said that he figured Meganck was planning to keep both the Yukon and her other vehicle, a Toyota Sienna, for use by her and her teenage children.

[5] At some point, Meganck also sold the Yukon. Karius did not seek to recover any proceeds from that sale, which Meganck said she used to pay off her home equity loan.

[6] The trial court denied Meganck's claims for child care expenses and a finder's fee for her son for selling the Tahoe. Meganck has not appealed the denial of those claims, and they will not be discussed in this opinion.

¶13 Finally, Karius testified that he never agreed to pay Meganck rent for the months of November and December 2007, although he acknowledged that he had rented his own home to someone else for those months.

¶14 Meganck's testimony contradicted Karius's testimony in numerous ways. She testified that over the course of her relationship with Karius, they discussed getting married and "blending [their] homes together." She said that they both owned homes and planned to sell them and buy a home together when Meganck's oldest child graduated from high school.

¶15 Meganck said that in 2007, she had the Sienna and Meganck had the Tahoe. When she learned that her stepfather was planning to sell a Yukon, she mentioned it to Karius and "he said that he wanted to get it, and we would sell his other car to pay for it." Meganck said that Karius did not have the money to buy the Yukon, so in about July 2007, she used a $16,000 home equity loan to pay for most of it; her stepfather agreed to let her owe him the remaining $5000. Meganck said the plan was that Karius would borrow the money from Meganck and when the Tahoe was sold, he would repay Meganck and her stepfather. Meganck said she never drove the Yukon, except to get a headlight fixed one time.

¶16 Meganck testified that when she learned that Karius was being deployed, she became worried about her finances. She said: "I overextended myself helping him with the [Yukon], and he said every time I had asked him about it [that] he was stressed out and didn't have any money and to sell the trucks and you'll get your money." She said that in December 2007, when Karius returned from Atlanta, Meganck again told him they needed to discuss finances. She said she remembers that as she was lying on the couch, recovering from surgery, he paid some bills, filled out the truck titles and left them in the dining

room. She said the date listed next to Karius's signature on the Tahoe title was December 15, 2007.

¶17 Meganck said that as a result of purchasing the Yukon for Karius, she incurred the cost of interest on her home equity loan and still owed $5000 to her stepfather. She sold the Yukon for $16,000 to pay off her home equity loan.

¶18 Meganck testified that Karius had agreed to pay her rent for November and December 2007. She explained:

> He moved in after he found out he was deployed…. I found somebody to rent his house out, and he knew that I needed the money as well, and he said he would start paying the rent for $500, the same amount that [the renter] was giving [Karius] for [Karius's] house.

¶19 Finally, Meganck said Karius owed her money toward the cost of repairs to her home. She said that after she sold the Tahoe, she sought a credit of $4075 from Karius, representing one-half the cost of the balance on the repairs. She said that in doing so, she made a clerical error by not seeking one-half of the original price, because Karius had never paid anything toward the total cost. Her trial counsel asked the trial court to award Meganck one-half the original cost or, if the trial court found that Karius had actually paid his cousin the balance on the home repairs, to award Meganck $4105.

¶20 Meganck called as additional witnesses Roy and Roeber, who testified about the Yukon, efforts to sell the Tahoe and the home improvements. Roy said that he and Karius were "best friend[s]" in the past, but their relationship changed when Karius did not tell him he was getting married and then suggested to the local police that Roy had assisted Meganck in keeping the Tahoe from Karius. Roy said that the Yukon was Karius's truck and that he remembered

Karius driving up and saying, "[L]ook at my new truck." Roy testified that Karius "bought it to replace his, he liked it because it was bigger, could tow more." Roy said that Meganck drove her Sienna and that he never saw Meganck drive the Yukon.

¶21 With respect to the repairs to Meganck's house, Roy said that Karius and Meganck "entered into the [home] improvements together because he felt that her house needed it to rise to the standard of living that he felt he needed to be comfortable."

¶22 Roeber testified that Karius asked him if he could park the Tahoe at Roeber's home so drivers could see it was for sale. Roeber agreed and asked Karius how the Tahoe would be sold when Karius was gone. Roeber said Karius told him "that he had signed the title over" to Meganck and that she would take care of the sale.

¶23 The trial court made detailed findings of fact and assessed the witnesses' credibility. It explicitly found that Karius's testimony was incredible in numerous respects and that Meganck, Roy and Roeber were credible witnesses.

¶24 The trial court found that the Yukon was purchased for Karius's use and that he had agreed to pay back Meganck the cost of purchasing the Yukon. Therefore, the trial court found, the $16,000 from the sale of the Yukon was appropriately applied to the home equity loan and Meganck was entitled to $5000 that was due her stepfather, as well as interest on the home equity loan that she paid in 2007 and 2008.

¶25 The trial court also specifically found that Karius had agreed to pay Meganck rent of $500 per month for November and December, "having moved

out of his house, moved items into her house, and having [had Meganck] find someone to rent his house while he was gone."

¶26 The trial court accepted Karius's testimony that he had agreed to pay one-half of the home remodeling costs. It found that Karius had paid nothing toward his half, explicitly rejecting Karius's proof that he paid his cousin $3590. The trial court explained: "It appears that in light of the pending litigation and claims, he contacted his cousin [and] got a statement of zero balance knowing that … [Meganck] was demanding setoffs against the proceeds of the sale of the truck." The trial court found that Karius had paid nothing toward the home improvement costs, rejecting his claim that he had made cash payments to Meganck.

¶27 The trial court found that after awarding Karius $12,800 of the proceeds of the Tahoe sale, then subtracting the money Karius owed Meganck for the Yukon, rent and home improvements, Karius owed Meganck $1885.59. This appeal follows.

