

STATE OF MICHIGAN  
COURT OF APPEALS

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CONSTANCE GROTH,

Plaintiff-Appellee,

V

RONALD GROTH,

Defendant-Appellant.

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UNPUBLISHED

November 2, 2001

No. 222804

Wayne Circuit Court

LC No. 98-827798-DM

Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from the divorce judgment entered by the trial court. We affirm in part and remand for proceedings consistent with this opinion.

Defendant first argues that the trial court committed error requiring reversal when it divided the parties' marital assets. In *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992), our Supreme Court outlined the factors that a trial court should consider when dividing marital assets:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity.

Not all of these factors will be relevant to a particular case, and additional factors not listed above may be applied. *Id.* "The determination of relevant factors will vary depending on the facts and circumstances of the case." *Id.* at 160. However, the trial court must make specific factual findings regarding those factors that are relevant. *Id.* at 159. This requirement is designed to "result in greater consistency and provide for more effective and meaningful appellate review." *Id.*

[T]he appellate standard of review of dispositional rulings is not limited to clear error or to abuse of discretion. The appellate court must first review the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. . . . [T]he ruling should be affirmed

unless the appellate court is left with the firm conviction that the division was inequitable. [*Id.* at 151-152.]

On the present record, we cannot conduct a meaningful review of the trial court's marital property division. Although the trial court divided the various marital assets between the parties, it failed to articulate its factual findings on the record. This is particularly problematic because plaintiff and defendant vigorously disputed the value of several assets, and the trial court failed to specifically determine, on the record, the value of those assets. Therefore, we must remand this case to the trial court with instructions to articulate its findings of fact on the record, as required by *Sparks, supra*.<sup>1</sup> We decline defendant's request to order remand proceedings before a different judge. We find no evidence in the record that the trial judge has evidenced a "settled predisposition" to the detriment of either party. *Kiefer v Kiefer*, 212 Mich App 176, 183; 536 NW2d 873 (1995).<sup>2</sup>

Defendant next contends that the trial court abused its discretion when it awarded plaintiff alimony. The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The trial court should base its award of alimony on what is just and reasonable under the circumstances. *Id.* We review the trial court's factual findings relating to the award of alimony for clear error. *Id.* A finding is clearly erroneous if the appellate court is left with the definite and firm conviction that a mistake has been made. *Id.* at 654-655. If the trial court's findings are not clearly erroneous, we must decide whether the dispositional ruling was fair and equitable in light of the facts. *Id.*

In *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991), this Court set forth the factors that a trial court should consider when deciding whether to award alimony:

(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, and (12) general principles of equity. In addition, the court may consider a party's fault in causing the divorce. [(Emphasis added), (citations omitted).]

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<sup>1</sup> On remand, we do not require the trial court to accept additional evidence or conduct further hearings. We simply require the trial court to articulate the factual findings that it made when it divided the marital assets.

<sup>2</sup> Given our decision to remand for an articulation of the trial court's factual findings, we do not address defendant's argument that the *Sparks* factors weighed in favor of an equal division of marital property. A decision on that issue would be more appropriately conducted after remand.

Fortunately, the trial court did articulate its reasons for awarding plaintiff alimony. The trial court explained that it had analyzed the factors set forth above and that it had accorded the most weight to one issue – plaintiff’s support obligation for the parties’ handicapped daughter.

Defendant argues that the trial court’s analysis was improper because it awarded alimony as a substitute for ordering defendant to support his adult child. The circuit court lacks jurisdiction to order payment of child support for adult offspring. *Lesko v Lesko*, 184 Mich App 395, 405; 457 NW2d 695 (1990). However, this Court has recognized that an award of alimony may be appropriate when the spouse receiving that award has undertaken the care of a handicapped child. In *Parrish v Parrish*, 138 Mich App 546, 549, 553-557; 361 NW2d 366 (1984), this Court upheld a trial court’s award of alimony that was designed to assist the plaintiff in caring for the parties’ handicapped adult daughter. The *Parrish* Court recognized that parents had no obligation, at common law, to support their adult children. *Id.* at 555. Nevertheless, this Court stated:

The absence of a legal obligation to support her handicapped daughter did not, however, preclude the circuit court’s consideration of plaintiff’s voluntarily assumed obligation for her daughter’s support. In holding that a party’s responsibility for the support of others is a factor to evaluate in awarding alimony . . . the Supreme Court impliedly recognized that “responsibility” is not limited to “legal responsibility.” After all, in awarding alimony, the courts always consider all types of factors that have nothing to do with legal obligations, e.g., the parties’ prior standard of living. [*Id.* at 556-557.]

In the present case, the trial court relied explicitly on *Parrish*. In fact, the trial court drafted an alimony provision that is virtually identical to the provision approved by this Court in *Parrish*. We believe that the trial court’s decision was wholly appropriate and conclude that defendant’s argument is without merit. The trial court committed neither clear error nor an abuse of discretion when it awarded plaintiff alimony based on her continued support for the parties’ handicapped daughter.

Finally, defendant argues that the trial court erroneously ordered him to pay a portion of plaintiff’s attorney fees. We will not reverse the trial court’s decision to award or deny attorney fees in a divorce action absent an abuse of discretion. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997). A court may award a party in a divorce action “any sums necessary to enable the . . . party to carry on or defend the action.” MCL 552.13(1). Further, MCR 3.206(C) provides:

- (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action.
- (2) A party who requests attorney fees and expenses must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay.

A party “unable to bear the expense of attorney fees may recover reasonable attorney fees if the other party is able to pay.” *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999).

However, a party may not be required to invade his assets to satisfy attorney fees when he is relying on the same assets for his support. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993).

Our review of the record indicates that the trial court awarded plaintiff attorney fees based on its finding that plaintiff needed her share of the marital assets and the alimony award to care for the parties' handicapped daughter. That reasoning is sound, and we find no abuse of discretion in that regard. However, defendant argues that compliance with the order would force him to invade the assets awarded to him in the marital property division. Because resolution of that claim depends, in part, on the trial court's valuation of the marital assets awarded to defendant, we must reserve our decision regarding the alimony award until after remand.<sup>3</sup>

Finally, plaintiff urges this Court to award her appellate attorney fees under MCR 7.216(C)(1). That rule permits this Court to assess actual and punitive damages against a party, including reasonable attorney fees, when the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that a meritorious issue existed for appeal. On the present record, we do not find that such grounds exist in this case.

We affirm the trial court's award of alimony. We remand for an articulation of the trial court's findings of fact underlying the marital property division. Within 56 days from the issuance of this opinion, the trial court shall enter a written order articulating the necessary factual findings. Within 7 days from the entry of that order, appellant shall forward to this Court a copy of the order. The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings. Affirmed in part and remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Brian K. Zahra

/s/ Michael R. Smolenski

/s/ Michael J. Talbot

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<sup>3</sup> The trial court should not revisit the attorney fee issue on remand. Based on an assumption that the trial court's division of the marital assets was equitable, we would find that the award of attorney fees was not an abuse of discretion. However, the validity of that assumption depends on the articulation of facts to be made by the trial court on remand.