

STATE OF MICHIGAN
COURT OF APPEALS

KIMBERLEE LYNN MUSSELMAN,

Plaintiff-Appellee,

v

BRIAN DAVID MUSSELMAN,

Defendant-Appellant,

and

JAMES MUSSELMAN, MARLENE
MUSSELMAN, and LORI OBERSON,

Third-Party-Defendants.

UNPUBLISHED

December 26, 2000

No. 220015

Midland Circuit Court

LC No. 97-006337-DM

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Defendant appeals as of right from a post-judgment order awarding plaintiff attorney and other fees in the amount of \$31,920.00. We remand for an articulation of the trial court's reasoning. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant were married in 1989 and are the parents of a daughter, born in 1990. In 1996 defendant sustained permanently disabling injuries in a snowmobile accident. A conservatorship was established and various assets, including marital assets, were liquidated and placed into the conservatorship. The major asset in the conservatorship consisted of defendant's shares of stock in International Engineering, Inc., a closely held family business. Initially, plaintiff was appointed as conservator for defendant.

Plaintiff filed for divorce; thereafter, she was removed as defendant's conservator. Plaintiff added defendant's parents and his sister, who acts as his guardian, to the action as third-party defendants. Subsequently, the trial court dismissed them from the suit. The parties reached a property settlement in which plaintiff received, inter alia, personal property, various financial accounts, and a cash payment of \$306,000, representing her interest in the value of defendant's

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

stock in International Engineering. The settlement was incorporated into the judgment of divorce, which resolved all issues except plaintiff's entitlement to attorney and other fees.

Plaintiff requested payment of \$16,000 in attorney fees and \$16,754.21 in appraisal fees, for a total of \$32,754.21. The court approved the requests as reasonable and necessary to plaintiff's pursuit of her claim. After reducing one fee by a small amount, the court awarded plaintiff a total of \$31,920.

In a divorce action, a court may order a party to pay the fees necessary for the other party to carry on or defend the action. MCL 552.13(1); MSA 25.93(1). A party who requests fees must allege facts showing that he or she is unable to pay the fees, and that the other party is able to pay the fees. MCR 3.206(C)(2). We review a trial court's decision to award fees for an abuse of discretion. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999).

Defendant argues that the trial court abused its discretion by awarding plaintiff attorney and other fees. We remand for an articulation of the trial court's reasons for granting plaintiff's requests for fees. The trial court stated that the fees were necessary to plaintiff's pursuit of her claim, MCL 552.13(1); MSA 25.93(1); however, the trial court failed to articulate findings of fact to support the award. MCR 3.206(C)(2); *Kosch, supra*. Both parties received assets in the property settlement, and defendant had assets in the conservatorship. A party should not be required to invade assets to pay fees when the party is relying on the assets for support. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). The record showed that plaintiff was employed, but that defendant could not work due to total and permanent disability. Defendant's income consisted of worker's compensation payments and social security disability payments. Defendant was required to obtain a loan to make the payment of \$306,000 to plaintiff pursuant to the property settlement. Moreover, while an award of fees may be justified if the party requesting same has been forced to incur expenses due to the other party's unreasonable conduct, *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992), the trial court specifically found that neither party had acted unreasonably or had prolonged proceedings unnecessarily. Given the lack of findings of fact, we are unable to determine if the trial court abused its discretion by awarding plaintiff the requested fees. We remand with instructions that the trial court articulate its reasons for granting plaintiff's request for fees. MCR 3.206(C)(2); *Kosch, supra*. Such an articulation will allow for "meaningful appellate review." *Waldeck v Small*, 431 Mich 873; 429 NW2d 179 (1988).

We remand. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber