

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT CHENIER,

Plaintiff-Counterdefendant-
Appellant,

v

KATHRYN G. CHENIER,

Defendant-Counterplaintiff-
Appellee.

UNPUBLISHED

March 9, 2001

No. 213702

Delta Circuit Court

LC No. 97 013811-DO

Before: Gribbs, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting the parties' divorce. Plaintiff's appeal raises issues regarding the trial court's disposition of the marital estate, award of spousal support to defendant, and award of attorney fees and costs to defendant. We affirm.

First, plaintiff argues that the trial court erred in failing to find defendant at fault for the marital breakdown and to consider defendant's fault as a factor in dividing the marital property and awarding spousal support to defendant. In reviewing the disposition of the marital estate and an award of spousal support, we will uphold factual findings made by the trial court unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). The trial court's findings are clearly erroneous if, on all the evidence, we are left with a "definite and firm conviction" that a mistake has been made. *Id.* Assuming the trial court's factual findings are not clearly erroneous, the trial court's disposition of the marital estate and award of spousal support should be affirmed unless this Court is left with a "firm conviction that the division was inequitable." *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

Although plaintiff referred to specific incidents suggestive of fault on defendant's part, this Court finds ample support in the record for the trial court's conclusion that these incidents were a product of defendant's mental illness. The record indicated that defendant's mental illness was caused by either childhood trauma, plaintiff's conduct, or perhaps both. Thus, we conclude that the trial court's finding that defendant was not at fault for the breakdown of the parties' marriage was not clearly erroneous. In the absence of a finding of fault, the trial court's

decision to not consider fault in dividing the marital estate and awarding defendant spousal support was proper.

Next, plaintiff argues that the trial court erred in failing to award plaintiff the increased value of his business after the parties separated. This Court has held that assets earned by either spouse during the marriage are part of the marital estate, even if the assets are received after the judgment of divorce. *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). Nevertheless, the *Byington* Court also held that “the court may properly consider manifestations of intent to lead separate lives when *apportioning* the marital estate,” in contrast to determining what assets *comprise* the marital estate. *Id.* at 113-114.

In the present case, plaintiff claims that the trial court should have excluded the increased value of his business, which he contends was caused by his sole effort after 1991, or at the latest, 1995. Testimony was presented indicating that the parties maintained separate households as early as 1991. On the other hand, testimony was presented that the purpose of the separation was to aid defendant’s recovery from her mental illness. Moreover, plaintiff lived with defendant for a while in 1994 or 1995. In the year or so before the May 1998 hearing, the parties took trips together and filed joint tax returns. On this record, the trial court’s refusal to find an earlier manifestation of intent to lead separate lives was not clearly erroneous.

Along the same lines, testimony supported the trial court’s finding that defendant’s contributions came earlier in the marriage while raising the children. Further, there was testimony supporting the trial court’s finding that plaintiff used defendant’s half of the proceeds from the sale of joint property for his business. Thus, we conclude that the trial court’s finding that plaintiff’s somewhat greater contribution to the marital estate was insufficient to “prevent a nearly equal distribution” is not clearly erroneous. We find that the trial court’s decision to attempt an even distribution of the marital estate was fair and equitable, in light of the facts and testimony.

Next, plaintiff argues that the trial court erred in failing to consider the effects of the property award in determining plaintiff’s ability to pay spousal support. The trial court in a divorce case has discretion to award alimony that it considers just and reasonable. MCL 552.23; MSA 25.103; *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996). When considering whether to award alimony, relevant factors include: “the length of the marriage, the parties’ ability to pay, their past relations and conduct, their ages, needs, ability to work, health and fault, if any, and all other circumstances of the case.” *Id.* The primary objective of alimony is to balance the incomes and needs of each party, without impoverishing either party. *Id.*

Here, the trial court ordered plaintiff to pay defendant \$92,500, secured by a first mortgage on his farm, to balance the estate disposition. Plaintiff contends that the trial court did not consider the effect of this mortgage on plaintiff’s income and ability to pay spousal support. Nevertheless, we note that the trial court found plaintiff’s annual income of \$88,000 to be an amount sufficient to meet the parties’ needs and satisfy the order. Thus, we must consider whether the trial court’s finding regarding annual income was clearly erroneous.

A CPA witness testified that plaintiff's business had gross receipts of approximately \$700,000 in 1996, and using a profit margin of thirteen percent, found that defendant realized an \$88,000 profit. The witness further testified that the IRS uses a figure of approximately 13.7 percent, which the trial court noted would result in a gross personal income of \$95,900. On the other hand, plaintiff testified that his recent tax filings showed yearly income of approximately \$37,500 and \$32,000. When weighing this evidence, the trial court emphasized plaintiff's testimony regarding the money that he had saved, the assets that he accumulated, and the loans and gifts that he made to his children. After factoring this money into plaintiff's earnings, we conclude that the trial court's finding regarding annual income was not clearly erroneous.

Regarding the spousal support award, the trial court found that plaintiff's monthly needs were \$1,500, whereas defendant's monthly shortfall was \$1,650. Plaintiff did not challenge these findings, and did not reference any evidence suggesting that paying defendant \$1,900 per month and making the loan payments would impoverish him. Therefore, we conclude that the trial court's award of spousal support was both fair and equitable in light of the facts. Despite each of plaintiff's arguments to the contrary, we find that the trial court did not err in either its disposition of the marital estate or the awarding of spousal support.

Finally, plaintiff argues that the trial court erred in awarding defendant attorney fees and by not making an appropriate finding of necessity when it ordered plaintiff to pay defendant \$7,000 for attorney fees and CPA expenses. We disagree.

This Court reviews a trial court's decision to award attorney fees under an abuse of discretion standard. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999). "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 406 (1999). If one party in a domestic relations matter is unable to bear the expense of attorney fees, reasonable attorney fees may be recovered from the other party who does have the ability to pay. *Kosch, supra*, citing MCR 3.206(C)(2). A trial court has discretion to award legal fees where the requesting party has incurred legal expenses as a result of the other party's unreasonable conduct in the course of the litigation. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992); *Thames v Thames*, 191 Mich App 299, 310; 477 NW2d 496 (1991). The trial court should make specific findings as to the necessity of a fee award. *Stackhouse, supra* at 446.

The record reveals that plaintiff testified that he was able to place more than \$110,000 into bank accounts, to provide his children over \$15,000 in cash, to finance the erection of a building on his property, and to pay his own legal expenses. On the other hand, defendant testified that she had less than \$30 in her bank account, was over \$20,000 in debt, and was faced with the immediate prospect of losing her medical insurance. The trial court found that an award of attorney's fees was warranted because defendant incurred additional attorney and CPA expenses because of plaintiff's failure to timely and completely provide discovery. Further, the trial court found that defendant "is and has been without sufficient financial resources to pay the attorney expenses for what became a complex divorce action." In addition, the trial court found that plaintiff "has the ability to assist with attorney expenses and shall do so." The trial court's

findings are sufficient. Under the circumstances of this case, we cannot conclude that the trial court abused its discretion.

Affirmed.

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra

Kelly, J., did not participate.