

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GLENN R. POLAKOWSKI,

Plaintiff/Counter  
Defendant-Appellee,

UNPUBLISHED

November 18, 1997

v

MARY G. POLAKOWSKI,

Defendant/Counter  
Plaintiff-Appellant.

No. 192345

Macomb Circuit Court

LC No. 93-312 DM

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Before: Griffin, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce entered by the circuit court on January 12, 1996. We affirm, but remand for proceedings consistent with this opinion.

The parties were married in 1977 and have three children. Plaintiff is employed as an engineer for General Motors. Defendant worked as a clerical employee for the federal government prior to the marriage, but left her job in 1981 to raise the couple's children. Defendant has not since sought employment outside the home because her poor health prevents her from working. Defendant suffers from a number of medical conditions, including eleven different allergies, positional vertigo, acephalic migraine, artery blockage and lupus. A great deal of the testimony presented at the parties' divorce hearing focused on the extent of defendant's medical conditions. Defendant argued that her medical conditions prevented her from working and that she should be awarded permanent alimony. The trial court concluded that defendant's conditions did not warrant permanent alimony and awarded rehabilitative alimony of \$175 per week for five years. The court found that the testimony of one of defendant's doctors (Dr. Angelia D. Mosley-Williams) was not highly credible and that none of the other doctors testified that the conditions for which they treated defendant would preclude her from working.

On appeal, defendant first argues that the trial court clearly erred in finding that defendant's conditions did not prevent her from working and that the trial court's refusal to award permanent alimony was inequitable. We disagree.

The trial court's findings of fact are first reviewed on appeal under a clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). A finding of fact is clearly erroneous if, after reviewing all the evidence, this Court is firmly convinced that an error has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). This Court may not reverse if the trial court's view of the evidence is plausible. *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991). If the findings of fact are upheld, we then determine whether the ruling was fair and equitable in light of the circumstances. *Id.*

The present dispute centers on defendant's medical history and her ability to work. Dr. Mosley-Williams, a physician specializing in internal medicine and sub-specializing in rheumatology, diagnosed defendant with systemic lupus erythematosus in November 1994. Mosley-Williams prescribed Prednisone to treat the disease and recommended monthly visits. She opined that defendant would be unable to work because the fatigue and arthritis make it very difficult for lupus patients to work, and that because lupus is a life-long condition, defendant would be permanently restricted from employment. Mosley-Williams stated that approximately ninety-five percent of her patients are unable to work, but that she does not discourage her patients from working if they feel they are able. The trial court considered Mosley-Williams' testimony, but concluded that her testimony regarding defendant's ability to work was not highly credible given the fact that she disables ninety-five percent of her patients and that her testimony was rebutted by that of Martin M. Pevzner, M.D., who examined defendant and concluded that defendant's condition would not preclude her from working.

On appeal, defendant argues that the trial court erred in finding that Mosley-Williams' testimony was not highly credible and that her testimony was rebutted by that of Pevzner. However, this Court defers to the trial court's credibility determinations. *Thames, supra* at 302; MCR 2.613(C). The trial court was not required to accept Mosley's explanation for why the number of patients she disabled from work was so high. Furthermore, Mosely stated that the treatment seemed to be helping defendant and implied that it was ultimately the patient's decision whether he or she was able to work. Finally, several other physicians, including Dr. Pevzner, testified that defendant did not appear unable to work. When considering all the evidence, we do not find that the trial court clearly erred in finding Mosley-Williams' testimony less credible than that of the other physicians.

Defendant next argues that the trial court erred in finding that Mosley-Williams failed to perform objective tests in diagnosing her condition and illness as "lupus." This argument misconstrues the trial court's opinion and is without merit. While the trial court did note in its opinion and order that Mosley did not perform objective tests to verify some of defendant's symptoms, it also noted that Mosley-Williams performed thyroid, rheumatoid factor and antinuclear antibody tests in order to make the diagnosis. The court's findings are supported by the record.

Defendant also challenges the trial court's findings concerning her problems with positional vertigo and acephalic migraines. Our reading of the record indicates that defendant has mischaracterized the trial court's ruling by considering isolated statements out of context. The trial court's ruling, when considered in its entirety, indicates that the court understood and considered both of these conditions, but that the court did not believe that these conditions prevented defendant from working. We find that the court's determination is supported by the testimony of several of defendant's physicians. Andrew Dzul, M.D., testified that positional vertigo generally has a good prognosis and that

defendant's condition could improve with "Cawthorne head exercises." Defendant testified, however, that she chose not to do these exercises. James M. Klein, M.D., testified that acephalic migraines generally do not disable a patient from employment. Given the testimony on the record, we conclude that the trial court did not clearly err in making its findings of fact regarding defendant's medical conditions.

