

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LINDA LAVACQUE,

Plaintiff-Appellee,

v

SCOTT GERRY LAVACQUE,

Defendant-Appellant.

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UNPUBLISHED

June 4, 1999

No. 207424

Delta Circuit Court

LC No. 97-013733 DM

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

PER CURIAM.

Defendant-appellant Scott Gerry Lavacque appeals as of right a judgment of divorce awarding spousal support to plaintiff-appellee Linda Lavacque for fifteen years, or until Scott Lavacque's death, Linda Lavacque's remarriage, or further order of the court. The only issue before us is the trial court's determination of spousal support, both as to amount and permanency. We affirm.

**I. Basic Facts And Procedural History**

Linda Lavacque and Scott Lavacque were married in June, 1982. They were separated in February 1997, and the judgment of divorce was entered on October 15, 1997. At that time, Linda Lavacque was age thirty-nine and Scott Lavacque was age forty-one. The Lavacques had two children by this marriage.

Scott Lavacque has a social work degree and has been employed by the State of Michigan since 1976. At the time of the hearing, he was working at the Bay Pines Juvenile Detention Center in Escanaba, Michigan. Scott Lavacque testified that his average bi-weekly net income was \$1,377. This amount included his estimate of his average amount of overtime pay. Linda Lavacque countered that Scott Lavacque's average bi-weekly income, as substantiated by business records, check stubs from 1997, and copies of W-2 forms from 1995 and 1996, was \$1,725. Scott Lavacque testified that there was an unusual period of overtime pay because of an injured employee for whom he was covering. Scott Lavacque also stated that his average overtime pay would be reduced from the amount he had had in former years because of a directive to eliminate overtime for state workers and because the detention center was planning on hiring an additional employee. Scott Lavacque claimed that his

monthly expenses amounted to \$2,032, and that there would not be enough remaining after paying child support to pay more than \$100 per week spousal support. Scott Lavacque did not object to paying some spousal support for “a couple of years” during Linda Lavacque’s transition from dependence on his income.

According to her testimony, Linda Lavacque has been treated for depression since 1990, has taken medication for anxiety both during the marriage and since the breakup, and was in counseling at the time of trial. Linda Lavacque also testified that her emotional state had manifested itself in drastic weight loss, hair loss, difficulty making decisions, and shaking. She further testified that she considered hospitalization in April, 1997.

Linda Lavacque testified that these emotional problems had negatively impacted her ability to find and maintain employment. However, Scott Lavacque maintained that Linda Lavacque was quite employable. At one point, prior to the marriage, Linda Lavacque had held a job in a research laboratory for six years. She had attended a community college for one year shortly after her marriage and, according to Scott Lavacque, had held some part-time jobs outside the home at that time. She ran a day-care business from her home in Kalamazoo for four or five years and was the household manager and primary caregiver for her children during the marriage.

Linda Lavacque testified that she had attempted to perform child care work in January, 1997, but that the stress of the divorce caused her to quit. She further testified that she had recently worked at Wendy’s for three or four weeks, at McDonald’s for one day, and at Days Inn for about one week but that she had voluntarily terminated her employment with each of these employers. At the time of trial, Linda Lavacque was enrolled in two college courses at Bay de Noc Community College, although she was not taking classes toward a particular degree. She planned to continue in college, but she felt that her class schedule, combined with emotional stress, did not enable her to work in addition to attending classes.

The trial court found that both parties had contributed equally to the marital estate, that their financial situation was generally debt free, and that their conduct was not at issue. The trial court therefore divided the assets of the marriage relatively equally. However, the trial court held Scott Lavacque solely responsible for the payment of some credit card debt and a credit union loan based on the fact that Scott Lavacque had received \$1,900 more in property distribution, that he received the greater percentage of the tax refund, and that he had the greater ability to pay the debts. The distribution of the marital assets is not at issue. The trial court ordered Scott Lavacque to pay child support of \$161 per week, which is also not at issue. As to spousal support, the trial court found that Linda Lavacque could not hold a job and that Scott Lavacque had a clear ability to pay. The trial court therefore awarded spousal support of \$325 per week for fifteen years or until Scott Lavacque died, Linda Lavacque remarried or the trial court ordered otherwise. The trial court based this spousal support award on the Friend of the Court support recommendation.

