

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 14, 2014

Diane M. Fremgen
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. 2012AP1469

Cir. Ct. No. 2006FA1518

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

BARBARA JEANNE BEAVER,

PETITIONER-RESPONDENT,

V.

ALBERT HENRY BEAVER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
MARK A. WARPINSKI, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Albert Beaver, pro se, appeals the property division and maintenance portions of a judgment dissolving his marriage to Barbara Beaver. Albert also challenges several rulings the court made while the

divorce action was pending. We reject Albert's arguments and affirm the judgment.

BACKGROUND

¶2 The Beavers were married in May 1993, and Barbara filed for divorce in December 2006. In January 2007, the parties entered into a “stipulation for temporary order,” which provided that Albert was to ensure monthly mortgage payments and other related expenses were made on the DePere residence occupied by Barbara. When Albert stopped making payments, Barbara moved the circuit court to hold him in contempt. In turn, Albert moved to modify the temporary order. After a March 2009 hearing, the court found Albert in contempt of court and denied his motion to modify the temporary order.

¶3 A divorce judgment was ultimately granted in April 2012. The court made no determination with respect to ownership of either the Door County home where Albert lived or the DePere home where Barbara lived.¹ Rather, the court awarded each party a “life estate” in the property where each resided. Relevant to this appeal, the court also awarded Barbara indefinite maintenance of \$300 per month. This appeal follows and, to the extent we can discern Albert's arguments, we address each in turn.

¹ The Door County home is ostensibly owned by Chateau Hutter Conservation Corporation and the DePere home is ostensibly owned by Beaver Management Corporation. Both entities are nonstock, nonprofit corporations that were organized by Albert.

DISCUSSION

I. The Contempt Order

¶4 Albert challenges a March 18, 2009 order holding him in contempt of court for disregarding the 2007 temporary support order requiring him to make mortgage payments on the DePere residence. A contempt order, however, is a penalty imposed in a special proceeding. Therefore, it disposes of the entire matter in litigation in that special proceeding and is a final order for purposes of appeal. *See* WIS. STAT. RULE 809.03(1) (2011-12);² *see also* ***Meggett v. O’Neill***, 104 Wis. 227, 229, 80 N.W. 447 (1889). Because Albert did not timely file a notice of appeal from the contempt order, we lack jurisdiction to review the order. *See* WIS. STAT. RULE 809.10(1)(e).

¶5 Even were we to reach the merits, Albert’s challenge to the contempt order fails. Albert claims the circuit court erred when it chose to believe Barbara’s contempt hearing testimony over his. A circuit court acting as fact-finder, however, is the “ultimate arbiter of the credibility of the witnesses.” ***Bank of Sun Prairie v. Opstein***, 86 Wis. 2d 669, 676, 273 N.W.2d 279 (1979). To the extent Albert challenges Barbara’s testimony regarding ownership of the DePere residence, testimony about ownership was irrelevant as nothing in the temporary order required the parties to own the property. Albert was ordered to make mortgage payments and failed to do so. The record supports the contempt order.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

II. Motion to Modify Temporary Order

¶6 Albert contends the circuit court erred by denying his motion to modify the temporary support order. Albert asserts, without citation to authority, that the court erred by denying his motion “without following the summary judgment methodology.” It is not this court’s job to supply legal research and argument to support and develop Albert’s claim. *See State v. Waste Mgmt. Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). In any event, the record supports the circuit court’s denial of Albert’s motion.

¶7 Albert asserted that a change in his financial circumstances warranted modification of the temporary support order. The circuit court, however, found that Albert’s testimony was “not credible with respect to [his] ability to generate funds.” Noting that \$108,000 in payments were made to protect the Door County property where Albert resided, the court added that “[Barbara] should have the same opportunity while this action is pending.” As noted above, the circuit court acting as fact-finder is the ultimate arbiter of witness credibility. *See Bank of Sun Prairie*, 86 Wis. 2d at 676.

III. Property Division

¶8 The division of property in divorce actions is entrusted to the circuit court’s discretion, and will not be disturbed on appeal unless the court has erroneously exercised its discretion. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. First, Albert claims the circuit court erred by awarding Barbara an interest in the DePere residence “when she failed to comply with the court’s order setting a deadline to file her legal position.” Barbara, however, timely filed her position statement. Albert nevertheless contends the position statement should have been disregarded by the circuit court as

insufficient. We disagree. Barbara’s statement set forth a summary of her requests, putting the parties and the court on notice of the issues she intended to raise and her position on them.

¶9 Next, Albert asserts the circuit court erred by entering the divorce judgment without holding a trial at which Albert could present defenses and assert offsets on behalf of his developmentally disabled adult daughter from a previous marriage. Albert, however, fails to show how any offsets for his adult daughter’s expenses would have been appropriate to consider when deciding the property division or maintenance issues. Noting that the DePere property is owned by Beaver Management Corporation for the benefit of his daughter, Albert also asserts that Barbara has no right to the property. As discussed above, the court made no determination that Barbara owned the property—it merely granted her a life estate in the home for as long as she lived there. We reject Albert’s challenge to the division of property.

