

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL L. MATTHEWS,

Plaintiff-Appellant,

v

FRANCES MATTHEWS,

Defendant-Appellee.

UNPUBLISHED

January 26, 2001

No. 213727

Wayne Circuit Court

LC No. 95-520432-DM

Before: Cavanagh, P.J., and Saad and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from a judgment of divorce that granted defendant alimony, child support, the marital home, and attorney and witness fees. We affirm.

Plaintiff contends that the trial court's award of alimony was clearly excessive and not supported by record evidence. We review for clear error the trial court's findings of fact in divorce proceedings. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if, after examining all the evidence, this Court is left with a definite and firm conviction that a mistake occurred. *Id.* If the findings of fact were not clearly erroneous, we must affirm the decision of the trial court unless we are left with a firm conviction that the court's dispositional ruling was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

"The main objective of alimony is to balance the incomes and needs of the parties in a way that would 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. *Thames v Thames*, 191 Mich App 299, 307; 477 NW2d 496 (1991). The factors to 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' 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, and (12) general principles of equity." *Id.* at 308. "In addition, the court may consider a party's fault in causing the divorce." *Id.*

Here, the trial court found that plaintiff was not forthright in disclosing his assets and income and that the court was therefore “unable to discern the true facts as to Plaintiff’s financial status.” The trial court found that defendant’s work skills and health difficulties would make it difficult for her to find meaningful employment. Because plaintiff was obviously capable of making a substantial living, the court concluded that alimony for defendant was appropriate. The court noted that a determination of the amount of alimony was problematic because plaintiff’s poor record keeping, failure to cooperate with a Friend of the Court investigation, and failure to attend trial made any real understanding of plaintiff’s financial condition impossible. Accordingly, the trial court held that the fairest solution was to award alimony in the amount plaintiff agreed to pay in 1995.¹

We find no clear error with regard to the trial court’s findings. Indeed, the record amply supports the finding that plaintiff refused to be forthright about his assets and income. Although plaintiff testified at a pretrial evidentiary hearing that his income in the mid-1990’s was approximately \$100,000 a year, other testimony introduced at trial suggested that that this figure was inaccurate and that he actually earned substantially more. The record also supports the findings that plaintiff was capable of making a living and that defendant suffered from numerous physical maladies that would hinder her ability to earn money. See *Draggo v Draggo*, 223 Mich App 415, 429; 566 NW2d 642 (1997) (providing that this Court gives special deference to a trial court’s findings based on witness credibility). In light of these findings, as well as the length of the marriage and the parties’ prior standard of living, we do not have a firm conviction that the trial court’s award of alimony was inequitable. Accordingly, we affirm it. *Sparks, supra* at 151-152.

Plaintiff also states, in his statement of questions presented on appeal, that the trial court erred in its award of child support. However, plaintiff did not address the issue of child support in the body of his appellate brief. Accordingly, he has abandoned the issue on appeal. See *Dresden v Detroit Macomb Hospital Corp*, 218 Mich App 292, 300; 553 NW2d 387 (1996).

Plaintiff also argues that the trial court’s award to defendant of \$10,000 in attorney fees and \$5,000 in expert witness fees was unreasonable and inequitable. This Court reviews an award of attorney fees for an abuse of discretion. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995).

One of the criteria for awarding attorney fees in a divorce action is whether the requesting party has been forced to incur expenses as a result of the other party’s unreasonable conduct in the course of the litigation. *Id.* at 298. Here, the trial court awarded attorney fees and expert witness fees because of plaintiff’s failure to cooperate, which resulted in unnecessary expenses for defendant. The trial court further noted that plaintiff was in a far better position than defendant to earn money in the foreseeable future.

¹ Defendant originally filed for divorce in California. For reasons that the trial court and this Court were unable to discern, plaintiff was able to successfully move for the dismissal of the California action in mid-trial upon condition that the case would be refiled in Michigan and plaintiff would pay \$3,430 in spousal support and \$2,210 in child support.

We find no abuse of discretion in the trial court's ruling. This suit was the result of plaintiff's successful motion to have earlier litigation in California dismissed and refiled in Michigan. Discovery was difficult because of plaintiff's failure to provide comprehensive information regarding his financial status. Although plaintiff ultimately supplied business records from a Houston storage facility for defendant's review, a trial witness testified that these records were incomplete. Plaintiff also failed to attend trial, leaving testimony about his personal finances to subordinates. The trial court correctly determined that plaintiff's unreasonable conduct directly resulted in undue expenses to defendant. Moreover, as discussed earlier, plaintiff was indeed in a better position than defendant to earn money. Accordingly, the trial court did not abuse its discretion in awarding defendant partial attorney fees. *Id.* at 298.

Moreover, accountant fees may be awarded if the requesting party has incurred undo expense as a result of the other party's unreasonable conduct. *Ianitelli v Ianitelli*, 199 Mich App 641, 645; 502 NW2d 691 (1993). Here, defendant was forced to hire an expert accountant to sort through plaintiff's unclear finances. The trial court did not abuse its discretion in awarding defendant partial accountant fees. *Id.* at 645.

Finally, plaintiff argues that the trial court erred in awarding defendant the marital home. We must affirm a trial court's division of property unless we are left with a firm conviction that the division was inequitable. *Draggo, supra* at 429. In light of plaintiff's earning ability and defendant's lack of earning of earning ability, we find no inequity in the trial court's decision to award defendant the marital home but to award plaintiff his past, present, and future business interests.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry W. Saad
/s/ Patrick M. Meter