

STATE OF MICHIGAN
COURT OF APPEALS

BEVERLY RUZZIN,

Plaintiff-Appellee,

v

ANIEL J. RUZZIN,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 193565
Oakland Circuit Court
LC No. 94-480213

Before: Corrigan, C.J., and Markey and Markman, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of divorce. Defendant challenges the disposition of the property, the award of attorney fees, and the denial of his motion to disqualify the trial judge. We affirm in part, reverse in part and remand for further proceedings consistent with this opinion.

Defendant first challenges the trial court's disposition of the property, specifically certain findings of fact made by the trial court. Defendant asserts that the trial court clearly erred in rejecting his testimony while finding plaintiff to be a credible witness. Credibility is an issue for the factfinder that we will not revisit. *Thames v Thames*, 191 Mich App 299, 311; 477 NW2d 496 (1991). Because plaintiff's testimony at trial supported the findings that defendant challenges, those findings are not clearly erroneous.

Next, defendant challenges the trial court's property settlement. Essentially, defendant contends that the trial court ignored many factors that were relevant to this case and improperly focused on defendant's felonious assault against plaintiff.

The trial court is required to make findings of fact and dispositional rulings when deciding a divorce action. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). On appeal, we will uphold the court's factual findings unless they are clearly erroneous and will affirm the dispositional ruling unless we are left with the firm conviction that the ruling was inequitable. *Sands, supra*; *Magee, supra* at 161-162. The trial court is given broad discretion in the disposition of the marital estate during a divorce. *McDougal v*

McDougal, 451 Mich 80, 88; 545 NW2d 357 (1996). Although there is no requirement that the division of property be equal, it must be equitable. *Id.* The trial court must consider several factors in order to reach a fair and equitable division where the factors are relevant to the circumstances in a particular case:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*McDougal*, *supra* at 89, quoting *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992).]

It is permissible for a court to consider the “fault” of one party in causing the divorce when dividing the marital property. *Sparks*, *supra* at 158. However, the trial court must not place disproportionate emphasis on fault or any other factor; instead, all of the relevant factors must be weighed. *Id.* In order to facilitate this Court’s review of the disposition of marital assets, a trial court must make specific findings of fact where any of the factors set forth above are relevant to the case. *Sparks*, *supra* at 159.

While there was evidence at trial relating to many of the *Sparks* factors, the trial court failed to make specific findings regarding the factors. Instead, the court focused primarily on general principles of equity (*Sparks*’ factor 9) and the parties’ past relations as well as defendant’s fault (*Sparks*’ factor 8). Based upon the sparse testimony and incomplete factual findings in the record with respect to the *Sparks* factors, we are left with a firm and definite conviction that the trial court’s disposition of the property is inequitable.

From the record, it appears that the trial court awarded defendant a house valued at approximately \$195,000, which he testified that he purchased prior to the marriage, and half of the value of the \$4,500 diamond engagement ring but ordered defendant to pay a total of approximately \$90,000 to plaintiff. One-half of this award, or \$45,000, was based upon the trial court’s finding that defendant feloniously assaulted plaintiff.¹ The court also ordered defendant to pay \$3,500 per year for twenty years, discounted by five percent but subject to statutory interest, because “her testimony alone is that she wanted to work for 20 years, or would work for 20 years, and [that] she’s losing \$3,500.00 a year, which is obvious.” Plaintiff testified that when she left Michigan with defendant in order to move to Texas and later returned to her same teaching job in Michigan, she was rehired at a lower pay level and given no credit for her prior employment. This amount, although not calculated by the court, equals approximately \$44,900. The parties also received the real and personal property each possessed before the marriage and at the time of their divorce, but these assets were not described.

