

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID JAMES LAFOREST,

Plaintiff-Appellant,

v

KIM IRENE LAFOREST,

Defendant-Appellee.

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UNPUBLISHED

October 30, 2001

No. 224890

Grand Traverse Circuit Court

LC No. 99-018914-DO

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

MEMORANDUM.

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

The trial court entered a default against plaintiff when he failed to appear for a mandated final settlement conference. Plaintiff asserts that the trial court erred in failing to find that he was not culpably negligent because he could not secure a return flight from Arizona to attend the conference. MCR 2.401(G)(2)(b). Plaintiff was aware of the conference, and he failed to make the necessary arrangements to return in time to attend. The trial court did not clearly err in finding that his failure to attend was due to culpable negligence. MCR 2.613(C); *Beason v Beason*, 435 Mich 791; 460 NW2d 207 (1990).

Plaintiff asserts that the trial court did not obtain sufficient testimony to resolve the property dispute. Plaintiff has failed to preserve this claim because his counsel left the courtroom, rather than participate in creating a record to support the divorce. *Tringali v Lal*, 164 Mich App 299, 306; 416 NW2d 117 (1987). The trial court relied on the parties' settlement offers, which differed by only a small amount. There is no evidence that the disposition was inequitable. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

The trial court acted within its power in entering a judgment of divorce even though defendant had not filed a counter-complaint. MCR 2.601(A) provides that "every final judgment may grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that relief in his or her pleadings." The parties were well aware of all the issues to be tried, and no additional notice was necessary. MCR 2.603(B)(1)(d).

Affirmed.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra