

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICIA A. TAYLOR,

Plaintiff–Appellant,

v

PAUL W. TAYLOR,

Defendant–Appellee.

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UNPUBLISHED

June 17, 1997

No. 182082

Wayne Circuit Court

LC No. 94 413612 DO

Before: Sawyer, P.J., and Marilyn Kelly and D.A. Burrell,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from a December 16, 1994, judgment of divorce in which she was awarded rehabilitative alimony for five years, assistance with health insurance for three years, the marital home, and an interest in a shopping mall. We affirm in part, reverse in part, and remand for further proceedings.

I

Plaintiff argues that the property distribution was inequitable, given the parties' twenty-eight year marriage, plaintiff's role as homemaker during the last twenty-six years, defendant's fault in causing the divorce, plaintiff's limited job prospects and poor health and defendant's contrasting ability to earn a good income and sound health. We disagree. The division of the marital assets must be equitable, not necessarily equal. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992). The trial court awarded plaintiff over fifty percent of the assets revealed at trial.

Plaintiff now argues that the trial court implicitly awarded defendant his architectural firm and two whole life insurance policies not revealed at trial. The record shows that, during the trial, plaintiff represented defendant's architectural firm as a source of income for defendant, not as a marital asset. Accordingly, the trial court seems to have considered the income potentially generated by the firm in its

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

alimony award to plaintiff. As for the life insurance policies that plaintiff alleges exist, she presented no information concerning the policies at trial. This Court cannot find that a property division is inequitable on the basis of hypothetical assets.

## II

Plaintiff also argues that the trial court's alimony award is based on clearly erroneous factual findings and that the award itself is clearly inequitable, given the circumstances of the parties. Although the trial court's factual findings were not clearly erroneous, we are convinced that the alimony award is inequitable in light of the totality of the circumstances.

The trial court specifically found that (1) neither party was at fault in causing the divorce, (2) both defendant and plaintiff were less than fully credible with respect to their limited earning capacity (3) both plaintiff and defendant exaggerated their expenses, and (4) plaintiff was capable of reentering the job market. There is record evidence to support all of these findings. Therefore, they are not clearly erroneous. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

However, considering the other circumstances in this case, we are firmly convinced that the trial court's decision to limit the alimony award to five years was inequitable. *Ianitelli v Ianitelli*, 199 Mich App 641, 642; 502 NW2d 691 (1993). Plaintiff and defendant were married for twenty-eight years. Plaintiff worked as a secretary both before and after the marriage. At defendant's request, plaintiff remained at home during the final twenty-six years. As a result, plaintiff lacks the work experience and skills necessary to obtain a good position in the present job market.

Although plaintiff could learn the skills needed for modern secretarial work, her age and lack of experience will continue to limit her job prospects. Additionally, the amount of alimony awarded, when combined with the salary plaintiff was earning at the time of trial, is barely sufficient to allow her to cover minimal monthly expenses.<sup>1</sup> Given plaintiff's present budget, it will be difficult for her to finance the vocational education required for employment which would eliminate her need for alimony.

By contrast, defendant is trained in a well paying field and is able to earn an income far higher than plaintiff's. Therefore, awarding rehabilitative alimony of \$100 per week for only five years in this case is inequitable. See *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993). The fact that defendant's income is not substantially higher than plaintiff's does not preclude the award of permanent alimony. See *McLain v McLain*, 108 Mich App 166, 171-174; 310 NW2d 316 (1981).

## III

Finally, we agree with plaintiff that the trial court abused its discretion in failing to award attorney fees to her. Necessary and reasonable attorney fees may be awarded to a party to carry on or defend a divorce action. *Thames v Thames*, 191 Mich App 299, 310; 477 NW2d 496 (1991). A trial court's decision with respect to attorney fees will not be reversed absent an abuse of discretion. *Id.*

As previously noted, plaintiff earns barely enough to cover her monthly expenses. Defendant has the ability to earn a substantially higher income than plaintiff. Moreover, we agree with plaintiff that

she has established the need for financial assistance to pursue this divorce action. *Id.*; *Wilson v Wilson*, 179 Mich App 519, 525-526; 446 NW2d 496 (1989). She has requested that this Court award her \$15,000 in attorney fees. However, we lack record support showing that \$15,000 is appropriate. Therefore, we remand this issue to the trial court to determine an appropriate attorney fee award for plaintiff.

In summary, we affirm the property distribution in this case. We reverse the award of rehabilitative alimony and remand for entry of an award of permanent alimony, the amount to be determined by the trial judge based on fairness and equity. We also remand the issue of attorney fees to the trial court for it to determine a necessary and reasonable sum to award to plaintiff for this divorce action. Affirmed in part, reversed in part and remanded. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Marilyn Kelly

/s/ Daniel A. Burrell

<sup>1</sup> The “minimal monthly expenses” to which we refer are those admitted by defendant in his brief on appeal. They total \$1,038 per month.