

STATE OF MICHIGAN  
COURT OF APPEALS

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LAURA L. McCLEAN,

Plaintiff-Appellee,

v

JEFFREY R. McCLEAN,

Defendant-Appellant.

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UNPUBLISHED  
October 20, 2000

No. 224514  
Saginaw Circuit Court  
LC No. 98-024434-DM

Before: White, P.J., and Talbot and Danhof\*, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of divorce. We affirm.

Plaintiff and defendant were divorced on December 17, 1999. The judgment of divorce granted the parties joint legal custody of their two minor children and awarded plaintiff sole physical custody. The judgment of divorce also divided the parties' assets and liabilities in a manner consistent with the trial court's ruling. It required, in part, that defendant pay one-half the outstanding balance on plaintiff's Mastercard after an \$8,500 transaction was subtracted from the balance. The trial court determined that the balance on the credit card, including the \$8,500 transaction was \$15,822.15, thereby requiring defendant to pay approximately \$3,691.08 of the balance.<sup>1</sup>

On appeal, defendant challenges the trial court's disposition of the parties assets and liabilities only with respect to the division of the Mastercard debt. We review a trial court's findings of fact in a divorce case for clear error. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a firm and definite conviction that a mistake has been made. *Id.* If the trial court's findings of fact are upheld,

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<sup>1</sup> Although the trial court did not specify the \$3,691.08 amount, we arrived at this approximate figure after reading the trial court's findings of fact and conclusions of law as well as the judgment of divorce together.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). The dispositional ruling is discretionary and should be affirmed unless this Court is left with a firm and definite conviction that the division was inequitable. *Draggo*, *supra* at 429-430.

Defendant first appears to argue that the trial court clearly erred in finding that the Mastercard balance was a marital debt subject to division between the parties because he did not use the credit card, plaintiff concealed the card and statement from him, and plaintiff used the card for gambling purposes, not marital purchases. We disagree.

At trial, plaintiff acknowledged that the credit card was in her name, that defendant did not use the card, and that at some point she had the statements sent to different addresses because defendant began opening her mail. She further testified that while she used the card for some gambling activities, she also used it to purchase household items such as paint for the family home, paving for the driveway, blinds, plaster, remodeling the children's bedrooms, comforters and a vacation she and defendant took. While defendant may not have known that plaintiff was specifically using the Mastercard to purchase household items, the evidence established that defendant knew plaintiff possessed some credit cards; that defendant knew plaintiff purchased some household items, such as a bedroom set, with those credit cards; that both defendant and plaintiff enjoyed the use of items before the parties separated; and that defendant gave plaintiff money to help her pay off her credit cards.<sup>2</sup> See *Ackerman v Ackerman*, 163 Mich App 796; 414 NW2d 919 (1987) (the trial court did not err in requiring the plaintiff to repay the defendant's Mastercard debt where the record suggested that the defendant incurred the debt in order to help support herself and the parties' minor child). The record further reveals that the trial court excluded from the marital debt the major transaction allegedly associated with plaintiff's gambling activities. The trial court held plaintiff responsible for the \$8,500 transaction and required her to pay half the remaining balance after subtracting that amount. On the basis of the available record, and giving deference to the special opportunity of the trial court to judge the credibility of witnesses, *Draggo*, *supra* at 429, we cannot conclude that its implicit finding that the remainder of the Mastercard balance was subject to division between the parties was clearly erroneous.

Defendant also argues that the trial court's ultimate decision to hold him responsible for one-half the outstanding Mastercard balance was inequitable for the same reasons specified above. Again, we disagree. The goal in apportioning a marital estate is to reach an equitable division in light of all the circumstances. *Welling v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999). The division need not be mathematically equal. *Id.*; *Byington*, *supra* at 114. In dividing the estate, the trial court

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<sup>2</sup> Defendant's contention that the trial court clearly erred in "its assumption that [he] made payments to [plaintiff's] Mastercard in its determination to charge [him] with half of the liability" is without merit. The court's actual finding that defendant "contributed to plaintiff's cash advance credit card payments for her gambling debts" is supported by the record. Defendant testified at trial that he gave plaintiff money when requested to help her meet her credit card obligations, and acknowledged in his motion for reconsideration that "he continually gave money to [plaintiff] to pay off the cash advances of her credit card for gambling debts."

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.” *Welling, supra* at 710, citing *Byington, supra* at 115; see also *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992).

Our review of the record reveals that the trial court considered the relevant factors and reached a reasonable and just conclusion concerning the division of the parties assets and liabilities, including the Mastercard debt. After reviewing the factors and dividing the property, the trial court stated on the record that it had attempted to distribute the parties’ assets and liabilities equally. As noted above, the evidence supports the conclusion that plaintiff incurred some of the Mastercard debt purchasing household items, and that the trial court excluded as marital debt the major remaining debt allegedly associated with plaintiff’s gambling activities. It was not unfair to require defendant to assume some responsibility for the cost of household items that he used and enjoyed, despite evidence that he may not have known the particular payment method plaintiff used to purchase the items. In light of the facts of this case, and because the trial court properly considered the relevant factors when making its dispositive ruling, we conclude that the trial court’s division of the marital estate was fair and equitable.

Defendant next argues that the trial court erred in awarding physical custody of the two minor children to plaintiff. Custody disputes are to be resolved in the child’s best interests, as measured by the factors set forth in MCL 722.23; MSA 25.312(3).<sup>3</sup> *Bowers v Bowers*, 198 Mich App 320, 327-328;

<sup>3</sup> MCL 722.23; MSA 25.312(3) provides:

As used in this act, “best interests of the child” means the sum total of the following factors to be considered, evaluated, and determined by the court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.

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497 NW2d 602 (1993). Findings of fact, including the trial court's findings as to each custody factor, are reviewed under the great weight of the evidence standard and will be affirmed unless the evidence preponderates in the opposite direction. *Fletcher v Fletcher*, 229 Mich App 19; 24; 581 NW2d 11 (1998), citing *Fletcher v Fletcher*, 447 Mich 871, 877-878; 526 NW2d 889 (1994); *Mogle v Scriver*, 241 Mich App 192, 196; 614 NW2d 696 (2000). The trial court's discretionary rulings, including to whom custody is granted, are reviewed under the palpable abuse of discretion standard. *Id.* "An abuse of discretion occurs when the result is so grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or the exercise of passion or bias." *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 408 (1999).

In this case, the trial court carefully considered the best interest factors and explained its findings and conclusions on each factor in its opinion following a six-day trial. The court found that the parties were equal in respect to factors (e), (f), (g), and (k), that plaintiff was superior in respect to factors (a), (b), (c), (d), and (h), and that no factors favored defendant. On appeal, defendant contends that the trial court's findings of fact with respect to factors (a), (b), (c), (d), (f), and (h) were against the great weight of the evidence, and that the court abused its discretion in awarding physical custody to plaintiff. We disagree.

After a thorough review of the record, we conclude that the trial court's findings on the contested statutory factors were not against the great weight of the evidence. These findings were supported by the evidence, and we defer to the numerous assessments the trial court had to make regarding the weight of the evidence and the credibility of the conflicting witnesses produced at trial. *Mogel, supra* at 201; *Helms v Helms*, 185 Mich App 680, 684-685; 462 NW2d 812 (1990). Because the statutory factors weighed in favor of plaintiff, we find no abuse of

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(...continued)

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

discretion and decline to disturb the award of physical custody to plaintiff.

Affirmed.

/s/ Helene N. White

/s/ Michael J. Talbot

/s/ Robert J. Danhof