DISCUSSION

¶28 Karius presents numerous arguments related to the expenses awarded to Meganck, which are discussed below. We begin our analysis by stating the standard of review. Where, as here, the trial court "acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness's testimony." ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." ***Id.*** We review questions of

law independently. ***Ball v. District No. 4, Area Bd. of Vocational, Technical and Adult Educ.***, 117 Wis. 2d 529, 537, 345 N.W.2d 389 (1984).

I. Challenge to the payment of $5000 for the Yukon.

¶29 Karius argues that he should not have been ordered to pay $5000 toward the cost of the Yukon because his statements to Meganck and Roy that he would pay Meganck's stepfather the $5000 he was owed were "mere declaration[s] of intention." Karius cites a 1924 case where the decedent, James Doyle, sold his sister Mary a cow for $200, which later died. *See* ***Estate of Doyle***, 183 Wis. 609, 610-11, 198 N.W. 767 (1924). When Doyle died, Mary sought and received $200 from his estate. *See* ***id.*** On appeal, the Wisconsin Supreme Court concluded that Mary's claim against the estate was improperly allowed, stating:

> It was claimed that the cow died by reason of infirmities which existed at the time of her sale. The only evidence given in support of this claim was that of Elizabeth Doyle, a sister of the claimant and of the deceased. She knew nothing whatever in regard to the facts concerning the cow's death except what she had been told by her sister and the claim seems to have been allowed because Elizabeth testified that her brother had said, when she had remonstrated with him about the sale of the cow to [Mary], that he would give her a cow or $200. In the absence of anything to establish a liability on the part of James to [Mary], this evidence at best amounts to a mere declaration of intention and is totally insufficient to support a judgment for the amount of the claim. There is no competent evidence in the case which establishes any liability on the part of the deceased to [Mary]. The claim was therefore improperly allowed.

Id. (italics omitted).

¶30 Karius argues that just as Doyle's statement to his sister that he would give her a cow or $200 was a mere declaration of intention at best, *see* ***id.***, Karius's statements to Meganck and Roy that he would pay Meganck's stepfather

the $5000 owed on the Yukon did not establish liability. We are not convinced that ***Doyle*** supports Karius's position. Here, the trial court found that Karius had, in fact, agreed to pay for the Yukon. This finding is supported by testimony that the Yukon was purchased for Karius's use, Karius used the Yukon and Karius told Meganck he would pay for the Yukon. The trial court's finding is not clearly erroneous. While the particular facts at issue in ***Doyle*** may not have supported the claim against the estate, there are facts in the record here that support the trial court's finding that Karius had agreed to pay for the Yukon and, therefore, owed Meganck the remaining balance on the Yukon.

¶31 Karius argues in the alternative that he should be required to pay only $2500, in light of the trial court's finding that the parties were combining their households and the fact that both the parties' names appeared on the Yukon's title. We reject this argument. Regardless of whether the parties were in the process of combining their households, the trial court explicitly found that "the Yukon was purchased for [Karius's] use [and] that he had agreed to pay [Meganck] back the cost of that purchase." As noted, that finding is supported by testimony from Meganck and Roy and is not clearly erroneous. Moreover, Karius has provided only two sentences of argument on this issue, and we decline to develop the argument for him. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (stating that this court will not address issues on appeal that are inadequately briefed).

II. Challenge to the payment of interest on Meganck's home equity loan.

¶32 Karius argues he should not have to pay the interest on the home equity loan that was taken out to pay for the Yukon. Karius's argument is essentially the same as he makes with respect to the $5000 payment: he argues

that he never agreed to pay the interest and that at best, he should be required to pay one-half the interest. We reject Karius's argument for the reasons noted above. The trial court found that Karius had agreed to pay for the Yukon, and that finding is not clearly erroneous. The cost of the Yukon included the principal and interest on the loan, as well as the $5000 debt owed to Meganck's stepfather.

III. Challenge to the home improvement costs.

¶33 Karius argues that Meganck is not entitled to any reimbursement for the home improvement costs because he produced evidence from his cousin that the bill had been paid in full.[7] In the alternative, he argues that he should get a credit for $3590, the amount he says he paid his cousin.

¶34 In effect, Karius is challenging the trial court's finding of fact that the documentation and testimony Karius produced in support of his claim that he paid his cousin was incredible. We are not convinced. The trial court evaluated the credibility of Karius and Meganck, rejected Karius's assertion that he had paid either Meganck or his cousin for the home repairs and accepted Meganck's testimony that Karius had not paid anything toward the cost of repairs. These credibility determinations were the trial court's to make and we will not disturb them. *See* ***Peppertree Resort Villas***, 257 Wis. 2d 421, ¶19.

[7] In his argument heading, Karius asserts that he had no liability to pay Meganck for the improvements to Meganck's home, but he does not provide any argument to support that assertion. We decline to address it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (stating that this court will not address issues on appeal that are inadequately briefed).

IV. Challenge to the payment of rent to Meganck.

¶35 Karius's final argument is that he should not have been ordered to pay Meganck rent for November and December 2007 because "where a couple is in a committed relationship where the parties do not charge each other rent for staying at each other's house, and where there is no written lease, Karius did not owe Meganck rent." (Some uppercasing omitted.) Karius's argument fails. The trial court found that Karius had agreed to pay Meganck rent for November and December. This finding is not clearly erroneous. Moreover, a written lease is not required unless the lease period is more than one year. *See* WIS. STAT. § 704.03(1) (2009-10).[8]

By the Court.—Judgment affirmed.

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

[8] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.