

STATE OF MICHIGAN
COURT OF APPEALS

LYDIA ESTHER MEDINA,

Plaintiff-Appellee,

v

TOMMY MEDINA,

Defendant-Appellant.

UNPUBLISHED

August 3, 2001

No. 221041

Wayne Circuit Court

LC No. 98-828734-DM

Before: White, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, raising issues of spousal support, division of pension, and medical coverage. We affirm but remand for clarification and modification of one provision of the judgment.

In deciding a divorce action, the trial court must make findings of fact and dispositional rulings. MCR 2.517(A); *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); see also *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *Booth v Booth*, 194 Mich App 284, 291; 486 NW2d 116 (1992). In this case, the trial court asked the parties to present a proposed judgment by computer disk as if they had prevailed on all the facts. The trial court did not make any findings of fact on the record or in a written opinion. Nevertheless, because the reasons for all but one of the court's rulings are apparent from the testimony and argument,¹ we affirm and remand only for clarification of an issue regarding the pension.

Plaintiff and defendant were married in 1974 and had two children, the youngest of which turned nineteen in April 1999. Plaintiff filed a complaint for divorce on September 4, 1998, after twenty-five years of marriage. At the time of trial, plaintiff was forty-three years old. Throughout the marriage, plaintiff worked mainly as a homemaker because it was agreed that she would not obtain outside employment until the children were older. Plaintiff worked part-time at a dry cleaner for about two years until 1998. At the time of trial, she had worked for about three

¹ We caution the trial court that the limited property and factual issues presented in this case make it one of the rare cases where appellate review is possible without adequate findings of fact. In the future, the court should be mindful of the requirement that findings of fact be made. MCR 2.517(A); *Sands, supra at 34*.

months as a teacher's aide, making \$235 biweekly. Plaintiff also worked intermittently during the marriage as a school noon aide, at a department store, and for a prepaid calling card company. Plaintiff did not have health insurance through her employment. During the marriage, plaintiff was covered through defendant's medical, dental and optical insurance.

Defendant, who was forty-two years old at the time of trial, was employed as an assembly-line technician at General Motors, where he began working in 1977. He had seventeen years of seniority due to interim layoffs during his employment. Defendant earned \$59,428 in 1998. Defendant testified that between January and April of 1999, his net weekly pay was \$506.10, \$516, \$609.21, \$1,764.07, \$575.50, \$552.90, \$567, \$547, \$553.40, \$428.05, \$428.05, and \$609.20. However, he conceded that his year-to-date gross pay as of March 14, 1999, was \$12,639.12, including some vacation pay and profit sharing, which would yield a gross salary at least as high as in 1998. Defendant testified that he had considerable expenses, including child support, debts and a monthly payment on his truck, and that he could not afford to pay plaintiff the nearly \$400 per week spousal support recommended by the Friend of the Court.

The marital property included a house in Lincoln Park appraised at \$110,000 with an outstanding mortgage of approximately \$85,000; a home in Detroit that is being sold on a land contract; tools valued at \$10,000 by plaintiff and less than \$5000 by defendant; a 1987 Ford Taurus worth about \$1000; a 1997 Chevy Suburban valued at \$45,000 by plaintiff and \$31,000 by defendant, with a \$500 monthly payment; and a motorcycle valued at \$1000 by defendant and \$3000 to \$4000 by plaintiff. Defendant has retirement benefits through General Motors based on seventeen years of seniority.

