

STATE OF MICHIGAN
COURT OF APPEALS

CAROLYN JUSTICE,

Plaintiff-Appellee,

v

MARK JUSTICE,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 181420

Oakland Circuit Court

LC No. 92-428802 DO

Before: Holbrook, Jr., P.J., and White and S.J. Latreille*, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's amended judgment of divorce. We affirm.

In a divorce action, we review a trial court's factual findings for clear error. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). If this Court upholds the findings of fact, we next address whether the trial court's dispositional ruling was fair and equitable in light of those facts. The dispositional ruling will be upheld unless this Court is left with the firm conviction that it was inequitable. *Id.*

On appeal, defendant first argues that the trial court erred in implicitly finding that the parties' marriage ended only after plaintiff filed the complaint for divorce in 1992, rather than five years earlier in 1987 when the parties separated. We find no merit to this claim. The rights of a husband or wife to property acquired by the other during a period of separation are not abrogated absent an external public manifestation of intent by the parties that the bonds of matrimony are irretrievably broken, such as moving out or filing a complaint for divorce. *Wilson v Wilson*, 179 Mich App 519, 523-524; 446 NW2d 496 (1989). The determination of a valuation date for marital assets is within the trial court's discretion and will not be disturbed if the trial court had a plausible reason for choosing the date. *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991). In this case, as proof that the parties separated in 1987, defendant submitted a page from plaintiff's interrogatories in which she designates two places of residence in 1988. Defendant contends that this is an admission that she had established her own residence at least by 1988. Plaintiff, for her part, alleges that the parties separated

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

in 1990 and submitted copies of the couple's income tax returns for 1984 through 1989, on which the parties declared their filing status as "married filing joint return." Considering these proofs, we decline to conclude that the trial court committed clear error in finding that the parties' marriage ended after plaintiff filed her complaint for divorce.

Defendant next argues that the grant of temporary alimony was inequitable because both parties are self-sufficient and employed. The award of alimony is within the trial court's discretion. *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). The primary purpose of alimony is to balance the needs and incomes of the parties in a way that will not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). The trial court noted the \$26,000 disparity between the annual incomes of plaintiff and defendant and awarded plaintiff temporary alimony of \$50 a week for one year, declaring that the award was equitable "in that it would enable the Plaintiff to become more financially secure." In light of the facts of this matter, we find no abuse of discretion by the court in awarding temporary alimony to plaintiff.

Defendant next argues that the trial court's award to plaintiff of one-half the purchase price of three parcels of real estate which were jointly owned by defendant and other family members was inequitable. In the lower court, the parties stipulated to the fact that defendant "owned and operated" a foster care business with his mother and sister. The factual dispute involved the extent of plaintiff's "participation" in the business and the amount of income earned from its operation. The court's written opinion awarded plaintiff "one-half of the purchase price" of the three parcels, while the resulting judgment of divorce (drafted by plaintiff's counsel) provided that plaintiff was to be awarded "a Fifty (50%) percent interest in the purchase prices" of the parcels. Contrary to defendant's argument, neither the language of the opinion nor the judgment necessarily supports the conclusion that the court had found defendant to be the sole owner of the parcels or that the award was to constitute one-half of defendant's financial interest in the parcels. Indeed, the court's written opinion expressly set forth the address of each parcel as well as the date of acquisition and the names of the owners and manner of ownership, as indicated by copies of the deeds for all three parcels, which were submitted along with defendant's trial brief, and which showed that the parcels were conveyed to defendant and various family members as joint tenants. Regardless of the manner in which it was denominated, our paramount concern is whether the court's disposition was equitable. After reviewing the entire record, including the noted \$26,000 disparity between the parties' annual income,¹ the court's disposition of the other marital assets, and the award of temporary alimony, we conclude that the monetary award of \$12,325 to plaintiff was equitable.

Finally, defendant argues that the trial court's dispositional ruling awarding plaintiff one-half of defendant's interest in five automobiles in his possession was unfair. We disagree. Defendant contends that plaintiff was not entitled to an interest in automobiles purchased after the parties separated and that the monies used to purchase the automobiles was not a marital asset. Although the purchase dates of two of the automobiles remain in question, and neither party has provided information to resolve the question, at least three of the five cars were purchased in

1989 and 1990 and, given the trial court's finding that the marriage ended in February 1992, are therefore marital assets.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Stanley J. Latreille

¹ In 1992, plaintiff earned approximately \$17,000 in wages and defendant earned approximately \$43,000.