

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM BOYNE,

Plaintiff-Appellee,

v

EVELYN BOYNE,

Defendant-Appellant.

UNPUBLISHED

June 4, 1999

No. 199180

Chippewa Circuit Court

LC No. 94-001288 DO

Before: Whitbeck, P.J., and Markman and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. Defendant challenges, as inequitable, the trial court's distribution of the marital estate, awarding roughly sixty percent of marital assets to plaintiff and forty percent to defendant. Defendant additionally argues that the trial court erred in denying her request for alimony. We affirm.

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of marital property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court." *Id.* at 114-115. The factors the trial court must consider include: "(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996), quoting *Sands v Sands*, 442 Mich 30, 35; 497 NW2d 493 (1993) and *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992).

In reviewing a divorce judgment, this Court must first review the trial court's findings of fact under the clear error standard. *Sparks, supra* at 151. If the trial court's findings of fact are upheld, this Court must decide whether the dispositional ruling was fair and equitable in light of those facts. The dispositional ruling regarding the division of marital property should be affirmed unless this Court is left with the "firm conviction that the division was inequitable." *Id.* at 152.

Defendant contends that the trial court clearly erred in several of its factual determinations. First, defendant argues that the court “inappropriately” decided the issue of fault. Although fault for the failure of the marriage is a relevant consideration, it is “not a *punitive* basis for an inequitable division.” *McDougal, supra* at 90 (emphasis added). The trial court concluded that defendant was sixty percent at fault for the failure of the marriage, leaving plaintiff forty percent of the blame. The trial court arrived at this conclusion from testimony indicating that defendant did not like plaintiff’s son and may have driven him from the marital home, and that she had “bad-mouthed” plaintiff. The court also noted that shortly after the divorce action was filed, defendant went to the couple’s retirement home with a truck and removed several household items. We note that defendant’s claims that plaintiff was abusive and a heavy drinker, and that he was involved in an adulterous relationship, were all contradicted by other testimony. This Court defers to the trial court’s opportunity to hear witnesses and assess credibility. *In re Leone Estate*, 168 Mich App 321, 324; 423 NW2d 652 (1988). Because the evidence supported a finding that defendant was more at fault for the deterioration of the marriage than plaintiff, we find no clear error in the trial court’s conclusions. Nor do we conclude that the court’s distribution of the assets was tainted by an undue emphasis on the factor of fault.

Second, defendant argues that the trial court erred in regarding the duration of the parties’ marriage as not “particularly long.” We disagree. The court did not simply conclude that the parties’ marriage of sixteen years constituted a union of short duration. Rather, the court reasoned that because both parties been married before, and had separated from each other before, their sixteen-year marriage was not long in comparison with other marriages of persons of similar ages. We conclude that the trial court’s characterization in this regard was a well-reasoned one.

Third, defendant argues that the trial court erred in finding that defendant did not significantly contribute to the growth of their marital estate. The trial court observed that defendant’s testimony that she did the bookkeeping for the business was contradicted by other testimony, and that testimony indicated that although defendant occasionally ran farm-related errands, she did not participate in farming activities on a regular basis. The court noted that defendant contributed by maintaining the marital home, but emphasized that she did not physically participate in the day-to-day work on the farm. We agree with defendant that the maintenance of the marital home and all that this entails is too important a contribution to any marriage to discount. However, the record indicates that plaintiff was a successful farmer when he married defendant, that farming was essentially the couple’s sole source of income before plaintiff retired, and that while plaintiff worked day in and day out on the farm defendant did not actively participate in the farm’s growth and maintenance beyond taking care of the home. Thus, although defendant did contribute to the marital estate, we find no clear error in the trial court’s conclusion that she did not *significantly* contribute to the *increase* in the marital estate.

Defendant further argues that the trial court erred by failing to address some of the factors necessary for determining property distribution. However, a trial court is required to address only those factors it considers relevant to the case. *Sparks, supra* at 159. Here, the record reveals that the trial court did make specific findings regarding the contribution of the parties to the marital estate, their ability to earn a living, the duration of the marriage, the lifestyle of the parties, and fault. Defendant does not specify which relevant factors the court overlooked, let alone develop argument regarding their

relevance or how defendant was prejudiced by any oversight. For this reason, we decline to entertain this argument further. A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim. *In re Hamlet (After Remand)*, 225 Mich App 505, 521; 571 NW2d 750 (1997).

Defendant next challenges as inequitable the trial court's determination that she was entitled to only forty percent of the marital assets. We disagree with defendant's characterization. Given the ages of the parties when they married, that they both had been divorced, that plaintiff came to the marriage as a successful farmer with sizable assets, that plaintiff did not significantly contribute to the increase in the marital estate, that plaintiff had no dependents and would be able to support herself through prudent investment of her award, and that defendant bore the greater culpability for the failure of the marriage, we are not left with a firm conviction that the division was inequitable. *Sparks, supra* at 152. Instead, we conclude that the trial court well explained the relatively minor departure from strict mathematical equality. *Byington, supra* at 114-115.

Finally, defendant argues that she should have been awarded alimony. The award of alimony is a discretionary matter for the trial court. MCL 552.23(1); MSA 25.103(1). The factors to be considered are similar to those used in determining the disposition of marital assets. See *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993). Defendant requested approximately \$5,200 a month, with \$1,500 going toward food, \$1,500 toward clothing, and the remainder toward other expenses. We agree with the trial court's determination that this request was inconsistent with defendant's lifestyle during the marriage. Defendant testified that during most of the marriage she was a housewife, and that she and plaintiff did not go out very much or take many vacations. She also stated that they did not spend a lot of money because they were saving to retire early. In light of defendant's own account, awarding defendant the alimony she requested would not have been just and reasonable under the circumstances. *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993).

Defendant also argues that the trial court erred by giving undue weight to defendant's award of marital assets in denying alimony. She cites *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995), for the proposition that "alimony may not be denied on the basis that the requesting party should dip into and devour marital assets otherwise awarded in order to maintain a comfortable lifestyle." In *Hanaway*, this Court stated that "where both parties are awarded substantial assets, the court, in evaluating a claim for alimony, should focus on the income-earning potential of the assets and should not evaluate a party's ability to provide self-support by including in the amount available for support the value of the assets themselves." *Id.* at 296. In this case, the trial court properly focused on the income-earning potential of the assets awarded to defendant, as was suggested in *Hanaway*. We find no error.

Affirmed.

/s/ William C. Whitbeck
/s/ Stephen J. Markman
/s/ Peter D. O'Connell