Defendant had two affairs during the marriage. Plaintiff testified that during the first affair, defendant put a gun to her head, hit her with the gun, and threatened to kill her with a knife. Defendant has at least one child as a result of his affairs, for whom he pays child support. Defendant moved out of the marital home in 1998 to live with his current (third) girlfriend who does not work; defendant pays for her food, rent, utilities, and entertainment. Despite moving out, defendant continued to pay the bills at the marital home, but fell behind on some of the payments. Plaintiff obtained a Household Finance Company (HFC) loan to make mortgage payments. Plaintiff testified that after she decided to obtain a divorce in September 1998, defendant became violent and threatened her with a knife, and that defendant also became violent and threatened to shoot plaintiff after being served with divorce papers. After this threat, plaintiff went to Puerto Rico for three months. Plaintiff claims that defendant threatened her again when she returned from Puerto Rico in March 1999. Defendant admitted to the affairs and some of the alleged marital violence, but maintained that they were isolated instances, and that he did not assault plaintiff with a shotgun or knife. Defendant admitted that he sometimes has trouble controlling his temper. Plaintiff testified that she would move to Puerto Rico after obtaining the divorce.

At trial, Albert J. Tartt testified as an expert in domestic relations that defendant earned \$59,428.44 in 1998, which is \$1,142.85 per week gross. Tartt testified that plaintiff earned \$122 per week. Based on the spousal support guidelines, Tartt determined that defendant should pay plaintiff \$398.49 per week. Tartt also determined that plaintiff should not receive permanent spousal support because she is forty-three and able to work. Tartt opined that plaintiff should

receive spousal support until she reaches age fifty-two and is able to get Social Security or until she becomes employed.

Steven Gilbert, an expert in vocational rehabilitation, testified that, based on plaintiff's age and previous employment, plaintiff could work as a counter clerk, at an average wage of \$12.89 per hour, a teacher's aide, at an average wage of \$10.63 per hour, or a retail clerk, at an average wage of \$9 per hour. He also expressed the view that plaintiff's ability to speak English and Spanish would enhance her employability.

As stated above, the trial court did not make any findings of fact on the record or in a written opinion. Instead, the trial court heard argument and asked the parties to present a proposed judgment on a computer disk as if they had prevailed on all the facts. The court awarded plaintiff \$350 per week in spousal support for ten years. The court ordered defendant to pay for medical insurance for plaintiff identical to the coverage during marriage, for up to three years or until plaintiff becomes eligible for coverage through her own employer. Each party was awarded all personal property in his or her possession. Defendant was awarded the homes in Lincoln Park and Detroit. Plaintiff was awarded the 1987 Taurus. Defendant was awarded the Suburban, the motorcycle, and the tools. Plaintiff was awarded a sixty percent interest in defendant's retirement benefits which accumulated through his employment at General Motors, from the date of marriage through the date of divorce. Pension benefits included pre and post retirement survivor benefits. The judgment also stated that the qualified domestic relations order was to be divided to include post-divorce pension contributions.

Defendant first argues that the trial court erred in awarding \$350 per week spousal support. We disagree. The award of alimony is in the trial court's discretion. *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). The main objective of alimony is to balance the income and needs of the parties in a way which will not impoverish either party, and alimony is to be based on what is just and reasonable under the circumstances of the case. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Among the factors that should 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, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496, (1991).

In this case, an analysis of the factors supports the conclusion that the trial court's judgment of alimony was equitable. Plaintiff and defendant were married for twenty-five years and raised two children. Plaintiff, at the time of trial, was forty-three years old and able to work; however, throughout the marriage, she was mostly a homemaker because defendant did not want her to work until the children were older. Although plaintiff sought employment and in fact worked, at the time of trial, she was making only \$235 every two weeks. Defendant was earning over \$59,000 per year. The marital assets were not substantial, and were awarded primarily to defendant. Defendant had two affairs during the marriage, had a child outside the marriage, and

moved out of the marital home in 1998 to live with his current girlfriend whom he supports. Defendant was at times assaultive during the marriage.

Based on the length of the marriage, defendant's requirement that plaintiff work at home, the parties' ages, defendant's ability to pay, the present situation of the parties, the award of the bulk of the current assets to defendant, and defendant's fault in causing the divorce, the award of spousal support to plaintiff is equitable. As to the amount of spousal support, the trial court clearly relied on the parties' earnings and earnings histories at the time of trial. This was not error. The court was not required to speculate that a change might occur. The spousal support is modifiable for a change in circumstances. *Bonfiglio v Pring*, 202 Mich App 61,63; 507 NW2d 759 (1993); MCL 552.28.

