

STATE OF MICHIGAN
COURT OF APPEALS

VICTORIA JEAN FIFER,

Plaintiff-Appellant,

v

TIMOTHY KENNETH FIFER,

Defendant-Appellee.

UNPUBLISHED

September 12, 2000

No. 216594

Washtenaw Circuit Court

LC No. 97-009500-DM

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Plaintiff Victoria Jean Fifer appeals the parties' judgment of divorce, challenging the trial court's decision not to award alimony and to use plaintiff's future social security benefits to offset her entitlement to defendant Timothy Kenneth Fifer's pension benefits. We affirm in part and reverse in part.

First, the trial court did not abuse its discretion in failing to award alimony. A trial court's decision as to alimony will be affirmed unless this Court is convinced that it was inequitable. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992). The award of alimony is within the trial court's discretion. *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). 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), and 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 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' support of others; (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).

Here, plaintiff argues that the trial court erred by not setting forth specific findings of fact on each of the applicable factors. A trial court's failure to specifically state findings only requires reversal where

a review of the record indicates that this Court would have reached a different result. *Lee v Lee*, 191 Mich App 73, 80; 477 NW2d 429 (1991).

Contrary to plaintiff's claim, the trial court made a number of factual findings that were relevant to its decision not to award alimony. The trial court found that the parties had been married for nearly twenty-five years and had one child; that plaintiff earned about \$30,000 a year; that plaintiff earned a degree from Michigan State University during the course of the marriage; that defendant is a veteran of the state police; that defendant now earns \$56,000 a year. It appears from the record that each party received approximately \$200,000 in cash and liquid assets, and the trial court awarded the additional amount of \$25,000 to plaintiff apart from her share of the marital property, characterizing the money as gifts and inheritance belonging solely to her. Although the trial court did not make specific findings as to the past relations and conduct of the parties, their needs, their health, their prior standard of living, the court stated that it took each of the factors into account, and it is apparent from the record that it was aware of the relevant information. We find no abuse of discretion in the trial court's decision not to award alimony.

Next, plaintiff argues on appeal that the trial court erred in using her future social security benefits as a set-off against defendant's pension. We agree. In making its property division, the trial court in this case set off the present value of plaintiff's anticipated social security against the present value of defendant's pension, and awarded plaintiff a 26% interest in defendant's pension benefits. The parties stipulated below that defendant is not eligible for and will not receive social security benefits. He is, however, entitled to a lifetime pension, which he intended to begin collecting in October 1999. Plaintiff, on the other hand, will not be entitled to receive social security benefits until approximately 2017. Defendant's pension amount is vested, while plaintiff's social security benefits are not vested.

This Court has found that social security benefits received during the marriage can be considered marital property because they are not "some future, possible benefit." *Evans v Evans*, 98 Mich App 328, 331; 296 NW2d 248 (1980). Although future social security benefits may be considered in making a determination about alimony and child support, MCL 552.602(c)(ii); MSA 25.164(2)(c)(ii), social security benefits are not a marital asset. 42 USCA § § 407(a), 659(I)(3)(B)(ii). See also *Hisquierdo v Hisquierdo*, 439 US 572; 99 S Ct 802; 59 L Ed 2d 1 (1979); *Mahoney v Mahoney*, 681 NE2d 852 (Mass 1997); *Boyer v Boyer*, 538 NW2d 293 (Iowa 1995). In making a property division, the trial court may consider any factor that is relevant to a particular case, *Sparks, supra* at 159-160, but in this case the trial court treated the anticipated social security benefits as if they were an asset capable of set-off. Accordingly we remand for a new determination of the property division in this case.

Affirmed in part; reversed in part and remanded for further proceedings. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Roman S. Gibbs