

STATE OF MICHIGAN
COURT OF APPEALS

SANA KHALIFEH,

Plaintiff/Counter-Defendant/Appellant,

v

JULIO KHALIFEH,

Defendant/Counter-Plaintiff/Appellee.

UNPUBLISHED

March 14, 1997

No. 190658

Oakland Circuit Court

LC No. 95-494810

Before: Griffin, P.J., and McDonald and C. W. Johnson*, JJ.

PER CURIAM.

Plaintiff, Sana Khalifeh, appeals as of right from the October 30, 1995, default judgment of divorce which: 1) granted defendant, Julio Khalifeh, sole legal custody of the couple's two minor children; 2) granted Julio the entire amount of marital assets and liabilities, save \$30,000 cash; and, 3) denied Sana alimony. We affirm.

Sana filed for divorce on April 4, 1995, alleging that, throughout her marriage, Julio was verbally and physically abusive to both her and her children. On April 25, 1995, Julio filed a counter-claim of divorce. Later, on April 26, 1995, the trial court ordered that Sana could not take her children anywhere without the permission of the court. However, on May 3, 1995, Sana's counsel informed Julio's counsel that, unbeknownst to him, Sana had left the country with her children and was staying in Lebanon with her father.

Subsequently, the trial court entered orders compelling Sana to return to the United States, granting Julio sole custody of the children, and holding Sana in contempt of court. Sana's counsel noted that Sana fled the country only out of her fear of Julio. Sana's counsel also alleged Sana could not travel because she was under medical treatment for depression. On July 28, 1995, an order of default was entered against Sana.

On August 24, 1995, Sana's counsel filed a motion to withdraw from the case. In his affidavit, Sana's counsel stated Sana had resided with her family in Lebanon since April 26, 1995, and

* Circuit judge, sitting on the Court of Appeals by assignment.

communications with her had been difficult. Sana's counsel also stated that Sana failed to answer the interrogatories as requested and Sana failed to communicate her intentions regarding whether she was going to return or pursue her divorce action. The case proceeded to trial on September 11, 1995. Neither Sana nor her counsel were present at the beginning of trial. According to Julio's counsel, Sana's counsel knew the trial was going to take place on September 11, 1995, yet chose not to attend. At trial, Julio testified on his own behalf. Julio testified he desired custody of his children and that he believed himself to be a fit parent. Julio told the trial court that he had a nice home in Farmington Hills and he could provide his children with adequate financial support and a good education. Julio also stated that he could provide for his children's medical and health needs.

With regard to the division of property in the marital estate, Julio testified Sana took approximately \$30,000 cash from the marital bank account just prior to filing for divorce. Julio stated that he owned a forty-five percent interest in a company called BioTech Clinical Laboratories, which had a net worth of \$4,748 after liabilities were deducted. Julio based his estimate on calculations prepared by his accountant. Julio testified the calculations prepared by the accountant were a true and accurate evaluation of his business assets. According to Julio's counsel, Julio had extensive liabilities. Julio's counsel opined that after all of Julio's liabilities were offset from his assets, he would be left with only \$2,000 as his total net worth. Therefore, Julio's counsel opined that Sana had \$28,000 more assets than him because of \$30,000 cash she took from the marital estate.

At the close of trial, Sana's counsel arrived, and asked to withdraw as Sana's counsel. The trial court stated the court would only entertain a motion to withdraw after the conclusion of trial. Sana's counsel asked no questions of Julio. Subsequently, the trial court informed Sana's counsel that after forwarding a copy of the judgment of divorce to Sana, he could be discharged as her attorney at that time. The trial court entered the default judgment of divorce on October 30, 1995. Julio was awarded custody of the children and all of the assets and liabilities set forth in Defendant's Trial Exhibit A, with the exception of \$30,000. Additionally, the trial court held that alimony would be barred from both parties.

I

On appeal, Sana first argues the trial court erred in its custody and child support determinations. In particular, Sana claims the trial court improperly disallowed a Friend of the Court investigation and failed to make specific findings of fact as to the best interest factors.¹ We disagree. This Court is required by statute to affirm the custody decisions of the trial court unless the trial court's order includes findings of fact which are against the great weight of the evidence; its disposition of the case is an abuse of discretion; or, its decision contains a clear legal error on an important issue. MCL 722.28; MSA 25.312(8); *Soumis v Soumis*, 218 Mich App 27; __ NW2d __ (1996).

Initially, we note that Sana did not participate in the divorce and custody proceedings below. As set forth above, Sana fled the country with her two children to Lebanon and did not participate in discovery. We find in light of Sana's 1) refusal to participate at trial; 2) her failure to communicate with her attorney; and, 3) her repeated disregard for court orders, the trial court had no choice but to award

custody to Julio. This Court has held that an appellant cannot claim error for an action which he precipitated. *Bufford v Brent*, 115 Mich App 146; 320 NW2d 323 (1982).

With regard to Sana's claim the trial court disallowed a Friend of the Court investigation, we note that the trial court addressed the need for a Friend of the Court investigation several times prior to trial. We find Sana's act of fleeing the country was the main reason why a Friend of the Court investigation could not have taken place. Thus, any court-ordered investigation would have been futile in light of Sana's behavior. Accordingly, no reversal is mandated as to this allegation of error.

With regard to Sana's argument the trial court failed to make explicit findings of fact on each of the best interest factors, we acknowledge a trial court's failure to make specific findings of fact is error requiring reversal. *Daniels v Daniels*, 165 Mich App 726, 730; 418 NW2d 924 (1988). Because the trial court addressed the best interest of the children as best as could be expected without Sana's participation at trial, we conclude that although the trial court erred in failing to make explicit findings as to each of the best interest factors, nothing will be gained by remanding this case for further review. See *Triple E, supra*. The trial court's failure to make explicit findings as to the best interest factors is harmless error. MCR 2.613(A). Therefore, no reversal or remand is necessary. Cf. *Bowers v Bowers*, 198 Mich App 320; 497 NW2d 602 (1993).

II

Sana next argues the trial court erred in awarding Julio all of the marital assets and denying her alimony. We disagree. The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Ackerman v Ackerman*, 163 Mich App 796; 414 NW2d 919 (1987). In this case, the trial court properly divided the marital estate by granting Julio all of the assets and liabilities of the marital estate, save Sana retaining \$30,000 cash and her personal property. Additionally, the trial court did not err in denying alimony to both parties.

We find the trial court's distribution of the marital estate was proper, in light of the limited information that the trial court received at the time of trial. The trial court's only accounting of the marital estate was provided by Julio. Although Sana argues on appeal Julio's accounting was incorrect, Sana failed to present any accounting of the marital estate, let alone a "correct" one. An appellant cannot claim error for an action which she precipitated. *Bufford, supra*, 115 Mich App 146.

Finally, Sana's argument the trial court erred in denying her alimony is also without merit. The trial court agreed that alimony would be barred from both parties. Sana made no request for alimony at trial, nor presented any evidence alimony was appropriate under the facts of the case. The main objective of alimony is to balance the incomes and needs of the parties in a way which will not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300; 495 NW2d 173 (1992). Additionally, alimony is to be based on what is just and reasonable under the circumstances of the case. *Maake v Maake*, 200 Mich App 184; 503 NW2d 664 (1993). We conclude the barring of alimony to both parties was the most equitable solution in this case, in light of the limited information presented at

trial regarding the state of Sana's financial affairs. Therefore, we affirm the trial court's order denying alimony to both parties.

Affirmed. Defendant being the prevailing party, he may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin

/s/ Gary R. McDonald

/s/ Charles W. Johnson

¹ MCL 722.23; MSA 25.312(3).