

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA DULLINGER,

Plaintiff-Appellant,

v

WILLIAM A. GARRETT,

Defendant-Appellee.

UNPUBLISHED
October 16, 1998

No. 200275
Monroe Circuit Court
LC No. 95-003271

Before: Gribbs, P.J., and Sawyer and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court order granting summary disposition for defendant in this legal malpractice claim arising out of defendant's representation of plaintiff in the underlying divorce action. MCR 2.116(C)(8), (10). In the underlying action, plaintiff appealed the trial court's refusal to grant her alimony and its distribution of marital assets, and a panel of this Court affirmed the trial court's decision in an unpublished per curium opinion. *Dullinger v Dullinger*, Docket No. 185382, issued 9-17-96. We affirm.

Plaintiff contends that the trial court erred in granting summary disposition because defendant failed to present evidence of the net present value of plaintiff's former husband's vested pension benefit. It is undisputed that plaintiff stipulated to the value of the pension. The stipulated value, in an amount recommended by the Friend of the Court mediator, was between the amounts recommended by plaintiff's expert and defendant's expert. Defendant was not negligent in this matter.

Plaintiff also argues that the trial court erred in granting summary disposition because defendant failed to produce evidence of the present net value of plaintiff's former husband's social security benefits. Because Michigan has not recognized future interests in social security benefits as marital assets, defendant was not negligent in failing to introduce evidence on this issue.

There is no merit to plaintiff's argument that summary disposition was improper because defendant failed to adequately argue and present evidence on plaintiff's alimony claim. Contrary to plaintiff's claim on appeal, the record clearly shows that plaintiff had no work history since 1984, that she had no marketable skills and that she was in general good health. The record shows the disparity

between plaintiff's and her former husband's incomes. The record also shows that plaintiff was capable of working. Defendant sufficiently argued and presented evidence that plaintiff was entitled to alimony.

Plaintiff argues that the trial court erred in granting summary disposition because defendant failed to properly argue and present evidence on plaintiff's health insurance needs. We do not agree. Again, the record shows the disparity between plaintiff's and her former husband's incomes, plaintiff's lack of job history, and evidence of plaintiff's need for and the expected cost of health insurance. Defendant was not negligent in this regard.

Next, plaintiff contends that defendant failed to refute plaintiff's former husband's valuation of personal property and address the disposal of personal property while the divorce action was pending. Plaintiff acknowledged in her deposition that it was the parties' strategy to stipulate to the amount of the missing assets and the value of the Dean Road property so that they could focus on the issues of alimony, health care and support. The stipulated value of the Crabb Road residence was consistent with the appraisal and the FOC recommendation. As the trial court noted in its written opinion, a division of property in a divorce action need not be equal, but equitable. Defendant was not negligent merely because plaintiff did not receive 50% of the marital assets. As to the former husband's disposal of property while the divorce was pending, plaintiff concedes that defendant filed a pretrial motion to stop defendant from removing assets. Defendant also filed a motion for a restraining order precluding the former husband from removing any assets. Defendant was not negligent in this matter.

Finally, defendant was not negligent in stipulating to a child support amount that was recommended by the FOC and which relied on the former husband's net income, as required by the Michigan Child Support Formula Manual.

Affirmed.

/s/ Roman S. Gribbs

/s/ David H. Sawyer

/s/ Martin M. Doctoroff