STATE OF MICHIGAN

COURT OF APPEALS

VALERIE J. HANCE,

Plaintiff-Appellee,

v

JOSEPH W. HANCE,

Defendant-Appellant.

UNPUBLISHED
August 21, 1998

No. 197413
Emmet County Circuit Court
LC No. 95-003049 DM

VALERIE J. HANCE,

Plaintiff-Appellant,

v

JOSEPH W. HANCE,

Defendant-Appellee.

No. 200684
Emmet County Circuit Court
LC No. 95-003049 DM

Before: O'Connell, P.J., and Kelly and Hood, JJ.

PER CURIAM.

In Docket No. 197413, defendant, Joseph W. Hance, appeals as of right from the judgment of divorce dated August 6, 1996. In Docket No. 200684, plaintiff, Valerie J. Hance, appeals as of right from the judgment of divorce. These matters have been consolidated for appellate review.

On appeal, defendant claims that (1) the trial court erred in the amount of its spousal support award to plaintiff; and (2) the trial court erred in its failure to follow the revised Friend of the Court recommendation, based on the Michigan Child Support Formula, in its calculation of child support. Plaintiff claims that (1) the trial court erred in including interspousal gifts of jewelry in the marital estate; (2) the trial court erred in failing to order the defendant to pay attorney fees and costs from the income derived from his medical practice, as opposed to the payment of those fees and costs from previously

generated marital assets; (3) the trial court's award of spousal support was inadequate; and (4) the trial court erred by ordering that spousal support is terminable upon plaintiff's future cohabitation.

We affirm.[1]

Plaintiff and defendant were married on August 18, 1972. The parties had three sons during the marriage. The parties separated on or about January 3, 1995, and the Judgment of Divorce was issued on August 6, 1996. Defendant is an orthopedic surgeon and plaintiff is a homemaker. The parties have stipulated that plaintiff shall have sole legal and physical custody of the children.

Early on in their marriage, the parties agreed that plaintiff would support defendant while he attended medical school, and later, defendant would be the financial provider with plaintiff taking care of the household and familial responsibilities. By the time the parties' divorce proceeding had begun, the marital estate was valued at $2,161,695. Defendant's average annual income, at the time of the divorce proceeding, was approximated at $370,000.

The trial court awarded plaintiff 55% of the marital estate. Plaintiff also received spousal support in the amount of $8,000 per month for the first five years, then to be reduced to $6,000 per month until death, remarriage, or cohabitation. Child support was awarded to plaintiff in the amount of $959 per week for three minor children, $761 per week for two children, and $502 per week for one child.

Defendant first contends that the trial court's award of spousal support was excessive and punitive in nature. We review the trial court's factual findings for clear error. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). We review dispositive rulings to decide if they are fair and equitable in light of the facts, and affirm unless we are left with a firm conviction that the final decision was inequitable. *Id.*

The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Hanaway v Hanaway*, 208 Mich App 278, 294; 527 NW2d 792 (1995). The trial court heard extensive testimony about the lifestyles and projected needs of the parties. While there was some confusion as to how each party had assessed and projected the future needs of plaintiff, the trial court adequately addressed these discrepancies. By taking into account the past lifestyle enjoyed by plaintiff, the income producing assets included in the property division, and defendant's potential to maintain a high level of income, the trial court did not err in its award of spousal support to plaintiff. The failure to provide an end date to alimony is inexplicable. However, rather than remand for proceedings we believe the matter can be addressed on petition of defendant in the trial court when a change in his activity, age or retirement status occurs.

Defendant next argues that the trial court erroneously computed the child support payment. An award of child support rests in the sound discretion of the trial court, and its exercise of discretion is presumed to be correct. *Morrison v Richerson*, 198 Mich App 202, 211; 497 NW2d 506 (1992). The party appealing the support order has the burden of showing an abuse of discretion. *Thompson v Merritt*, 192 Mich App 412, 416; 481 NW2d 735 (1991).