## II. Standard Of Review

This Court reviews a trial court's findings of fact under the clearly erroneous standard before deciding whether a dispositional ruling, such as an award for spousal support, is fair and equitable in light of the findings. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Pursuant to this standard, we must not reverse the trial court's factual findings if its view of the evidence is plausible. *Thames v Thames*, 191 Mich App 299, 301-302; 477 NW2d 496 (1991). Spousal support should be based on what is just and reasonable under the circumstances, *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993), taking into account the length of the marriage, contributions of the parties to the marital estate, the parties' earning abilities, the parties' past relations and conduct, their ages, needs, ability to work and health, and fault, if any. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993); see also *Sparks, supra* at 159-160.

### III. The Amount And Permanency Of The Spousal Support Order

#### A. Amount

As to the amount of the spousal support award, Scott Lavacque submitted exhibits by which he attempted to demonstrate that his income prior to the divorce was unusually high, and that his more recent pay stubs revealed a lower average income because of fewer overtime opportunities. The trial court relied on Scott Lavacque's 1996 W-2 form and his three percent salary raise in establishing his income, figures Scott Lavacque does not dispute. It was not clearly erroneous for the trial court to disregard Scott Lavacque's relatively unsubstantiated documentation in favor of more reliable evidence of income. Moreover, this Court has indicated that the "ability to pay" factor is not limited to a consideration of the party's income at the time the divorce is granted. *Healy v Healy*, 175 Mich App 187, 191; 437 NW2d 355 (1989). It was plausible to conclude that Scott Lavacque's reduced overtime pay was voluntary. We conclude that it was not error for the trial court to base its findings of ability to pay on Scott Lavacque's past earnings.

Scott Lavacque also takes issue with the trial court's finding regarding Linda Lavacque's inability to work. The trial court found that Linda Lavacque "cannot hold a job at this time." The trial court went on to say that, "The stress she experiences in the workplace, whatever its genesis, is real and debilitating, making the present likelihood of holding even a minimum wage job very doubtful." Both Linda Lavacque and Scott Lavacque testified to Linda Lavacque's fairly long-term and on-going emotional difficulties. Linda Lavacque's account of her failed recent attempts at employment were credible, and both parties agreed that Linda Lavacque had very little work experience during the course of the marriage. As with the spouse in *Zecchin v Zecchin*, 149 Mich App 723; 386 NW2d 652 (1986), and *Sullivan v Sullivan*, 175 Mich App 508, 512-514; 438 NW2d 309 (1989), Linda Lavacque's future job prospects appear on the record to be quite dim. Thus, we conclude that the trial court's findings regarding the parties' relative ability to work were well supported by the record.

The trial court also premised the spousal support award on its finding that Scott Lavacque's health was good but that Linda Lavacque could not function in the workplace because of her mental health. Linda Lavacque's testimony regarding her emotional difficulties was credible: she suffered from physical as well as psychological symptoms and was in counseling at the time of trial. Moreover, Scott

Lavacque's testimony supported her claims. Therefore, we conclude that the trial court's view of the evidence is highly plausible and will not reverse its findings. *Thames, supra* at 302.

#### B. Permanency

Scott Lavacque argues that the dispositional ruling regarding the permanency of the award of spousal support was unfair and inequitable. Given the circumstances, Scott Lavacque maintains that he should be required to pay only rehabilitative, rather than permanent, spousal support. This Court must uphold the award of spousal support unless it is left with the firm conviction that the award is inequitable. *Sparks, supra* at 152. While rehabilitative spousal support may be appropriate in some situations, its award remains a matter of trial court discretion. The trial court carefully considered the relevant factors and enumerated the special circumstances found to be operative in the instant case. The trial court not only considered the length of the marriage and the fact that Linda Lavacque had few work experiences outside the home, but also the extenuating circumstances of Linda Lavacque's health history and emotional well being. We conclude that the award of spousal support was equitable.

Affirmed.

/s/ William C. Whitbeck

/s/ Stephen J. Markman

/s/ Peter D. O'Connell