

STATE OF MICHIGAN  
COURT OF APPEALS

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RODNEY LEE KILPATRICK,  
  
Plaintiff-Appellant,

v

BARBARA ANN KILPATRICK,  
  
Defendant-Appellee.

UNPUBLISHED  
May 25, 1999

No. 209046  
Muskegon Circuit Court  
LC No. 96-232684 DM

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Before: Sawyer, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce after a bench trial, contesting the lower court's award of spousal support, the division of marital property, and the award of attorney fees to defendant. We affirm.

Plaintiff alleges a number of errors in the trial court's determination of whether defendant was entitled to an award of spousal support. On appeal, factual findings of the court are reviewed for clear error. *Wiley v Wiley*, 214 Mich App 614, 615; 543 NW2d 64 (1995). A finding is clearly erroneous if after reviewing all the evidence, this Court is left with a firm and definite conviction that a mistake has been made. *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). Additionally, we note that the award of spousal support is in the trial court's discretion. *Id.* at 27. The main objective of spousal support is to balance the incomes and the needs of the parties in such a way that will not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). Spousal support is to be based on what is reasonable under the circumstances. *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993).

In determining whether to award alimony there are a number of factors that the trial court should take into consideration. These factors include: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) abilities of the parties to work; (4) source and amount of property awarded to parties; (5) the ages of the parties; (6) ability of the parties to be able to pay alimony; (7) present situation of the parties; (8) the needs of the parties; (9) the health of the parties; (10) the prior standard of living and whether either party is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a

party's financial status; (14) general principles of equity. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

Plaintiff's first allegation of error is that the trial court erred when it failed to consider the amount of property awarded in the property settlement when determining whether defendant was entitled to spousal support. We disagree. The trial court noted that defendant was the primary caregiver to the children during the marriage and had also worked in the business supporting plaintiff's efforts to build a successful medical practice. The trial court noted that all of the property being awarded was obtained during the marriage through the efforts of both parties. Additionally, the court noted that defendant would not be able to maintain her lifestyle and also maintain her marital estate award without the appropriate alimony award. On the other hand, the trial court recognized that plaintiff would be able to maintain his lifestyle without having to consume his portion of the marital property settlement. We are not left with the firm and definite conviction that the trial court erred in its findings pertaining to this factor.

Next, plaintiff contends that the lower court erred when it considered factor ten, the prior standard of living and whether either party is responsible for the support of others, when the court failed to consider that defendant was receiving child support for their minor child. We disagree. Upon review of the record, we are not left with the firm and definite conviction that the trial court failed to consider that defendant was to receive child support for the parties' minor child residing with defendant.

Plaintiff also contends that the trial court erred because it failed to acknowledge the large amount of money that plaintiff spent during the pendency of the divorce proceedings to pay marital debt and support to defendant. Plaintiff claims that based on this Court's decision in *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995), the trial court erred when it failed to attribute payments made by plaintiff on marital debt. We disagree. In *Hanaway*, *supra* at 300, this Court held that it was inequitable to treat any amount of money that plaintiff appropriated and used to pay marital debt as an advance against her final property award when she did not receive interim alimony and no other contributions from the defendant and her own earnings were inadequate. Although plaintiff argues otherwise, this holding is not applicable to the determination of spousal support, and plaintiff cites no other authority in support of this proposition. A party who fails to provide authority for his argument has abandoned it on appeal, as we will not search for authority to sustain or reject a position. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). Therefore, we decline to further address this issue.

Next, plaintiff contends that the trial court erred in awarding spousal support because defendant failed to provide adequate evidence of her need for support. We disagree. Defendant testified to her budget, projected expenses and her annual salary. We find that the court did not clearly err in awarding spousal support.

If the trial court's findings are not clearly erroneous, we must then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). We will affirm the lower court's decision unless we are firmly convinced that it was inequitable. *Id.* After considering the length of marriage, the disparity in the parties' income,

the high standard of living enjoyed by the parties, and the ability of plaintiff to pay spousal support, we are not firmly convinced that the trial court's decision was inequitable. Accordingly, we affirm the spousal support award.

