STATE OF MICHIGAN

COURT OF APPEALS

KRISTEN KAE PRICE, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED December 14, 2001
v	No. 232154 Washtenaw Circuit Court
DANIEL LEE PRICE, Defendant/Counterplaintiff-Appellant.	LC No. 99-013725-DM

Before: K.F. Kelly, P.J., and Fitzgerald and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of divorce entered by the trial court. We affirm.

I. Basic Facts and Procedural History

The parties married on October 29, 1988. Two minor children were born of the marriage. During the marriage, defendant earned both an undergraduate degree and a postgraduate law degree. While defendant studied to earn both of his degrees, plaintiff maintained a flexible work schedule to allow her to tend to the needs of the household and care for the parties' two minor children.

The record also reveals that when the parties' experienced financial hardship, plaintiff's parents loaned the parties money. Plaintiff's parents initially loaned the parties $30,000 to purchase a mobile home for which defendant signed a promissory note. Upon sale of the mobile home, defendant remitted $15,000 of the $30,000 loan and used the remaining $15,000 to purchase a computer and a vehicle. Testimony adduced at trial indicated that plaintiff's parents loaned the parties a total of $56,277.79 during the duration of the parties' marriage representing funds to subsidize defendant's education as well as monies advanced to assist the parties through defendant's period of disability. During the trial, plaintiff's father testified that the monies advanced were unforgiven loans and that the parties were still obligated to repay the debt. Additionally, plaintiff also testified that the funds advanced by her parents were not a gift, but rather a loan for which the parties remained liable. On the contrary, defendant contended that the monies were not loans, but rather gifts representing advancements on the parties' future inheritance.

In October of 1998, while defendant was attending law school, he happened upon computer discs containing various photographs of plaintiff which she admitted were sent out via the Internet. Suffice it to say that the discovery of these photographs precipitated the breakdown in the parties marital union causing the parties to separate in November of 1998 and ultimately divorce.

After trial, the trial court entered a judgment of divorce, awarding plaintiff sole legal and physical custody of the parties' two minor children. The judgment also divided marital assets and liabilities. In rendering its judgment, the trial court determined that the monies advanced by plaintiff's parents represented joint marital debt for which both parties shared fifty percent responsibility. However, to equalize the property division, the trial court ordered defendant to pay slightly more than fifty percent. [1]

In accord with its findings, the trial court ordered plaintiff to pay $25,138.89 and defendant to pay $31,138.90 on the debt. The trial court further ordered defendant to pay his portion of the debt directly to plaintiff stating that defendant's portion of the debt is "for the support and maintenance of plaintiff and the parties' children" and "shall not be dischargeable in bankruptcy." Additionally, the trial court ordered defendant to pay $3,000 in attorney fees, which the trial court similarly indicated was in the nature of support and also nondischargeable in bankruptcy. Finally, the trial court calculated and ordered defendant to pay child support based on a calculation using $35,000 as defendant's income. The trial court denied defendant's motion for a new trial. Defendant appeals as of right and we affirm.

II. Property Distribution

Defendant argues first that the trial court impermissibly adjudicated the rights of plaintiff's parents as nonparty creditors and then improperly transferred the right to receive payment to plaintiff, a party to the divorce, by ordering payment on the debt directly to plaintiff as opposed to plaintiff's parents. Defendant argues that the trial court's decision violates the well-established rule that in an action for divorce, a trial court cannot adjudicate the rights of third parties.

This Court reviews for clear error a trial court's factual findings relative to the division of marital assets or allocation of debt. *Dragoo v Dragoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). It is axiomatic that incumbent upon a court in an action for divorce is to determine the assets that comprise the marital estate and fashion an equitable division thereof. *Byington v Byington*, 224 Mich App 103, 109-110; 568 NW2d 141 (1997). See also *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993) (recognizing that equity not necessarily equality is the goal of property division in divorce.) Part and parcel of determining and dividing marital property is the concomitant allocation of marital debt. Indeed, the trial court is in the best position to determine whether a particular debt is marital in character or whether it belongs to one individual. See *Lesko v Lesko*, 184 Mich App 395, 401; 457 NW2d 695 (1990), overruled on other grounds, 194 Mich App 284 (1992).

