

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS P. GARAVAGLIA,

Plaintiff-Appellee,

v

LOUISE GARAVAGLIA,

Defendant-Appellant.

UNPUBLISHED

March 28, 2000

No. 211222

Macomb Circuit Court

Family Division

LC No. 91-004354-DO

Before: Neff, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from the parties' divorce judgment, challenging the trial court's refusal to award her alimony or attorney fees, and the court's selection of the filing date of the divorce complaint as the valuation date of plaintiff's pension. We affirm.

I

Defendant first argues that the trial court's refusal to award alimony was an abuse of discretion. The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). Alimony is to be based on what is just and reasonable under the circumstances of the case. *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993). Among the factors that should be considered in determining whether to award alimony are: (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; (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; and (14) general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). On appeal, the trial court's factual findings are reviewed for clear error. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1989); *Wiley v Wiley*, 214 Mich App 614, 615; 543 NW2d 64 (1995). If the trial court's findings are not clearly erroneous, this Court must then decide

whether the dispositional ruling was fair and equitable in light of the facts. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992). The trial court's decision as to alimony will be affirmed unless the appellate court is firmly convinced that it was inequitable. *Id.*

The trial court summarized the background of this case as follows:

The parties were married on January 28, 1967 and have two adult children. They first separated from January-August 1991 and finally separated in September 1991. Both parties are in their late 40s. There is no evidence that either of them has a serious health problem.

Plaintiff has a GED and was employed as a carpenter until 1973, when he joined the Roseville Fire Department. On February 24, 1997, he was promoted to the position of Battalion Chief. The base pay for his position is \$54,209.00.

Defendant is a high school graduate who has taken some business and accounting classes at Macomb County Community College. She returned to work when the youngest child was in second grade and has held a variety of general office jobs with some bookkeeping required. Since December 1992, she has worked at similar jobs on and off and has received unemployment benefits. She is currently employed in a temporary position at the rate of \$12.98 per hour.

In denying defendant's request for alimony, the trial court stated:

After carefully considering all of the factors set forth in *Vance* [*v Vance*, 159 Mich App 381; 406 NW2d 497 (1987)], the Court, in its discretion, finds that an award of alimony would not be equitable. In this regard, the Court finds that plaintiff had assumed the entire mortgage obligation of the marital home during the pendency of the divorce, including the payment of taxes and insurance. Although there is a disparity in the parties' income, the Court is satisfied that defendant has sufficient experience and education to support herself in a reasonable manner. In light of this ruling, there is no need to require plaintiff to give security for alimony.

The trial court's factual findings are not clearly erroneous and we are not firmly convinced that the decision not to award alimony is inequitable under the circumstances. In particular, we note that the parties' assets were evenly divided and that, during the pendency of these protracted proceedings, plaintiff expended over \$50,000 in maintaining the parties' joint assets, including payment of the home mortgage, taxes, home equity loan and insurance. Also, defendant is not without the experience or ability to support herself. Thus, the trial court's refusal to award defendant alimony is neither unjust nor unreasonable. *Ianitelli, supra*.

II

Next, defendant argues that the trial court's refusal to award her attorney fees was likewise an abuse of discretion. We disagree. Attorney fees and costs in a divorce action may be awarded when

necessary to enable a party to prosecute or defend the action. MCL 552.13; MSA 25.93; MCR 3.206(C)(2); *Maake, supra* at 189. In determining whether to award attorney fees, the trial court should consider the needs of the divorced spouse, the ability of the other spouse to pay, and the difficulty of the case. *Carlson v Carlson*, 139 Mich App 299; 362 NW2d 258 (1984); *Arnholt v Arnholt*, 129 Mich App 810, 818; 343 NW2d 214 (1983); *Ross v Ross*, 24 Mich App 19; 179 NW2d 703 (1970). A party should not have to invade assets that provide income for living expenses to pay attorney fees. *Maake, supra* at 189. While there is a disparity in the parties' incomes, the record reflects that defendant has the ability to support herself and pay her attorney fees without invading assets that provide for living expenses. *Id.* Although defendant complains that plaintiff was responsible for dragging this case out for years, the record reflects that both parties were responsible for these protracted proceedings. Moreover, plaintiff made payments in excess of \$50,000 in maintaining the parties' joint assets during the pendency of the proceedings. Because it cannot be said that plaintiff's actions caused defendant to incur debts by unnecessarily prolonging these proceedings, an award of attorney fees was not appropriate. Cf. *Lesko v Lesko*, 184 Mich App 395, 406; 457 NW2d 695 (1990); *Thames, supra* at 310. Thus, the trial court did not abuse its discretion in refusing to award defendant attorney fees.

III

Finally, the trial court's choice of the filing date of the divorce complaint as the date for valuing plaintiff's pension was not an abuse of discretion. While marital assets are typically valued at the time of trial or the time judgment is entered, the trial court has the discretion to select a different date. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). In selecting the date of the filing of the divorce complaint as the valuation date, the trial court remarked:

A decision regarding the date of valuation lies within the sound discretion of this Court. *Thompson v Thompson*, 189 Mich App 197, 200; 472 NW2d 51 (1991). For valuation purposes, it is not necessary that the termination date of the marriage be identical with the entry date of the divorce judgment. *Id.* When there is a finding that the objects of matrimony had been irreconcilably destroyed by the time the complaint was filed, the date on which the complaint was filed may serve as the cutoff for valuation of the pension plan that accrued during the marriage. *Id.* at 200.

The Court notes that the parties separated for the first time from January—August 1991 and finally separated in September 1991. Plaintiff filed the complaint on October 10, 1991. After carefully considering the parties' history, the Court concludes that the objects of matrimony had been irreconcilably destroyed by the time that plaintiff initiated these proceedings. *Thompson, supra*. Accordingly, the Court is satisfied that October 10, 1991 should be the cutoff date for the purpose of valuing plaintiff's pension from the City of Roseville. *Id.*

Considering the circumstances of this case, we cannot say that the trial court abused its discretion in selecting the date on which the complaint was filed as the date for valuing plaintiff's pension plan. The record shows that the parties' marriage was irreconcilably destroyed by the time the divorce

complaint was filed in October 1991. As with the other major assets comprising the marital estate, the trial court evenly divided plaintiff's pension and accumulated sick and vacation days from 1973 until the date of the filing of the complaint. As mentioned previously, defendant was equally as responsible as plaintiff for prolonging the proceedings, a factor that clearly worked to defendant's advantage, given plaintiff's expenditure of substantial sums in preserving the marital assets during the pendency of these proceedings. While the selection of a different valuation date might have produced a more equitable result in this case, the trial court's choice of the date the divorce complaint was filed is not itself inequitable and, hence, was not an abuse of discretion.

Affirmed.

/s/ Janet T. Neff

/s/ David H. Sawyer

/s/ Henry W. Saad