STATE OF MICHIGAN

COURT OF APPEALS

ROXANNE G. DEHAAN,

Plaintiff-Appellee,

v

GARRY L. DEHAAN,

Defendant-Appellant.

UNPUBLISHED
May 2, 1997

No. 188498
Ottawa Circuit Court
LC No. 94-021511-DM

Before: Neff, P.J., and Smolenski and D. A. Roberson*, JJ.

PER CURIAM.

Defendant appeals as of right a judgment of divorce. We affirm.

The trial court's opinion concerning the division of the marital property indicates that the court attempted an approximately equal division. However, on appeal, defendant raises several grounds in support of his argument that the trial court's division of property was inequitable. Defendant provides this Court with what defendant asserts would have been an equitable property division in this case. For the reasons that follow, we reject defendant's property division and affirm the trial court's property division.

In making the property distribution in a divorce action, the trial court must make findings of fact and dispositional rulings. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). On appeal, the court's factual findings are upheld unless they are clearly erroneous. *Id*. The court's dispositional ruling is likewise affirmed unless this Court is left with the firm conviction that the division of property was inequitable. *Id*

First, we note that defendant's property division does not consider the value of an account receivable entitled the "Roossien account" but does consider the value of a checking account owned, in part, by plaintiff and valued by the court at $5775. Defendant contends that no value should be attached to the Roossien account where the trial court stated that "[d]efendant claims he is indebted to

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* Recorder's Court judge, sitting on the Court of Appeals by assignment.

subcontractors and material suppliers for the Roossien project amounting to nearly the total amount which he is owed by Roossien on the contract." However, defendant focuses on one isolated statement by the trial court. Contrary to defendant's position, our review of the trial court's opinion clearly reveals that the court valued the Roossien account at approximately $13,000 and found that the account constituted a marital asset. Defendant does not dispute these findings. In addition, defendant has cited no authority for his proposition that the Roossien account was without value simply because defendant also had offsetting accounts payable in his business. The court awarded defendant all of the accounts receivable in his business and ordered that defendant pay his business obligations. The court stated that in light of certain other factors it believed that its award of the accounts receivable to defendant and its award of the checking account to plaintiff would result in an "approximately equal" division of those assets. The court then divided the remaining assets (the equity in the marital home, defendant's tools and defendant's equity in another parcel of real property) equally and offset defendant's share by certain obligations owed by the parties to each other. We conclude that the trial court's findings in this regard are not clearly erroneous and we are not left with the firm conviction that the court's division of the marital estate was inequitable.

Second, defendant contends that the trial court failed to take into account the parties' 1994 tax liability in dividing the martial estate. We disagree. The trial court found that plaintiff filed her 1994 taxes separately and received a refund whereas defendant had filed no estimated taxes and still owed taxes for 1994. Defendant does not challenge this finding, and we find no clear error. The trial court ordered that defendant "shall be solely responsible for all 1994 income taxes and penalties which he has or may incur." Defendant does not challenge this dispositional ruling, and we are not left with a firm conviction that it was inequitable where plaintiff and defendant filed separately in 1994.

Defendant also contends that his share of the marital estate should be increased by half of the 1994 taxes he has already paid on the ground that such percentage would constitute plaintiff's one-half share of that tax debt. However, as previously indicated, plaintiff and defendant filed separately in 1994. Thus, where each party was responsible for their own tax liabilities in 1994, we find no clear error or inequity in the court's failure to require plaintiff to be responsible for a portion of defendant's 1994 tax debt.

Next, defendant argues that the court's findings with respect to the issue of backpay allegedly owed by defendant to plaintiff for bookkeeping services were not sufficiently definite for the purpose of ascertaining how the trial court treated this debt. See MCR 2.517(A)(2). We disagree. Although the trial court noted that money earned by plaintiff during the marriage should normally be treated as a marital asset, it is clear that the court found that the backpay at issue was a personal obligation owed by defendant to plaintiff pursuant to their agreement and not a martial asset or marital debt.

Finally, defendant claims that the trial court abused its discretion in awarding plaintiff attorney fees. We disagree. In a divorce action, attorney fees are not recoverable as of right. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). Rather, attorney fees in a divorce action are awarded only as necessary to enable a party to prosecute or defend the action. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). Attorney fees may also be awarded

when the requesting party has been forced to incur expenses as a result of the other party's unreasonable conduct in the course of litigation. *Id*. See also *Stackhouse*, *supra*. This Court will not reverse a trial court's decision to award attorney fees absent an abuse of discretion. *Hanaway*, *supra*. Generally, the trial court should make specific findings concerning the necessity of a fee. *Stackhouse*, *supra* at 446. However, even where the trial court failed to make the requisite findings, this Court has affirmed an award of attorney fees in a divorce action where sufficient record evidence existed to support the necessity of the fee award. *Id*. at 445-446.

In this case, the trial court made no specific finding regarding the necessity of a fee award. Nevertheless, there is sufficient evidence in the record to support the necessity of the award where, because of defendant's unreasonable conduct during the course of litigation, plaintiff twice moved the court for injunctive relief and, as a result, incurred additional legal expenses.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Dalton A. Roberson