STATE OF MICHIGAN

COURT OF APPEALS

BARBARA ROBINSON,

Plaintiff-Appellee,

v

WALTER L. ROBINSON,

Defendant-Appellant.

UNPUBLISHED
April 9, 1999

No. 203051
Wayne Circuit Court
LC No. 96-631890 DO

Before: Hoekstra, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Plaintiff and defendant divorced after thirty-eight-and-a-half years of marriage. Defendant appeals the trial court's division of the marital estate and its award of alimony to plaintiff. He also claims that Michigan's no-fault divorce statute, MCL 552.6; MSA 25.86, is unconstitutional, violates public policy, and violates his right to the free exercise of his religion. We affirm.

I

Defendant argues that the trial court erred when it included certain property in the marital estate. We note from the outset that neither party in this case, nor the trial court, has provided this Court with documentation of the assets that comprise the marital estate or a record that clearly reflects those assets.[1] Despite these ambiguities, we have enough information to sustain the trial court's rulings.

Defendant first argues that the trial court should not have included money from an inheritance in the marital estate. Defendant received the money in question, $100,000, as the beneficiary of his mother's insurance policy. He claims that it was his mother's wish that he divide the money among her family, keeping about $25,000 for himself. Defendant presented no evidence, other than his own testimony, that he intended to distribute this money to his sister and step-siblings. The record shows, however, that defendant placed the money in a fund where he subsequently combined it with funds from his retirement pension. Money was then moved from this account to another account with First of Michigan Investments. The trial court awarded plaintiff the first twenty-four thousand dollars from the First Michigan account and fifty percent of what remained in the first account.

A party's inheritance forms an estate separate from the marital estate. *Reeves v Reeves*, 226 Mich App 490, 495; 575 NW2d 1 (1997). Where one party has a separate estate, the trial court should only include it in the marital estate when the marital estate is not sufficient for the support of the other spouse. *Id*. at 494. In this case, however, the money was not kept separate and distinct; defendant combined it with other funds that were clearly part of the marital estate. Because the money could not properly be characterized as part of a separate estate, the trial court correctly held that it was part of the marital estate.

Defendant also argued that the home awarded to plaintiff was given to him by his mother and was part of a separate estate that should not have been considered part of the marital estate. Again, the parties fail to provide a clear record on this point, but we are convinced the trial court did not err in awarding the home to plaintiff. Plaintiff introduced a deed showing that defendant's mother signed a quit-claim deed transferring the house to defendant while defendant was living in the home. The trial court appeared to believe plaintiff's testimony that she and defendant made payments on the house while it was in the name of defendant's mother, who then transferred title to them. Therefore, the home was purchased with funds from the marital estate; it was not simply given to defendant. The trial court did not err when it included the property in the marital estate.

II

Defendant next argues that the trial court erred in granting plaintiff alimony. We disagree. An award of alimony is within the trial court's discretion and will not be reversed unless the reviewing court is convinced that there was clear error and it would have reached a different result had it been in the trial court's position. *Demman v Demman*, 195 Mich App 109, 110; 489 NW2d 161 (1992).

The main objective of alimony is to balance the incomes and needs of the parties in a way which will not impoverish either party. *Hanaway v Hanaway*, 208 Mich App 278, 295; 527 NW2d 792 (1995). Alimony may be awarded where the court considers it just and reasonable under the circumstances. *Demman*, *supra* at 110. Like the factors used in determining a just division of marital property, when deciding whether to award alimony, the trial court should consider "the past relations and conduct of the parties, the length of the marriage, the ability of the parties to work, the ages of the parties, the needs of the parties, the health of the parties, and general principles of equity." *Id.* at 110-111. The court should also consider "the source and amount of property awarded to the parties" as well as "the abilities of the parties to pay alimony." *Lee v Lee*, 191 Mich App 73, 80; 477 NW2d 429 (1991).

The trial court did not err when it awarded plaintiff alimony. The couple was married thirty-eight-and-a-half years during which time plaintiff was the primary caregiver of the couple's children while defendant worked. Plaintiff, at one time, worked herself. However, it appears a battle with cancer caused her to stop working. Plaintiff testified that she liked to sew and would occasionally do work for family and friends, but that this income earned her only $600 a year. Given plaintiff's health and earning capacity, an award of alimony was reasonable. *Demman*, *supra* at 110. Defendant presented no evidence that shows he is unable pay the required alimony. Indeed, he currently assists

two adult children financially, donates a substantial amount of money to religious organizations, and owns income-generating rental property.

III

Defendant next argues that the Michigan no-fault divorce statute, MCL 552.6; MSA 25.86, is unconstitutional because it infringes on his fundamental right to marry. We addressed this argument in *Cowsert v Cowsert*, 78 Mich App 129; 259 NW2d 393 (1977), and no extended response is required here. Defendant has not shown that no-fault divorce interferes with his right to get married, only that it might allow his wife to obtain a divorce more easily. However, defendant has not shown that a divorce would not have been granted under the fault provision of the old legislation, or even that his marriage was salvageable. Finally, defendant's argument that legislatures across the country are reconsidering their no-fault divorce statutes merely serves to indicate that the proper forum for such policy concerns is the legislature, not the judiciary.

IV

Defendant next argues that the no-fault divorce statute should be reconsidered because it contradicts sound public policy. According to defendant, no-fault divorce is responsible for rising divorce rates and a worsening economic situation for women and children victimized by divorce. Again, however, we are not the appropriate forum in which to air these concerns. A statute will not be struck down merely because it is undesirable, unjust, or unfair. *Doe v Dep't Social Services*, 439 Mich 650, 681; 487 NW2d 166 (1992). Defendant should address his arguments to the legislature, not this Court. *Id.*

V

Finally, defendant argues that Michigan's no-fault divorce statute violates his right to freely exercise his religious beliefs. In *Fisher v Fisher*, 118 Mich App 227; 324 NW2d 582 (1982) we held:

> In challenging the state's authority to declare a dissolution of the parties' marriage, defendant mischaracterizes the nature of the state action. The court's power extends only to dissolution of the parties' civil contract of marriage. . . . The status of their ecclesiastical union has in no way been affected by the dissolution of their civil union. [*Id*. at 230.]

Thus, defendant's argument that the no-fault divorce statute violates his first amendment rights must fail.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell

[1] For example, in their briefs, the parties do not agree on the value of the so-called "inheritance" account. Plaintiff claims it contains $180,000, while defendant claims it contains $93,000. The trial court understood it to contain $92,000. Neither party provides this Court with any documentation to support their claim as to the value of the account.