

STATE OF MICHIGAN
COURT OF APPEALS

CATHY JO ANDERSON,
Plaintiff-Appellee,

UNPUBLISHED
March 6, 2001

v

GREGORY ALAN ANDERSON,
Defendant-Appellant.

No. 217364
Oakland Circuit Court
Family Division
LC No. 97-548136-DM

Before: Smolenski, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce entered on January 13, 1999. We affirm.

The parties were married on August 25, 1979, and had two children together. Plaintiff filed the complaint for divorce in July 1997. On appeal, defendant raises three issues, mainly relating to the award of alimony. The trial court awarded alimony to plaintiff in the amount of \$195 a week for the next eight years, or until the death or remarriage of plaintiff, or until further order of the court.

Defendant first argues that the trial court failed to make findings of fact sufficient to justify the award of alimony. In a divorce action, the trial court must make findings of fact and dispositional rulings. *Beason v Beason*, 435 Mich 791, 798; 460 NW2d 207 (1990). The trial court must also place its findings of fact on the record or in a written opinion. *Id.* “Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts.” MCR 2.517(A)(2).

In its written opinion, the trial court specifically adverted to *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991), where this Court stated:

Factors considered in awarding 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, and (11) contributions of the parties to the joint estate, and (12) general principles of equity. *Id.* In addition, the court may consider a party's fault in causing the divorce. *Kurz v Kurz*, 178 Mich App 284, 295; 443 NW2d 782 (1989).

"The trial court should make specific findings of fact regarding those factors that are relevant to the particular case." *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993). However, a trial court's failure to specifically state its findings regarding each consideration does not require reversal where our review of the record indicates that we would not have reached a different result. *Lee v Lee*, 191 Mich App 73, 80; 477 NW2d 429 (1991).

A review of the trial court's opinion reveals that the relevant factors in *Thames* were considered. After discussing the various *Thames* factors in its opinion, the trial court was not required to separately state each of those factors when making its dispositional ruling. *Lee, supra*, p 80. We conclude that the trial court's findings of fact are sufficient to justify its award of alimony.

Defendant's second issue is somewhat difficult to discern. Defendant asserts in his statement of questions presented that the trial court erred by ordering him to pay debts that had previously been discharged in bankruptcy. In his discussion of this issue, however, defendant argues that the trial court erroneously assigned disproportionate weight to fault.

With regard to the issue of bankruptcy, defendant petitioned the bankruptcy court for relief under Chapter 7 of the Bankruptcy Code on May 18, 1998, during the pendency of the divorce proceedings. According to defendant's trial testimony, he listed the two house mortgages and his boat on the bankruptcy petition. As noted by the trial court, the debts of the parties was quite substantial. The house, which apparently had a market value of between \$260,000 and \$280,000, had two mortgages on it totaling \$228,000. However, the mortgage payments were several months behind, and the lender ultimately foreclosed on the house. The parties still owed \$30,000 in federal loans. The boat had been purchased for \$22,000, was worth about \$25,000, and carried a debt of \$18,000. Although the trial court had ordered defendant to sell the boat, he was either unwilling or unable to do so and the boat was repossessed, with the debt of \$18,000 remaining. Additionally, there was an outstanding judgment in the amount of \$26,000 against plaintiff, and the trial court ordered in the judgment of divorce that plaintiff would be solely responsible for this debt. There was also credit card debt of over \$12,000, of which defendant was ordered to pay \$8,947, and plaintiff was ordered to pay \$3,584. Lastly, plaintiff was driving a Ford Expedition at the cost of \$560 a month, although the lease was in defendant's name. The trial court ordered that plaintiff be solely responsible for this lease if she wished to continue to drive the Expedition.

As stated by defendant, the parties agreed to lift the automatic bankruptcy stay to complete the divorce proceedings. However, at some point not identified by defendant and not made known in the record, defendant was discharged of his debts in bankruptcy¹. Defendant

¹ At the hearing to clarify the judgment of divorce, held on December 9, 1998, counsel for plaintiff indicated that bankruptcy proceedings were completed, although they were still pending (continued...)

does not state which of the debts were actually discharged. Defendant now complains that the trial court erred in ordering him to pay debts that were discharged in bankruptcy. If the debts were indeed discharged, then defendant's issue is moot because there is no "remedy" that this Court can fashion. He is simply discharged of those debts. Moreover, there is no evidence in the record supporting defendant's claim that the trial court found fault in defendant filing for bankruptcy or penalizing him for exercising the right to file bankruptcy.

With regard to the issue of fault, fault is a factor that may be considered when fashioning a property distribution in the formulation of a dispositional ruling. *McDougal v McDougal*, 451 Mich 80, 88; 545 NW2d 357 (1996). The conduct of the parties during the marriage may be relevant concerning dispositional rulings; however, all relevant factors must be considered and the court must not assign disproportionate weight to any one factor. *Id.*, quoting *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992). A court need not give equal weight to the various factors to be considered when apportioning the marital estate. *Id.*, p 159. In this case, the circumstances justified the trial court's consideration of fault as a factor in its decision. Based on our review of the record and the trial court's opinion, we are satisfied that the trial court did not give disproportionate weight to fault, and that the trial court reached an equitable distribution in light of the circumstances. *Id.*

Lastly, defendant argues that the trial court erred to the extent that it considered his conduct during the course of the divorce proceedings in arriving at its property distribution and decision to award alimony where he had already been "punished" through contempt proceedings. A trial court may properly consider the conduct of the parties when awarding alimony or dividing the property and we believe that the trial court's dispositional rulings concerning property and alimony were fair and equitable in light of the circumstances of the case because the trial court did not disproportionately weigh any one factor in its award. *Sands v Sands*, 442 Mich 30; 497 NW2d 493 (1993).

Affirmed.

/s/ Michael R. Smolenski
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald

(...continued)

as of the time of the trial court's opinion dated October 16, 1998. If this is correct, then the trial court could not have assigned debts to defendant that were discharged in bankruptcy because the debts had obviously not been discharged when the trial court issued its opinion.