Defendant next argues that the trial court failed to consider the cumulative effect of her illnesses and erred in refusing to award alimony on that basis. We disagree. The trial court has discretion to award alimony as it deems "just and reasonable" considering all the circumstances. *Ianitelli v Ianitelli*, 199 Mich App 641, 624-643; 502 NW2d 691 (1993). Once again, we note that the trial court discussed each of the illnesses in its opinion. Moreover, we note that the illnesses have not prevented defendant from caring for her children, maintaining the home, driving, volunteering at church, or helping in her cousin's dress and drapery shop. Therefore, we find that the trial court's view of the evidence was plausible and that the court did not err in refusing to award permanent alimony based on defendant's illnesses.

Defendant's next argument is that the trial court erred in concluding that she would be responsible for her own hospitalization insurance after three years and that she must pay her own uninsured health and prescription expenses. We disagree. The trial court awarded defendant rehabilitative alimony for five years and ordered plaintiff to pay defendant's hospitalization insurance for three years. Given that defendant is not precluded from working and that she has three years to obtain health insurance, we do not find that this ruling is unfair or inequitable.

Defendant next challenges the division of property, asserting that she should have received half the gross value of defendant's stock savings plan. We disagree.

This Court will affirm the trial court's distribution of marital property unless it is left with the firm conviction that the division was unfair or inequitable. *Sparks, supra* at 151-152. The trial court has broad discretion in making a division of property; it is not required to follow a rigid framework or mathematical formula. *Id.* at 158-159. The division must be equitable, but it need not be equal. *Id.* at 159; *Sands v Sands*, 442 Mich 30, 35; 497 NW2d 493 (1993) (citing *Sparks, supra*). A number of factors should be considered when making a division of property:

(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. [*Sparks, supra* at 159-160.]

The determination of the relevant factors will depend upon the facts and circumstances of the case. *Sparks, supra* at 160.

After reviewing the record, we are not convinced that the property distribution is unfair or inequitable. The trial court's opinion indicates that the court properly considered the factors set forth in *Sparks, supra*. Moreover, a comparison of the numbers indicates that -- excluding alimony --

defendant received slightly more than half the marital estate.<sup>1</sup> That distribution was supplemented with rehabilitative alimony and \$334 per week in child support. Furthermore, plaintiff was ordered to pay off the balance of the home equity loan on the marital home and to pay all maintenance expenses on the home up until the date of the divorce judgment. Given the facts and circumstances of the case, we can not say that the trial court's ruling with respect to the division of marital property was "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

Finally, defendant argues that the trial court abused its discretion in refusing to award attorney fees. MCR 3.206(C)(2) permits the court to award attorney fees in a domestic relations action where the party requesting the fees alleges "facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay." *Id.* A party may only recover those fees which are necessary and reasonable to carry on or defend the suit. *Thames, supra* at 310. In this case, defendant's attorney presented an exhibit which itemized the attorney fees and offered to testify concerning the necessity and reasonableness of the fees. However, the trial court decided that it could make the determination without an evidentiary hearing. In its November 20, 1995 opinion and order, the court ruled that "[e]ach party is to be responsible for their own attorney fees." This ruling is reflected in the judgment of divorce, which provides that "each party shall pay their own attorney fees and costs associated with this divorce action." At no point, however, did the trial court explain the reasons for its decision. This Court has cautioned trial courts to make specific findings regarding attorney fees. See *Stackhouse v Stackhouse*, 193 Mich App 437, 446; 484 NW2d 723 (1992). Because the record does not reflect the findings of the trial court, we remand for an explanation of the court's decision.

Plaintiff raises an additional argument on appeal, asserting that the trial court erred in ordering him to pay certain expenses twice and in ordering him to pay expenses which constituted improvements to the marital home instead of maintenance. Because this issue was not raised on cross appeal, it is not properly before this Court and we decline to review it. *Barnell v Taubman Co*, 203 Mich App 110, 123; 512 NW2d 13 (1993); MCR 7.207.

Affirmed, but remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell

<sup>1</sup> The major assets awarded to defendant include the marital home, \$29,000 from plaintiff's stock savings plan, the car, and a one-half interest in plaintiff's pension benefits which had accrued through the date of divorce. These assets total \$163,673.50 plus the pension benefits. The major assets awarded to plaintiff were his stock savings plan less \$29,000 and one-half his pension benefits. The trial court's opinion indicates that the stock savings plan has a value of \$128,717.82 after applying a 26% tax rate.

Therefore, the gross value of the asset is \$173,943, and the balance after subtracting the \$29,000 awarded to plaintiff is \$144,943.