Defendant next asserts that the trial court erred in awarding plaintiff a sixty percent share of defendant's pension because plaintiff requested only fifty percent of the pension and there was no evidence to substantiate a greater distribution. We disagree.

Pensions may be distributed through a property division or the award of alimony. *Magee v Magee*, 218 Mich 158, 164; 553 NW2d 363 (1996). In this case, the pension was distributed through a property division. The goal in distributing marital assets is to reach an equitable distribution of property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division need not be mathematically equal, but any significant departure from congruence should be supported by a clear exposition of the court's rationale. *Id.* at 114-115. To reach an equitable division, the trial court 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, needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks, supra*, 440 Mich 158-160.

A right to vested pension benefits accrued by a party during the marriage must be considered part of the marital estate subject to award upon divorce. MCL 552.18(1); *VanderVeen v VanderVeen*, 229 Mich App 108, 110-111; 580 NW2d 924 (1998). Pension benefits accrued before or after the marriage may also be subject to property division. *Boonstra v Boonstra*, 209 Mich App 558, 563; 531 NW2d 777 (1995); *Booth, supra*, 194 Mich App 291.

Defendant's pension was clearly part of the marital estate. While plaintiff only asked the court for half of the pension, the court is charged with devising its own fair and equitable division of the property. Here, defendant was awarded the marital home, with an equity of \$25,000, the property in Detroit of undetermined value, tools worth at least several thousand dollars, a motorcycle worth at least \$1000, and arguably more, and the Chevy Suburban, albeit with a debt attached. In contrast, plaintiff was awarded spousal support, her personal possessions and a car worth \$1000. It is clear that the court sought to balance the unequal division of property by awarding plaintiff sixty percent of the retirement benefits accrued through the date of the judgment of divorce. We find no error in this division. Nevertheless, we find the provision unclear in that it awards plaintiff sixty percent of the benefits accumulated from the date of judgment through the date of divorce, and then states that "the QDRO shall be divided to include post divorce pension contributions." Although the latter provision is permissible under *Boonstra, supra*, it is inconsistent with the remainder of the provision which divides the benefits

accrued through the date of judgment. Further, while the justification for the sixty-forty split is apparent from the record, the justification for including post-divorce contributions is not apparent without explanation. Thus, we remand for clarification. If the last inconsistent statement was included in error, the judgment should be modified to exclude it. If the earlier statement was included in error, the trial court shall make findings of fact in support of the award. Additionally, the provision regarding the cost of living increases should be clarified to explain the method of payment of cost of living increases to plaintiff.

Lastly, defendant argues that the trial court erred in ordering defendant to pay for plaintiff's medical coverage, identical to the coverage maintained during the marriage, for a period of three years under the Consolidated Omnibus Budget Reconciliation Act (COBRA). The goal in distributing marital assets is to reach an equitable distribution of property in light of all the circumstances. *Byington, supra*, 224 Mich App 114. In *Voukatidis v Voukatidis*, 195 Mich App 338, 339; 489 NW2d 512 (1992), this Court determined that it is not inequitable to require a spouse to maintain the other spouse's health insurance on a temporary basis if the parties are in disparate economic positions.

In this case, the trial court ruled that defendant shall pay for group medical insurance for plaintiff, identical to the coverage she maintained during the marriage, for three years "*or until the Plaintiff becomes eligible for group medical insurance coverage through her own employer, whichever occurs first.*" This is equitable based on the facts presented at trial - a long term marriage, with plaintiff not working and relying on defendant for health insurance, and plaintiff's present inability to obtain a job that provides her with medical insurance.

Affirmed in part, and remanded for correction, clarification, or further fact-finding regarding the inconsistent and unclear pension provisions. We do not retain jurisdiction.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Henry William Saad