

STATE OF MICHIGAN
COURT OF APPEALS

JACK DOUGLAS PASSWATERS,

Plaintiff-Appellee,

v

SANDRA KAY PASSWATERS,

Defendant-Appellant.

UNPUBLISHED
September 3, 1999

No. 204310
Kent Circuit Court
LC No. 95-001786 DO

JACK DOUGLAS PASSWATERS,

Plaintiff-Appellant,

v

SANDRA KAY PASSWATERS,

Defendant-Appellee.

No. 204311
Kent Circuit Court
LC No. 95-0017876 DO

Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

KELLY, P.J. (concurring in part and dissenting in part).

I concur with the majority opinion except as to the amount of spousal support. As noted by the majority, this Court reviews a trial court's findings of fact for clear error before deciding whether the dispositional ruling, in this case alimony, is fair and equitable in light of those factual findings. *Sparks v Sparks*, 440 Mich 141, 151, 152; 485 NW2d 893 (1992).

I believe the record clearly indicates defendant's need for spousal support. It is not disputed that defendant has not worked since 1984 and that she has myriad physical problems. She also appears to be psychologically troubled. There is compelling doubt as to whether defendant will be able to adequately support herself financially at any time in the future. The court on remand did not explain how or where defendant was to be employed and how her numerous physical and psychological

ailments were to be overcome or accommodated. It appears that the experts that testified in the lower court agree that, at best, defendant may be able to maintain part-time employment in the future.

The trial court did not make a finding of fault against defendant. I cannot assume that she is or was malingering. It is my conclusion, absent some proof of defendant's intentional avoidance of maintaining steady employment, that the trial court erred in reducing spousal support from \$500 per week to \$250 per week.

/s/ Michael J. Kelly