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[1] Apparently, defendant obtained $6,000 more than plaintiff in the property distribution representing a disparity in value between the automobiles awarded to each respective party.

In the case at bar, the trial court found credible evidence establishing that the parties received at total of $56,277.79 from plaintiff's parents during the duration of the parties' marriage. The trial court further determined that the funds advanced were not a gift, but rather constituted a joint marital debt for which the parties were obligated to repay. After equalizing the distribution of marital property, the trial court determined that defendant was responsible for paying $31,138.90 and plaintiff was responsible for paying $25,138.89. Ostensibly, to protect the award in the event that defendant attempted to discharge this obligation in a subsequent bankruptcy proceeding, the trial court also determined that the funds representing defendant's portion of the debt represent funds for the support and maintenance of plaintiff and the parties' minor children. Defendant quarrels with the trial court's decision insofar as defendant argues that the trial court's determination constitutes the impermissible adjudication of a third party creditor's rights within the context of a divorce proceeding. We do not agree.

It is well recognized that in an action for divorce, the circuit court lacks jurisdiction to adjudicate the rights of parties other than the husband and wife involved. *Smela v Smela*, 141 Mich App 602, 605; 367 NW2d 426 (1985); *Hoffman v Hoffman*, 125 Mich App 488; 336 NW2d 34 (1983). Consequently, statutes governing divorce in Michigan do not allow a court to order "conveyance of property or interests in property to third parties." *Smela, supra* at 605.

To support his position, defendant primarily relies on the decision rendered in *Smela, supra*. In *Smela*, plaintiff wife's parents filed a third-party complaint in the parties' divorce action seeking a money judgment to secure payment for funds loaned to the parties so that the parties could purchase their marital home. The trial court determined that the money was a loan and that both parties were liable thereupon. *Id.* After a trial, the court awarded plaintiff wife the marital home encumbered by a lien in defendant husband's favor. The defendant husband's interest in the marital home was the fair market value of the home reduced by the outstanding mortgage and further reduced by the money judgment entered in favor of plaintiff wife's parents. *Id.* On appeal, this Court determined that the trial court lacked jurisdiction to adjudicate the rights of third parties and thus vacated the third-party ancillary judgment, indicating that the third-party creditors may initiate an independent action to obtain payment on the alleged loan.

The situation presented in the case at bar is factually distinguishable. In this instance, plaintiff's parents did not file a third party complaint in the parties' divorce action, nor did the trial court grant a money judgment payable to plaintiff's parents. The trial court did not adjudicate the rights of a third party creditor. On the contrary, the trial court merely made a factual determination that the monies owed to plaintiff's parents constituted marital debt for which both parties shared liability and allocated the debt between the parties in accord with the trial court's factual findings. Accordingly, the trial court did not exceed its jurisdiction and impermissibly "order conveyance of property or interests in property to third parties." *Smela, supra* at 605.

The trial court did decree that the amount represented by defendant's portion of the marital debt owed to plaintiff's parents was in the nature of maintenance and support to plaintiff and the minor children to secure payment and thereby frustrate any attempt by defendant to discharge the obligation in bankruptcy. To that end, the trial court recognized that ultimately, the bankruptcy court definitively determines whether a debt is dischargeable. However, providing that an obligation acquired as a result of a divorce proceeding is in the nature of support or maintenance to secure payment does not render the judgment void. See *Krist v Krist*, 246 Mich

App 59; 631 NW2d 53 (2001) (finding no error resulting from an arbitrator characterizing a property settlement as "spousal support" to frustrate any subsequent attempt to circumvent what the arbitrator deemed an equitable division of the parties' marital estate.)[2]

A review of the record in the instant matter reveals the trial court found competent and credible testimony establishing an existing debt owed to plaintiff's parents. Respecting that this Court grants special deference to a trial court's findings when premised upon witness credibility and respecting the trial court's superior ability to determine the character of a particular debt, *Dragoo, supra* at 429; *Lesko, supra* at 401, on the record here presented, we do not find that the trial court clearly erred in either regard.

III. Property Division

Next, defendant argues that the trial court's division of property was unfair. We disagree. This Court reviews a trial court's dispositional rulings for clear error and will affirm the trial court "unless the appellate court is left with the firm conviction that the [property] division was inequitable." *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). The appropriate factors to consider in the division of property include:

> (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. (*Dart v Dart*, 460 Mich 573, 583; 597 NW2d 82 (1999) (citing *Sparks, supra*.))

