

STATE OF MICHIGAN
COURT OF APPEALS

MARIANNE JAMISON,

Plaintiff-Appellee,

UNPUBLISHED
August 7, 2001

v

ROBERT JOHN JAMISON,

Defendant-Appellant.

No. 224628
Washtenaw Circuit Court
LC No. 98-012585-DM

Before: Neff, P.J., and O’Connell and R.J. Danhof*, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm in part and remand.

Defendant’s first argument on appeal is that the procedural irregularities including the trial court’s failure to place any findings of fact on the record require this case to be remanded for testimony and evidence to be taken so the court can make appropriate findings of fact.

When divorce cases go to trial, the trial court must find facts on the basis of the evidence presented, and must exercise its discretion in fashioning a disposition. *Beason v Beason*, 435 Mich 791, 798; 460 NW2d 207 (1990). In its fact-finding role, the trial court must hear the evidence, weigh credibility, and, pursuant to MCR 2.517, place findings of fact on the record or in a written opinion. *Id.* The trial court must base its disposition of the case on the facts it finds. *Id.* If the parties have reached a settlement agreement, the trial court is not bound to accept it but is “without authority to alter the parties’ agreement absent the taking of testimony on the disputed issues, weighing the proofs, and rendering an opinion setting forth pertinent conclusions of law and findings of fact.” *Jones v Jones*, 132 Mich App 497, 500; 347 NW2d 756 (1984).

On the day scheduled for trial, the parties informed the court that they had reached agreement on most issues. The complete agreement was not read into the record, although some of the specific terms were described in testimony. The principal remaining issues were division of the proceeds from the sale of the marital home, spousal support, and division of proceeds from a possible worker’s compensation award to defendant.

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

The trial court, without objection from the parties, accepted the basics of the agreement and indicated that it would determine the percentage of the property division. Ultimately, the court awarded the parties the personal property they each possessed, regardless of its value, and fifty percent of the net proceeds from the sale of the marital home. The court also determined that each party would receive fifty percent of any future worker's compensation settlement or redemption. Because the trial court's ultimate decision regarding the marital home was in conformity with the settlement, the court was not required to make specific findings of fact with respect to that issue. Further, defendant does not contend that the division of the proceeds from the sale of the home was inequitable.

The issue of spousal support, however, was not discussed on the record as part of the agreement. When awarding alimony, courts are to make specific findings of fact based on what is reasonable and just in light of all the circumstances of the particular case. *Ianitelli v Ianitelli*, 199 Mich App 641, 642-643; 502 NW2d 691 (1993). There are many factors for a court to consider which include, but are not limited to: (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 parties' ages; (5) the abilities of the parties to pay alimony; (6) the needs of the parties; (7) the parties' health; and (8) a party's fault in causing the divorce. *Id.* at 643. Because this issue was not on the record as part of the agreement between the parties, the trial court was required to make specific findings of fact as to the factors relevant to the circumstances of this case. Accordingly, we remand for the trial court to make such findings.

Defendant next argues that his possible future worker's compensation settlement or redemption should not have been included as a marital asset. We disagree.

The Worker's Disability Compensation Act, MCL 418.101 *et seq.*, was intended to assist both the injured worker and the injured worker's spouse, and benefits received during the course of the marriage are considered a marital asset. *Evans v Evans*, 98 Mich App 328, 330; 296 NW2d 248 (1980). This Court has affirmed the trial court's decision to include the amount of a redemption offer as a marital asset where the facts were very similar to those of the present case. *Smith v Smith*, 113 Mich App 148, 151; 317 NW2d 324 (1982). In *Smith, supra*, a spouse was injured during the marriage and later rejected a worker's compensation settlement offer that also came during the marriage. The trial court included the amount of the redemption offer as a marital asset even though the offer had been rejected; this Court affirmed, noting that the injured spouse could move to modify the amount awarded in the event that the final settlement was less than the anticipated amount of the offer. *Id.* at 151, n 1.

Similarly, this case deals with an injury that occurred during the marriage and a settlement offer that was made during the marriage. Although defendant has not redeemed the award, the right to do so accrued during the marriage. However, unlike *Smith, supra*, the amount of the offer was not added to defendant's awarded property; rather, the trial court merely retained jurisdiction and divided any future redemption equally, based on the original redemption offer. Accordingly, the trial court correctly included any future redemption in the judgment of divorce as a marital asset, and if the actual redemption is different from the original offer of \$130,000, then the parties may move that the worker's compensation redemption portion of the settlement be set aside or modified.

Defendant's final argument is that attorney fees were improperly granted in plaintiff's favor. We disagree.

Absent an abuse of discretion, this Court will not reverse a lower court's decision to award attorney fees. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW 2d 674 (1997). Attorney fees may be awarded in divorce cases when the requesting party has been forced to incur the fees "as a result of the other party's unreasonable conduct in the course of the litigation." *Id.*

The judgment of divorce in this case ordered defendant to pay \$2,000 of plaintiff's attorney fees "due to his failure to follow the orders of this Court." That finding of the court was supported on the record by plaintiff's statements to the court that defendant violated prior court orders when he did not pay his fifty percent of the mortgage, when he did not pay the electric bill and had his name removed from that account, when he did not return family photographs belonging to plaintiff, and when he did not pay child support to the point that a court order was required to have it taken out of his wages.

Based on the trial court's finding of fact, and the circumstances supporting the court's finding, the trial court's award of \$2,000 in attorney fees cannot be characterized as an abuse of discretion.

Affirmed in part and remanded so that specific factual findings can be made by the trial court on the issue of spousal support. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert J. Danhof