A court may deviate from the support formula generated by the Friend of the Court only if its application of the formula would be unjust or inappropriate; further, the court must specify in writing or on the record the reasons the formula would be unjust or inappropriate. MCL 552.16(2); MSA 25.96(2), MCL 722.27(2); MSA 25.312(7)(2), *Calley v Calley*, 197 Mich App 380, 382; 496 NW2d 306 (1992), *Eddie v Eddie*, 201 Mich App 509, 513; 506 NW2d 591 (1993).

The trial court went into great detail to show why the child support formula issued on April 3, 1996, would have an unjust and inappropriate effect on the children. The court noted that the formula does not make an adequate representation of the customary support reflected in families that are accustomed to a high level of income. Also, the trial court stated that the parties had historically provided their children with lavish benefits, thus making this case unusual. The trial court has met the statutory requirements for deviating from the child support formula. Defendant has not established an abuse of discretion by the trial court.

On cross-appeal, plaintiff asserts that the trial court erred by including in the marital estate interspousal gifts of jewelry. At issue are Christmas gifts given by defendant to plaintiff in 1986 consisting of a diamond and sapphire necklace, earrings, and a ring. The trial court ruled that these assets, valued at $31,295, should be included in the marital estate which totaled over $2,000,000. Findings of fact will not be reversed unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.*

A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3), *Yeo v Yeo*, 214 Mich App 598, 601; 541 NW2d 285 (1995). The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997); *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). The total marital estate was valued at $2,161,695 with plaintiff receiving 55% of the estate, and the jewelry at issue was included in the property division. The court did not err in including the jewelry in the marital estate as individual assets need not be the subject of separate and discreet awards.

Plaintiff next claims the trial court abused its discretion in failing to award attorney fees and costs 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. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997).

Plaintiff and defendant agreed to liquidate certain marital property prior to the commencement of the divorce proceeding. Each party received approximately $150,000 in cash. Plaintiff receives over $100,000 per year in spousal and child support. Also, as noted above, plaintiff received over $1,000,000 from the marital property division.

An award of legal fees in a divorce action is authorized when it is necessary to enable the party to carry on the suit. MCR 3.206(C)(2); *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). While a party should not have to invade assets to satisfy attorney fees when she is relying on the same assets for support, *Id*, plaintiff has been awarded ample funds to satisfy her legal debts. Plaintiff should be able to satisfy her legal obligations without using the principal of her marital property award. Even if she intends to use such assets to satisfy her attorney fees, she will not be relying on the same assets for support. The trial court did not abuse its discretion by not awarding attorney fees and costs to plaintiff.

Plaintiff next argues that the trial court's spousal support award was inequitable and inadequate. For the above stated reasons, we find that the trial court did not err in its award of spousal support.

Finally, plaintiff argues that the trial court erred by ordering the spousal support award terminable upon plaintiff's cohabitation with a member of the opposite sex. Plaintiff has cited numerous cases in support of the proposition that spousal support cannot be terminated by cohabitation alone.[2] None of the cases cited by plaintiff address the issue of whether a judgment of divorce can terminate spousal support upon a party's cohabitation. We find, as alluded to in *Kersten v Kersten*, *supra*, 141 Mich App at 184, where the trial court's judgment of divorce is clear in that cohabitation will terminate a spousal support award, the trial court may so condition the award.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Kelly
/s/ Harold Hood

[1] Plaintiff and defendant have raised a total of six issues on appeal and cross-appeal. Both parties have asked this Court to remand this case back to the trial court for a further determination of these issues. However, we find that no reversible error has been committed by the trial court. Therefore, we affirm the trial court's judgment of divorce.

[2] Plaintiff's reliance on *Crouse v Crouse*, 140 Mich App 234; 363 NW2d 461 (1985); *Petish v Petish*, 144 Mich App 319; 375 NW2d 432 (1985); and *Kersten v Kersten*, 141 Mich App 182; 366 NW2d 92 (1985) is misplaced since these cases deal with cohabitation as a substitute for remarriage. In all of these cases, the judgment of divorce was silent as to cohabitation.