Apparently, the trial court made this \$90,000 award based upon its finding that defendant committed misconduct without considering the other *Sparks* factors. *McDougal*, *supra* at 89-90.² It appears that the trial court attempted to restore the parties to the positions that they occupied before the marriage, but we are unable to confirm this in light of the court’s scant findings and limited supporting testimony regarding the parties’ assets. Indeed, the court’s findings would lead one to conclude that the engagement ring was the only property to “come to either party by reason of the marriage.” MCL 552.19; MSA 25.99; *Byington v Byington*, 224 Mich App 103, 110, ___NW2d ___ (1997).

Further, we believe that the trial court did not, as required by *Sparks*, adequately justify its award of \$3,500 a year for a twenty-year period. The court's terse statements on the record preclude us from determining whether the trial court considered the felonious assault, which occurred after plaintiff had filed for divorce and after the marital relationship had broken down, as relevant in determining fault or relevant to general equitable factors. "It is inappropriate to assess such conduct as a cause rather than an effect without a clear revelation of the trial court's reasoning and record support indicating facts on which it relied." *Knowles v Knowles*, 185 Mich App 497, 500-501; 462 NW2d 777 (1990). A parties' actions during the divorce proceedings can, however, be "a relevant consideration" in achieving equity, rather than apportioning fault, but should be weighed with other pertinent factors. *Sands, supra* at 34-36. The court may also properly consider the parties' manifestations of intent to lead separate lives when apportioning the marital estate. *Byington, supra* at 111-113. Because we cannot determine how the court weighed these factors, we believe that it is necessary to reverse the property division and remand this case for the trial court to reconsider the *Sparks* factors, make specific findings of fact relating to those factors, and fashion an equitable property division.

Next, defendant argues that the trial court erred in awarding attorney fees to plaintiff. This Court will not reverse a trial court's decision to award attorney fees in a divorce action absent an abuse of discretion. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). Defendant argues that plaintiff had not preserved her request for attorney fees stemming from previously dismissed annulment actions. We find it unnecessary to review this claim because it is apparent from the record that the trial court did not include these fees in its award. Moreover, the trial court's failure to make specific findings regarding the necessity of the award was harmless "in light of the clear evidence of necessity in the record," *Stackhouse v Stackhouse*, 193 Mich App 437, 446; 484 NW2d 723 (1992), i.e., that defendant's income far exceeded plaintiff's, and that defendant caused many delays in the litigation.

Finally, defendant argues that the trial judge should have been disqualified from presiding over this matter because of his bias and prejudice against defense counsel. Defendant has abandoned this issue on appeal by failing to cite case law or any other authority in support of his position. A party "may not leave it to this Court to search for authority to sustain or reject its position." *Magee, supra* at 161.³ Nevertheless, we find no merit to defendant's contention that the trial judge was biased against him or his counsel. See, generally, *Cain v Dep't of Corrections*, 451 Mich 470, 494-502; 548 NW2d 210 (1996). To the contrary, the court's rulings throughout this case in several respects were favorable to defendant.

Affirmed in part, reversed in part and remanded for further proceedings related to the property division. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Jane E. Markey
/s/ Stephen J. Markman

¹ Apparently, defendant was convicted of felonious assault.

² There was no testimony and the court made no findings with respect to the duration of the parties' marriage, particularly in light of the annulment proceedings plaintiff filed after six months of marriage (*Sparks*' factor 1), the age, health, or life status of the parties (factors 3, 4 and 5), and their contributions to the "marital estate" or the value of that estate (factor 2). The parties testified that plaintiff made \$29,388 in 1994 as a teacher and had rental income of \$995 per month and sold one of two other homes for \$90,000. Defendant testified that his salary was \$86,000 but he had made over \$100,000 and had purchased the marital home before the marriage for \$195,000 (factors 6 and 7). There was conflicting evidence regarding defendant's refusal to engage in sexual relations, plaintiff's alcohol problems, the parties' lack of fidelity during their separations, and the impact of defendant's ex-wife on the marriage (factor 8).

³ We do not address defendant's argument regarding alimony because the trial court did not make an award of alimony in this case.