

STATE OF MICHIGAN
COURT OF APPEALS

DAVID F. BURKETT,

Plaintiff-Appellant,

v

BARBARA A. BURKETT,

Defendant-Appellee.

UNPUBLISHED

August 28, 2001

No. 224075

Oakland Circuit Court

LC No. 99-618588-DO

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff first contends that the trial court erred in requiring him to pay defendant \$1,106 a week in alimony. This Court reviews the trial court's findings of fact for clear error. A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. If this Court upholds the factual findings, it must decide whether the dispositional ruling was fair and equitable in light of those facts. This Court will not reverse the trial court's dispositional ruling absent a firm conviction that it was inequitable. *Moore v Moore*, 242 Mich App 652, 654-655; 619 NW2d 723 (2000); *Magee v Magee*, 218 Mich App 158, 161-162; 553 NW2d 363 (1996).

An award of alimony is within the trial court's discretion. *Demman v Demman*, 195 Mich App 109, 110; 489 NW2d 161 (1992). "A court may award alimony in a divorce action 'as it considers just and reasonable,' after considering the ability of either party to pay, the character and situation of the parties, and all other circumstances of the case." *Id.* The main objective of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party. *Hanaway v Hanaway*, 208 Mich App 278, 295; 527 NW2d 792 (1995). Alimony is to be based on what is just and reasonable under the circumstances, *Moore, supra*, taking into account the relevant factors set forth in *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

Plaintiff's gross pay averaged \$120,000 a year over the last four years and although he expected his pay to decrease due to a cutback in overtime, the cutback had not taken effect.

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

Therefore, the trial court did not clearly err in determining that his gross annual salary was \$124,000. Plaintiff's claim that the court erred in considering more than half his overtime pay has not been preserved due to the failure to cite appropriate supporting authority. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993). Defendant was sixty-three years of age and had no work experience outside the home after thirty years of marriage and thus the trial court did not err in not imputing any income to defendant. Given that plaintiff does not dispute the fact that defendant was entitled to alimony, any error in the finding that plaintiff was at fault for the breakdown of the marriage was harmless. *In re Hamlet (After Remand)*, 225 Mich App 505, 518; 571 NW2d 750 (1997), overruled in part on other grounds by *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). In light of the facts and circumstances of this case, we are not convinced that the alimony award was inequitable.

Plaintiff also challenges the trial court's ruling that he contribute \$3,000 toward defendant's attorney fees. The trial court's decision to award attorney fees is reviewed for an abuse of discretion. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999).

Attorney fees in a divorce action are not recoverable as of right. *Kurz v Kurz*, 178 Mich App 284, 297; 443 NW2d 782 (1989). An award of reasonable attorney fees is authorized when one party is unable to bear the expense of the litigation and needs assistance to prosecute or defend the complaint for divorce and the other party has the ability to pay. *Kosch, supra*; *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997). A party may require assistance in paying attorney fees despite receiving substantial assets if the value of those assets is uncollectible or not subject to ready liquidation. *Kurz, supra* at 298.

Given that defendant's share of the marital estate left her with minimal liquid assets and no assets readily convertible to cash, that the alimony she received from plaintiff was her sole income, and that she had been unable to pay her attorney, we cannot find that the trial court's award constituted an abuse of discretion.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel