STATE OF MICHIGAN

COURT OF APPEALS

BARBARA F. VAMPLEW,

Plaintiff/Appellee/
Cross-Appellant,

v

EDWARD K. VAMPLEW, f/k/a EDWARD W. VAMPLEW,

Defendant/Appellant/
Cross-Appellee.

UNPUBLISHED
April 28, 1998

No. 196667
Wayne Circuit Court
LC No. 96-605481 DO

Before: Michael J. Kelly, P.J., and Cavanagh and N. J. Lambros*, JJ.

PER CURIAM.

Defendant, Edward K. Vamplew, f/k/a Edward W. Vamplew, appeals as of right from a judgment of divorce. Plaintiff, Barbara F. Vamplew, filed a cross-appeal. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

Plaintiff and defendant were originally married in 1960. Defendant attended college in the early years of the marriage, during which time plaintiff supported the couple. After graduating from college in 1968, defendant worked for the Detroit Public Schools, where he continued to work as of the date of trial in this case. On February 21, 1986, a judgment of divorce was entered in Wayne Circuit Court, although the parties never separated and were remarried on October 3, 1986. The 1986 judgment provided that neither party would pay alimony and that alimony was forever barred. It further provided that defendant would pay plaintiff $7,700 from his one-half interest in the marital home as a payment representing plaintiff's marital interest in defendant's pension. The parties then separated in 1995, and the instant action was filed. Evidence at trial established that plaintiff had incurred $22,773 in debt on credit cards issued in her name only. Plaintiff claimed that the debt was incurred for things that both of the parties used, but only itemized $7,000 worth of debt. Defendant testified that he did not know about the debt, but admitted that he could not refute plaintiff's testimony.

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

At the conclusion of trial, the lower court stated its belief that the 1986 divorce judgment was a "non-event" and "almost of no moment," because its terms were not executed. The court made its award as though the parties had been married for thirty-six years, the duration of the two marriages combined. Based on the duration of the "marriage," the court awarded plaintiff $100 per week in alimony for a five-year period. The court further ruled that each party had a one-half interest in defendant's pension because the pension began during the course of the "marriage." The present value of defendant's pension at the time of trial was $232,674. In addition, the court decided that the credit card debt was a mutual obligation of the parties to be paid out of the proceeds of the sale of marital assets.

Defendant's first argument on appeal is that the trial court's dispositional rulings awarding plaintiff alimony and one-half of defendant's pension were barred by the doctrine of res judicata. We believe that this issue is more properly analyzed under the doctrine of collateral estoppel. Even though this issue was not raised below, we may still review it because the question is one of law and all the facts necessary for its resolution have been presented. *Providence Hosp v Labor Fund*, 162 Mich App 191, 194-195; 412 NW2d 690 (1987).

"Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). In this case, the earlier divorce action culminated in a valid final judgment, and both the alimony and pension issues were actually and necessarily determined in the prior action. The court in the previous case determined that alimony for the first marriage was forever barred, and awarded $7,700 for plaintiff's interest in defendant's pension arising out of that marriage. Therefore, collateral estoppel precludes the relitigation of those issues, and the trial court erred when it considered the first marriage in determining the amount of alimony and pension benefits to which plaintiff was entitled.

We cannot conclude that the trial court's error was harmless. Compare *Giesen v Giesen*, 140 Mich App 335, 337-339; 364 NW2d 327 (1985) (trial court's error in awarding alimony in second divorce action for the combined duration of the parties' first and second marriages was harmless.) Here, had the trial court properly applied the doctrine of collateral estoppel, the court may have awarded a different amount of alimony or divided the pension differently.

Because we conclude that collateral estoppel barred the trial court's award of alimony and pension benefits based in part on the first marriage, we reverse those dispositional rulings. On remand, the trial court shall determine an award of alimony and a division of defendant's pension based upon a consideration of the totality of all circumstances including the duration of the relationship.

Defendant and plaintiff challenge the amount of the alimony award. In light of our previous holding, we need not address these arguments. *Mich Natl'l Bank v St. Paul Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997).

Finally, defendant contends that the trial court erred in ordering defendant to pay one-half of the credit card debt incurred by plaintiff in her own name during the second marriage. We disagree.

The trial court found that the debt was incurred for the mutual benefit of the parties. This finding was supported by plaintiff's testimony indicating that she incurred the debt for items that were purchased for both parties' benefit, such as furniture, decorating, family gifts, and a wedding for plaintiff and defendant's daughter. Defendant failed to present any evidence that the debt was incurred for items that were purchased for plaintiff's benefit alone. Although defendant claimed that plaintiff took vacations on her own for which she paid with her credit card, defendant offered no evidence to establish that the expenses for those vacations created the debt at issue here. We conclude that plaintiff's virtually unrebutted testimony concerning the nature of the expenses involved supported the trial court's finding. The finding was not clearly erroneous, and we are not left with a definite and firm conviction that the division was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Accordingly, we affirm the court's decision that the credit card debt was a mutual obligation of the parties to be paid out of the proceeds of the sale of marital assets.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros