

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM DAVID MOORE,

Plaintiff-Appellee,

v

MARGARET ANN MOORE,

Defendant-Appellant.

UNPUBLISHED

July 11, 1997

No. 192817

Kent Circuit Court

LC No. 94-000240 DM

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of divorce with respect to the award of alimony to defendant and the division of the parties' marital property. We affirm the award of alimony, and remand on the issue of property distribution for either a correction or modification of the judgment to accurately reflect the court's intention to divide the property fifty-fifty, or to justify its reasoning.

I

Defendant first argues that the trial court failed to make specific findings of fact by failing to articulate on the record any of the necessary and relevant factors to be weighed before determining the amount of alimony and, therefore, did not make a fair and equitable award of alimony in light of the facts. We disagree.

On appeal, the trial court's factual findings concerning an award of alimony are reviewed for clear error. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *Ianitelli v Ianitelli*, 199 Mich App 641, 642; 502 NW2d 691 (1993). The court's findings are presumed correct and defendant bears the burden of showing otherwise. *Beason v Beason*, 435 Mich 791, 804; 460 NW2d 207 (1990). A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake was made. *Id.*, 805. After determining that the court's factual findings are not clearly erroneous, we must then decide whether an alimony award was fair and equitable in light of those facts. *Sparks, supra*, 151-152. We will affirm alimony rulings unless we are left with the firm conviction that the distribution was inequitable. *Ianitelli, supra*, 642.

Here, the record shows that the trial court's factual findings were not clearly erroneous, and the court specifically addressed several of the relevant factors defendant now claims it ignored. The court found that defendant did not work except for while plaintiff was in medical school, and plaintiff moonlighted while in medical school to supplement their income, that the parties had a long-term marriage, that defendant has a bachelor's degree, and plaintiff's medical training and practice have been rather successful, that the settlement regarding the property division was fair and accurate, that plaintiff has supported the family very well, and that one of the children was a minor.

Hence, the court stated that it considered the relevant factors required to be considered in determining spousal support. *Parish v Parish*, 138 Mich App 546, 554; 361 NW2d 366 (1984). Because the court's findings are supported by the evidence presented at trial, with no "definite and firm" mistake found by this Court, the presumption stands that such findings are without error. *Beason, supra*, 804-805.

In addition, we find that the trial court's alimony award was fair and equitable under the circumstances. *Sparks, supra*, 151-152. The record indicates that defendant felt that she need not work, but that she is healthy and able to work; defendant's earning potential is roughly \$14,500 per year which, added to the \$36,000 per year alimony award, puts her income at \$50,500 per year; defendant's \$405,000 interest in plaintiff's pension plan is potentially worth \$700,000 to \$1.1 million; defendant was awarded the parties' interest in two limited partnerships that generate annual income of about \$9,500. We also conclude that defendant claimed some exorbitant monthly expenditures.

Because the main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992), and we need only determine whether the alimony was equitable, *Sparks, supra*, 152, we find that the alimony awarded was just and reasonable under the circumstances, *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993). We are not firmly convinced otherwise. *Ianitelli, supra*, 642.

The alimony award is affirmed.

II

Next, defendant argues that the trial court's marital property division must be modified because it made a mathematical error in attempting to divide the property equally, and, therefore, its dispositional ruling was not fair and equitable. We agree.

In reviewing dispositional rulings in a divorce case, this Court must first review the trial court's findings of fact for clear error, and then decide whether the dispositional ruling was fair and equitable in light of those facts. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). Property dispositional rulings will be affirmed unless we are left with the firm conviction that the distribution was inequitable. *Id.*

The goal of distributing marital assets in a divorce proceeding is to reach a “fair and equitable” distribution in light of all the circumstances. *Ackerman, supra*, 807. To reach an equitable division, the trial court is given broad discretion in fashioning its rulings, is not held to a strict mathematical formula, and is only required to consider those factors relevant to the case before it. *Sands v Sands*, 442 Mich 30, 34-35; 497 NW2d 493 (1993).

After reviewing the record, we find that the court committed a clear factual error in its mathematics when intending to divide the marital property fifty-fifty, and, therefore, we are convinced that the property division was not fair and equitable in light of that factual circumstance.

The record clearly establishes that the trial court’s original divorce judgment awarded plaintiff assets valued at \$633,115, and defendant assets valued at \$858,100, a disparity of \$224,985. As part of its calculations to arrive at these figures, the court had equally divided the value of plaintiff’s interest in his medical practice, \$500,000, by ordering \$250,000 paid to defendant from plaintiff in a series of promissory notes. Later, to rectify the disparity, the court amended the judgment by changing the amount in promissory notes paid to defendant to \$112,500. However, simple math shows that by giving defendant \$112,500 out of the \$500,000 rather than \$250,000, the property distribution is then \$770,615 for plaintiff and \$720,600 for defendant. This leaves a \$50,015 disparity, this time favoring plaintiff. In its bench opinion, the trial court stated several times its intent “to split this estate fifty-fifty.” Therefore, defendant argues that this mathematical error favoring plaintiff was inequitable.

The trial court’s mathematical error resulted in a property distribution that was clearly contrary to its stated intent. Accordingly, notwithstanding that a strict mathematical formula is not required, *Sands, supra*, 34 (citing *Sparks, supra*, 159), we find the trial court’s property dispositional ruling inequitable, not necessarily because of the disparity, but because it effectuates an unequal result—contrary to the court’s clear intent. The inequity lies in the court’s clear factual error in its mathematics when its intent was to divide the property equally.

On remand, the trial court may either correct or modify the disparity in its judgment to accurately reflect its intention to divide the property fifty-fifty, or, if it intended a disparity in the property division, articulate more specifically its intent to do so.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Maureen Pulte Reilly
/s/ Harold Hood
/s/ William B. Murphy