Next, plaintiff contends that the trial court erred in the division of the marital estate. First, plaintiff argues that the lower court improperly valued an individual retirement account (IRA) that was divided equally between the parties. The trial court valued the IRA as of the time judgment was entered, whereas plaintiff contends that the proper valuation date was when the complaint for divorce was filed and that all increases in value since that date should belong to him. We disagree.

While we have upheld valuation dates as the date the complaint was filed, it is not the rule. *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991). The determination of the proper time for valuation of an asset is in the trial court's discretion. *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 76; 471 NW2d 631 (1991). Additionally, the trial court retains "considerable discretion to see that equity is done" in determining the valuation date. *Byington v Byington*, 224 Mich App 103, 114, n 4; 568 NW2d 141 (1997). Accordingly, we find that the trial court did not abuse its discretion in valuing the IRA as of the date of entry of judgment.

Plaintiff also contends that the trial court erred in the values placed on plaintiff's medical practice and a rental property owned by the parties. Findings of fact, such as valuations of particular marital assets, will not be reversed on appeal unless we find them to be clearly erroneous. *Pelton, supra* at 25. The record reveals that there was testimony that valued the medical practice from \$132,200 to \$168,700, and the trial court valued it at \$158,000. Given the evidence of value offered at trial, we cannot say that the trial court's valuation is clearly erroneous. As for the value of the rental property, the record reveals that the rental property had a potential equity of \$140,000 to \$240,000, and the trial court valued it at \$175,000. Again, given the evidence presented, we do not find this valuation clearly erroneous.

Plaintiff also claims that the trial court erred in its findings of fact when dividing the marital estate. The trial court found that the factors pertaining to the necessities and circumstances of the parties, the earning abilities of the parties, the past relations and conduct of the parties, and general principles of equity form the basis for defendant to have been awarded slightly more than fifty percent of the marital assets. However, upon reviewing the trial court's findings of fact, we are not left with a firm and definite conviction that it erred. The earning capabilities of the parties are disparate, even should defendant receive additional schooling. Further, defendant will not be able to afford a lifestyle even remotely similar to the one she enjoyed during the course of her marriage. Additionally, defendant worked with plaintiff in the business to create a viable and successful medical practice, while still maintaining the home and being primary care-giver to their children. We find that the trial court did not err in its findings of fact.

In sum, in light of the facts and circumstances, we are not left with the firm conviction that the division was inequitable. Therefore, the property division is affirmed.

Plaintiff also contends that the trial court erred in granting defendant a portion of her requested attorney fees because she failed to show that the fees requested were reasonable and necessary. We disagree. Attorney fees in divorce actions are not recoverable by right. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). Rather, attorney fees are awarded only as necessary to enable the other party to carry on or defend the action. *Id.* We review a lower court's decision to award attorney fees under an abuse of discretion standard. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997). An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

Plaintiff contends that the lower court erred when it failed to consider the reasonableness of the fee using the standards of reasonableness as found in other areas of the law, such as mediation. These standards include considering the professional standing and experience of the attorney; the skill, time and labor involved; the amount in question and results achieved; the expenses incurred; and the nature and length of the professional relationship with the client. However, plaintiff fails to cite any authority in the area of domestic relations that holds the trial court to such a standard, and even the court rule that provides for attorney fees does not require such an analysis. See MCR 3.206(C). Accordingly, we decline to require such an analysis.

Second, plaintiff contends that the trial court erred in awarding attorney fees because defendant failed to prove that they were necessary to defend the action. In light of the disparate incomes and the award of spousal support to defendant, we cannot find the award of \$8,500 to be so palpably and grossly violative of fact and logic that it evidences a perversity of will, defiance of judgment, or exercise of passion or bias. We affirm the award of attorney fees.

Affirmed.

/s/ David H. Sawyer  
/s/ William B. Murphy  
/s/ Michael J. Talbot