IV. Maintenance

¶10 Albert also contends the circuit court erred by awarding Barbara indefinite maintenance in the amount of \$300 per month. The determination of maintenance is a matter entrusted to the circuit court’s sound discretion. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). Upon a judgment of divorce, “the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering” those factors

listed under WIS. STAT. § 767.56.³ On review, the question is whether the circuit court's application of the factors achieves both the support and fairness objectives

³ WISCONSIN STAT. § 767.56 provides:

Upon a judgment of annulment, divorce, or legal separation, or in rendering a judgment in an action under s. 767.001(1)(g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:

- (1) The length of the marriage.
- (2) The age and physical and emotional health of the parties.
- (3) The division of property made under s. 767.61.
- (4) The educational level of each party at the time of marriage and at the time the action is commenced.
- (5) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- (6) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
- (7) The tax consequences to each party.
- (8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, if the repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
- (9) The contribution by one party to the education, training or increased earning power of the other.
- (10) Such other factors as the court may in each individual case determine to be relevant.

of maintenance. *Forester v. Forester*, 174 Wis. 2d 78, 84-85, 496 N.W.2d 771 (Ct. App. 1993). The first objective is to support the recipient spouse in accordance with the needs and earning capacities of the parties. “The goal of the support objective of maintenance is to provide the recipient spouse with support at pre-divorce standards.” *Fowler v. Fowler*, 158 Wis. 2d 508, 520, 463 N.W.2d 370 (Ct. App. 1990). The fairness objective is “to ensure a fair and equitable financial arrangement between the parties in each individual case.” *King v. King*, 224 Wis. 2d 235, 249, 590 N.W.2d 480 (1999) (citation omitted).

¶11 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 maintenance. While the reasons for the court’s determination on maintenance may not have been exhaustive, they need not have been. *See Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). The court reviewed the length of the parties’ marriage, their respective ages, educations, earning capacities and incomes. The court’s award of maintenance was fair considering what the court knew of the financial arrangement between the parties, and it provided Barbara with sufficient funds to support herself considering the parties’ pre-divorce circumstances. The court properly exercised its discretion in making the maintenance determination.

V. Albert’s Motion for Sanctions

¶12 Albert contends the circuit court erred by denying his motion for sanctions against Barbara and her attorney. In his motion, Albert asserted that Barbara’s claim for the division of certain real estate and corporations was frivolous because she had no evidence to establish that these were marital assets.

In denying the motion for sanctions, the court reiterated that claims regarding ownership were irrelevant because it had not awarded fee title and interest in the subject property to either party. The court merely awarded each party a life estate in the residence each occupied.

¶13 The court added: “This case, over all of this tortured litigation history, has really resulted in no disclosure because there has been, in this Court’s opinion, an active effort to prevent the disclosure by obfuscation, by delay and by a number of other means.” The court implicitly determined it would be improper to sanction Barbara for failing to offer evidence that Albert failed to provide to her during discovery. We discern no error.

VI. Stipulation and Order for Dismissal Arising from Door County Litigation

¶14 During the pendency of the divorce proceedings, Albert was “forced” into receivership and, in August 2009, the receiver moved to intervene in the divorce action to collect sanctions judgments against Albert that arose from Door County litigation. Barbara moved to prohibit Chateau Hutter Conservation Corporation from incurring the \$295,000 debt necessary to settle the judgments against Albert. Although it is not clear how the judgments were ultimately satisfied, a stipulation and order for dismissal of the Door County case was entered in April 2010.

¶15 The stipulation and order for dismissal provided that the Door County lawsuit “together with all claims and causes of action asserted by the parties in the lawsuit, be, and the same hereby are, dismissed with prejudice, without costs, and without further notice to any party.” Albert contends that this stipulation and order precluded the divorce court from ordering that any

maintenance or other payments be made from Albert to Barbara. We disagree. The stipulation, by its very terms, was limited to the Door County lawsuit. It does not and cannot foreclose consideration of issues subject to the divorce court's jurisdiction.

VII. Albert's Cross-Claim Summary Judgment Motions

¶16 Albert recounts that attorney Lynn Layber represented the Beavers in the Door County litigation and entered into a "hold harmless" agreement with the Beavers. The court presiding over the Door County lawsuit ultimately assessed \$215,000 in sanctions against Albert for bringing what it deemed to be a frivolous lawsuit, and \$12,000 in sanctions against Layber for maintaining the lawsuit. No sanctions were assessed against Barbara. Layber filed suit against the Beavers in Waukesha County to enforce the hold harmless agreement and recoup the sanctions assessed against her. Albert then cross-claimed against Barbara and filed a motion for summary judgment seeking contribution from Barbara for the sanctions assessed against him and the monies paid to settle the Door County litigation. The Waukesha County court decided that the determination of liabilities between Barbara and Albert was a matter for the divorce court and dismissed the cross-claims and motion for summary judgment.

¶17 The divorce court determined that the divorce judgment "subsumed" Albert's summary judgment motion. As the court noted, each party would keep what they have and deal with the creditors as they come. The court added: "If there are concerns about whether there has to be a debt allocation, because I've never been given an accurate picture of who owes what, I'll certainly take [that up] at a later date." As the court was not provided with sufficient information

regarding who owed what, it properly denied the existing motion with leave to return to court. We discern no error.⁴

By the Court.—Judgment affirmed.

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

⁴ By order dated March 7, 2013, this court denied Albert's motion to strike Barbara's brief. To the extent he renews the request in his reply brief, it is again denied.

