STATE OF MICHIGAN

COURT OF APPEALS

SCOTT BRADLEY WATSON,

Plaintiff/Appellee/Cross-Appellant,

v

CAROL LYNN WATSON,

Defendant/Appellant/Cross-Appellee.

UNPUBLISHED
May 30, 1997

No. 189576
Wayne Circuit Court
LC No. 94-436656-DM

Before: Smolenski, P.J. and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Defendant appeals as of right and plaintiff cross-appeals from the circuit court's entry of a judgment of divorce. We affirm.

Defendant's sole claim on appeal is that the trial court erred in failing to award her more than five hundred dollars in attorney fees. Defendant contends that she is entitled to have plaintiff pay the full cost of her attorney fees accrued during the divorce litigation because she neither earned money nor received money from plaintiff during the marriage and has little earning power, and because plaintiff's unreasonable conduct during the pendency of the litigation forced her to assume added attorney fees. We disagree.

While attorney fees in a divorce action may be awarded to enable a party to prosecute or defend a suit, or when the requesting party has been forced to incur expenses as a result of the other party's unreasonable conduct in the course of the litigation, we conclude that the trial court record showed that defendant did not meet these criteria. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). While plaintiff earned about $49,000 a year in his job and defendant did not work outside the home during the balance of the marriage, defendant began working outside the home toward the end of the marriage. Plaintiff testified that defendant had shown him checks from her employer for a month's work that totaled $628. Plaintiff also testified that after he filed for divorce, defendant's employer began paying her in cash so that defendant would have no declarable income. Defendant also told the trial court that she was willing to continue in this job or return to her prior career as a cosmetologist should she receive custody of the children. In addition, although defendant testified

that plaintiff gave her no spending money, plaintiff testified that he gave defendant fifty to a hundred dollars a week in spending money during the balance of the marriage. Defendant also admitted that plaintiff paid her credit card bills during the marriage. The evidence thus shows that defendant did not lack funds during the marriage and the trial court did not err reversibly in inferring that she was not likely to lack them after the divorce.

We also conclude that defendant was not forced to assume additional legal expenses solely because of plaintiff's unreasonable conduct. On the contrary, the trial court record reveals that plaintiff and defendant have been accusing each other of unreasonable conduct since plaintiff filed his complaint for divorce. Lower court documents and trial testimony establish that plaintiff and defendant traded accusations of assault, verbal abuse, destruction and theft of personal property, manipulation of the children and destruction of marital property. Neither party was held in contempt of court, and both were ordered to return any property belonging to the other party and to refrain from taking property from the marital home. Although plaintiff was ordered to remove a long-distance service block from the family telephone, to unlock certain common rooms of the marital home and to stay out of defendant's car, he denied breaking these orders at trial. We conclude that the trial court did not abuse its discretion in failing to award defendant more than five hundred dollars in attorney fees. *Hanaway, supra* at 298; *Heike v Heike*, 198 Mich App 289, 294; 497 NW2d 220 (1993).

Plaintiff raises two issues on cross-appeal. First, plaintiff complains that the trial court abused its discretion in failing to allow him to present during trial the testimony of several disinterested witnesses who would support his claim to custody of the minor children. Because plaintiff's claim is completely unsupported by the trial court record, we decline to consider it. *Samuel D Begola Services, Inc, v Wild Bros*, 210 Mich App 636, 642; 534 NW2d 217 (1995); *Trail Clinic, PC v Bloch*, 114 Mich App 700, 713; 319 NW2d 638 (1982). It is an improper expansion of the record to attempt to supply off the record statements and events by attorney affidavit not presented to the trial court.

Second, plaintiff asserts that the trial court's findings on three of the eleven factors outlined in MCL 722.23; MSA 25.312(3), under which the trial court must consider the "best interests of the child" in deciding which parent to award custody of minor children, were against the great weight of the evidence. We disagree.

Plaintiff contends that the trial court's findings as to factor (c), "the capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care . . . and other material needs," were against the great weight of the evidence because the evidence adduced at trial showed that plaintiff was financially better able to provide for the minor children than defendant. *Wellman v Wellman*, 203 Mich App 277, 282; 512 NW2d 68 (1994); *Overall v Overall*, 203 Mich App 450, 456; 512 NW2d 857 (1994). We disagree. The evidence showed that although plaintiff made about $49,000 a year in his job, defendant was earning over six hundred dollars a month from her honey-bottling job and also had skills as a cosmetologist which she was willing to put back to use to provide for the children. Defendant also was awarded alimony of $433 a month for twenty-seven months by the terms of the trial court's written decision and order. Both parties had the ability to provide for the children as the trial court found.

Next, plaintiff contends that the trial court made inadequate findings as to factor (g), the mental and physical health of the parties, because the court proceeded to trial without having received the results of psychodiagnostic examinations of plaintiff and defendant recommended by the Friend of the Court. Again, plaintiff's claim is unsupported by the trial court record, and we find no action inconsistent with substantial justice in failing to correct this alleged error. MCR 2.613(A); *Bloch, supra* at 713. Plaintiff's counsel informed this panel at oral argument that further developments, post disposition, existed in this matter to warrant seeking a change in custody based on a change in circumstances. We have therefore, expedited our disposition of this matter to enable plaintiff to seek relief from the trial court in this area. For purposes of our review we are not persuaded by plaintiff's claim that the trial court did not have and therefore could not review the results of psychodiagnostic examinations of the parties which were obtained pursuant to Friend of the Court recommendations. These tests are not mentioned in the trial transcript. Neither party offered testimony or exhibits regarding the mental or physical health of the other during trial or at extensive post trial motions or hearings. We have no basis for holding the trial courts findings inadequate or against the weight of the evidence. *Fletcher v Fletcher*, 447 Mich 871; 526 NW2d 889 (1994).

Affirmed. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Michael R. Smolenski
/s/ Michael J. Kelly
/s/ Roman S. Gribbs