

STATE OF MICHIGAN
COURT OF APPEALS

DARYL L. SHAUGER,

Plaintiff-Appellant,

v

DONNA M. SHAUGER,

Defendant-Appellee.

UNPUBLISHED

April 20, 1999

No. 203010

Saginaw Circuit Court

LC No. 94-005139 DO

Before: Cavanagh, P.J., and MacKenzie and McDonald, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order requiring him to pay defendant alimony in the amount of \$300 a week for ten years. We remand for further findings of fact and for a corresponding reconsideration of the alimony award.

Plaintiff argues that the trial court failed to make sufficient factual findings in determining the alimony award. In addition to each party's fault in causing the divorce, *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991), the factors relevant to an alimony determination are:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity.

A court is to make specific findings with regard to each factor that is relevant in a particular case. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993); see also *Daniels v Daniels*, 165 Mich App 726, 732; 418 NW2d 924 (1988), and MCR 2.517. Plaintiff argues that the court did not do so with regard to factors (1), (3), (5), (6), (7), (8), (9), and (10).

We reject plaintiff's argument that the court failed to make sufficient findings on factor (9). The court specifically addressed defendant's health, and because there was no evidence that plaintiff had health problems, the court had no reason to address plaintiff's health. Similarly, we reject plaintiff's argument with respect to factor (1); since there was no evidence that either party had abused or mistreated the other during the marriage, the court had no reason to address the parties' past conduct. We also reject plaintiff's argument concerning factor (7). Plaintiff argues that under this factor the trial court should have considered his contribution to the education of the parties' daughter. However, given that their daughter was over the age of majority, the trial court was not required to consider this contribution in determining alimony. See *Kilbride v Kilbride*, 172 Mich App 421, 430-432; 432 NW2d 324 (1988), abrogated on other grounds as recognized in *Heike v Heike*, 198 Mich App 289 (1993); 497 NW2d 220 (1993).

We agree, however, that the trial court failed to make sufficient findings on factors (3), (5), (6), (8), and (10). With regard to factor (3), the court concluded that defendant would not be able to work full time because of her health problems. However, the court did not address the possibility that defendant could handle a part-time position, even though the record indicates that defendant worked part-time as a dental assistant during the ten years preceding the trial, and even though she had an ongoing heart condition for eight of those years. Nothing in the record suggests that the heart condition had recently worsened to the point where defendant could not work. On remand, the trial court must specifically state its findings regarding defendant's ability to earn money in a part-time job and indicate whether it imputed any income to defendant. The court shall also explain the relevance of its conclusion that defendant's medication gave her a "dry mouth . . . and thick tongue," since it is not clear how this would affect defendant's ability to work. The court shall also explain whether it concluded that defendant's ability to work would improve after ten years or whether it based the ten-year limit placed on the alimony award on another factor.

With regard to factor (5), the trial court mentioned defendant's age in its opinion, but it did not indicate its relevancy. Although the context suggests that the court mentioned defendant's age because it believed her heart condition would worsen as she grew older, this is not entirely evident from the record. On remand, the court must specify whether and why it found defendant's age significant and whether this significance will change after the ten-year alimony period. The court must also state its findings regarding factors (6) and (8) – plaintiff's ability to pay alimony and the respective needs of the parties. At trial, plaintiff alleged that his income had lessened from the previous year because of a change in his work shifts; the trial court must address this allegation and must provide the factual basis for its implicit conclusion that defendant could afford to pay defendant \$300 a week for ten years while still meeting his own needs.

Regarding factor (10), plaintiff claims that the trial court failed to consider defendant's move to a neighborhood with a higher standard of living than her previous neighborhood. Defendant testified that she was forced to make this move because she could not obtain an apartment in Saginaw, where the parties lived during their marriage. We agree that the trial court should have addressed this issue and indicated how the parties' prior standard of living affected the alimony award.

Plaintiff additionally argues that the trial court clearly erred by failing to impute income to defendant, by overestimating plaintiff's salary, and by disregarding the principles of equity. Without sufficient factual findings on the record, however, we are unable to address these allegations at this time. Plaintiff also requests that this case be remanded to a different trial judge. The record does not suggest, nor does plaintiff provide, any reason for doing so. Accordingly, we decline to remand the case to a different judge. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Remanded for further factual findings and for reconsideration of the alimony award based on those findings. The proceedings on remand shall be completed within 35 days of the issuance of this opinion. We retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Barbara B. MacKenzie
/s/ Gary R. McDonald