

STATE OF MICHIGAN
COURT OF APPEALS

TERRY L. PELTO,

Plaintiff-Appellant,

V

RICHARD R. PELTO,

Defendant-Appellee.

UNPUBLISHED

October 19, 2001

No. 228069

Houghton Circuit Court

LC No. 99-010900-DM

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right the judgment of divorce denying alimony to plaintiff. We reverse and remand.

We review alimony awards de novo. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). However, this Court reviews a trial court's underlying factual findings for clear error. *Id.* A finding is clearly erroneous if the appellate court, after reflecting on all the evidence, is left with a definite and firm conviction that a mistake has been made. If the trial court's findings are not clearly erroneous, this Court must then determine whether the ruling was fair and equitable. The trial court's decision regarding alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999), quoting *Draggoo v Draggoo*, 223 Mich App 415; 429-430; 566 NW2d 642 (1997).

The trial court erred in concluding that defendant's financial obligations precluded him from paying alimony, that there would not be funds to provide for expenses beyond necessities, and that the parties' standard of living would not change.

Plaintiff alleges several factual errors by the trial court that are without merit. However, we find that there was no evidentiary support for the trial court's conclusion that defendant's mental health would be seriously harmed by the payment of alimony. At trial, only brief anecdotal references were made to defendant's depression. See, e.g., *People v Thenghkam*, 240 Mich App 29, 52-53; 610 NW2d 571 (2000). Defendant's questions were not, of course, evidence. Virtually all reference to defendant mental health is contained within defendant's questions to plaintiff. Defendant was not under oath nor was any other evidence adduced in regards to his mental health problems.

We further find that the trial court erred in denying plaintiff alimony. The purpose of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party; it is to be based on what is just and reasonable under the circumstances. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Among those factors to be considered are: the past relations and conduct of the parties; the length of the marriage; the parties' abilities to work; the source and amount of property awarded to each party; the parties' ages; the parties' abilities to pay alimony; the parties' present situations; the parties' needs; the parties' health; the parties' prior standard of living and whether either is responsible for the support of others; the parties' contributions to the joint estate; a party's fault in causing the divorce; and general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames, supra*.

We find that the factors heavily favor the awarding of alimony to plaintiff. Plaintiff was a forty-five-year-old former homemaker, married twenty-eight years, with limited work experience outside the home and no education and no health benefits, who was relegated to living with her parents while attempting to further her education, work part-time as a direct care worker, and raise the couple's children. Conversely, defendant was employed full-time as a licensed electrician with full benefits and was living in the marital home. Further, defendant engaged in unscrupulous post-judgment conduct in an effort to undermine the substance of the judgment. After reviewing the evidence and considering the relevant factors, we are left with a firm and definite conviction that the trial court erred in declining to award plaintiff alimony.

We reverse and remand for a determination of the appropriate amount of alimony to be awarded to plaintiff. We do not retain jurisdiction. Plaintiff being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin

/s/ Jane E. Markey

/s/ Patrick M. Meter