STATE OF MICHIGAN

COURT OF APPEALS

DARLENE ANN STALLINGS,

Plaintiff-Appellee,

v

ROY JERARD STALLINGS,

Defendant-Appellant.

UNPUBLISHED
December 28, 1999

No. 219513
Genesee Circuit Court
LC No. 95-180443 DM

Before: Cavanagh, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from the April 26, 1999 judgment of divorce that ended the parties' twenty-five-year marriage. We affirm.

The parties are the parents of two boys, Ryan (DOB 7/16/80) and Jason (DOB 9/14/84). At the time of trial, plaintiff was operating her own cleaning business, and defendant was employed at Fenton Ring and Screw Works. Plaintiff was earning approximately $165 per week. Defendant had both a defined benefit plan and a 401(k) through his employment. The parties' marital home was appraised as being worth $86,000. The parties owed $10,862 on an outstanding home equity loan. Defendant's mother testified that she had loaned approximately $35,000 to the parties through the years. She estimated that at the time of trial, the parties owed her approximately $22,000.

First, defendant claims that the trial court erred in ordering that he pay spousal support in the amount of $350 per month. Specifically, defendant argues that the court failed to consider the appropriate factors when awarding alimony to plaintiff. We disagree. "An award of alimony is within the trial court's discretion. This court reviews an alimony order de novo, but will not modify an award unless convinced that, had it been in the position of the trial court, it would have reached a different result." *Demman v Demman*, 195 Mich App 109, 110; 489 NW2d 161 (1992) (citations omitted).

Alimony may be awarded where the court considers it just and reasonable under the circumstances. *Id*. "The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Hanaway v Hanaway*, 208 Mich App 278, 295; 527

NW2d 792 (1995). In addition to general principles of equity, among the factors which the trial court should consider when applicable include:

> (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, [and] (11) contributions of the parties to the joint estate . . . . [*Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).]

A party's fault in causing the breakup of the marriage is also a valid consideration. *Demman, supra* at 111.

After reviewing the record, we are convinced that the trial court was made aware of, and based the alimony award on the appropriate factors. The court's failure to make specific findings regarding each factor does not require reversal given that we conclude that we would not have reached a different result had we sat in the position of the trial court. *Demman,* supra at 110; *Lee v Lee*, 191 Mich App 73, 80; 477 NW2d 429 (1991). Further, we note that the court combined its analysis of property division and spousal support in its written opinion. Because the factors considered for the division of property were also applicable to the issue of alimony, we believe it is reasonable to assume that the court's analysis of the alimony issue was based on the findings it had made with respect to the property division. We conclude that each of these findings is not clearly erroneous. *Beason v Beason*, 435 Mich 791, 801; 460 NW2d 207 (1990). Accordingly, we see no abuse of discretion in the alimony award. *Demman, supra* at 112.

Defendant next argues that the trial court erred in awarding custody of Jason to plaintiff. We disagree. Defendant's argument centers on the trial court's handling of best interest factor (e) of § 3 of the Child Custody Act.[1] Factor (e) concerns "The permanence, as a family unit, of the existing or proposed custodial home or homes." MCL 722.23; MSA 25.213(3). Defendant contends that when considering factor (e), the trial court improperly focused on the Jason's preference to stay in the marital home. We are of the opinion that a child's preference in this regard does bear on the question of whether either or both parent can provide that child with "the benefits of a custodial home that is marked by permanence, as a family unit." *Ireland v Smith*, 451 Mich 457, 466; 547 NW2d 686 (1996). While the reasonable preference of a child is listed as a separate factor under § 3 (factor (i)), we believe that there is some degree of natural overlap between that factor and other best interest factors, including factor (e). Cf. *Carson v Carson*, 156 Mich App 291, 299-300; 401 NW2d 632 (1986) (observing that there is a natural overlap between factor (i) and factor (a)).

However, a child's preference is not the sole fact that should be considered when evaluating factor (e). *Id.* The trial court's opinion does suggest that this was the only fact it looked at when evaluating factor (e). Nonetheless, defendant has failed to demonstrate how the outcome of the custody issue would be different had the trial court considered all of the facts relevant to factor (e). Although the court did not state that an established custodial environment existed when it handed down its ultimate

ruling, the court had previously determined that an established custodial environment existed with plaintiff. This finding was not contrary to the great weight of the evidence. MCL 722.28; MSA 25.312(8). Therefore, defendant was required to show by clear and convincing evidence that a change in custody was in the best interests of the children. MCL 722.27(1)(c); MSA 25.312(7)(1)(c). Defendant failed to meet this burden.

Finally, defendant argues that the trial court erred in distributing the marital property. Again, we disagree. The division of marital property is within the sound discretion of the trial court. *Demman, supra* at 114. In distributing marital property, the goal of the court should be an equitable distribution, taken in light of all the surrounding circumstances, and not merely mathematical equality. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "When dividing the estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstance." *Id.* at 115.

Defendant's argument is essentially two-fold: (1) that the trial court's division was based solely and impermissibly on the issue of fault; and (2) that plaintiff was awarded a disproportionate share of the marital assets, while he was "saddled with all the marital debt." We reject both of these assertions. The record indicates that the court did consider the relevant factors when arriving at a property division. The court did not give the issue of fault a disproportionate weight. *Sparks v Sparks*, 440 Mich 141, 163; 485 NW2d 893 (1992). As for defendant's second assertion, we conclude that it does not square with the record before us. While plainitff was awarded title to, use of, and occupancy interest in the marital home, defendant was awarded a second mortgage in the home in the amount of $30,000, with any amount he is required to pay in back taxes added to the mortgage. Additionally, we note that plaintiff is required to pay off the balance remaining on the parties' home equity loan, and is solely responsible for all future expenses incurred, including property taxes.

Defendant appears to be particularly upset about the court's decision to hold him solely responsible for the $22,000 owed to defendant's mother. The court, however, did not appear to be convinced that the advanced money was anything more than a gift. As the court observed, repayment of this alleged debt "did not become an urgent issue until the parties separated." We see no reason to second guess the court on this matter, given the court's superior opportunity to assess the credibility of the witnesses. *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

[1] MCL 722.21 *et seq.*; MSA 25.312(1) *et seq.*