In the instant case, the parties were married for almost twelve years.[3] While defendant argues that he contributed more financially to the marriage, evidence adduced at trial well demonstrated that plaintiff contributed significantly to the marriage both financially and otherwise. At the time the marriage dissolved, the parties were both relatively young and in their thirties. There were no allegations that either party was in ill health. The parties had virtually no assets. While defendant has a greater earning potential given his law degree, he also incurred considerable debt obtaining his degree. And, while defendant claimed that plaintiff was at fault in the breakdown of the marriage, the record does not reveal that the trial court considered plaintiff's fault when dividing the marital property. The parties were relatively equal with regard to relevant considerations and the trial court treated them accordingly, dividing everything approximately fifty percent to plaintiff and fifty percent to defendant.

Defendant's car, valued at $6,000, was the only property owned by the parties that warranted valuation. Defendant received the car and half of all of the remaining personal property. According to the judgment, plaintiff and defendant were to equally divide the marital debt owed to plaintiff's parents with a $6,000 adjustment inuring to plaintiff's benefit

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[2] In fact, the trial court recognized this principle and advised defendant, "[d]eclare bankruptcy. Maybe you'll win in the federal court."

[3] The record reveals that the parties married on October 29, 1988 and the Judgment of Divorce entered on October 27, 2000.

representing the value of defendant's car that he received in the distribution of the marital property. A review of the record reveals that the parties were each awarded roughly a fifty percent share of the marital assets and liabilities, except for the law school debts.[4] Under the circumstances, we find that the division of the parties' marital property was fair and equitable. *Heugel v Heugel*, 237 Mich App 471, 482; 603 NW2d 121 (1999).

The disposition of the law school debt was also equitable. Evidence adduced during trial revealed that defendant amassed law school loans greater than $55,000. According to the Judgment of Divorce, defendant is solely responsible for their repayment. In exchange, plaintiff agreed to forego any equitable share of defendant's law school degree to which she would otherwise be entitled. Indeed, it is well settled that "where an advanced degree is the end product of a concerted family effort, involving the mutual sacrifice, effort, and contribution of both spouses, there arises a `marital asset' subject to distribution, wherein the interest of the nonstudent spouse consists of an `equitable claim' regarding the degree." *Postema v Postema*, 189 Mich App 89, 101; 471 NW2d 912 (1991).

Under the circumstances, the trial court's decision rendering defendant solely responsible for the educational debt in exchange for plaintiff's agreement to forego an equitable claim to defendant's degree was indeed appropriate. The trial court's decision did not unfairly penalize defendant. Upon review of the entire record, we find that the trial court did not clearly err in distributing the parties' property and that the ultimate distribution was indeed fair and equitable under the circumstances. *Sparks, supra* at 152.

IV. Custody

Defendant next argues that the trial court erred by awarding plaintiff sole legal and physical custody. We disagree.

When reviewing decisions relative to child custody, this Court applies three distinct standards of review. *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000). All findings of fact are subject to the great weight of the evidence standard and will be sustained "unless the evidence clearly preponderates in the opposite direction." *Id.* (Citations omitted.) An abuse of discretion standard governs the trial court's discretionary rulings such as custody decisions. Since a trial court's custody decision is "a discretionary dispositional ruling, a custody award should be affirmed unless it constitutes an abuse of discretion." *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998). And, questions of law in custody decisions are reviewed for clear legal error. *LaFleche, supra* at 695 (citing MCL § 722.28.) A trial court commits legal error when it incorrectly chooses, interprets, or applies the law. *Id.*

At the outset, we note that legal custody and physical custody are two substantively distinct concepts. A legal custodian is the individual charged with making "important decisions

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[4] Although the trial court determined that a concerted family effort allowed defendant to obtain his law degree, plaintiff agreed to forego any right in defendant's degree in exchange for defendant accepting full responsibility for any and all debts associated with his degree, excepting any funds loaned by plaintiff's parents.

affecting the welfare of the child," while a physical custodian denotes the individual with whom the child physically resides. See MCL 722.26a(7) (1), (2) (defining the term "joint custody.") Thus, where one parent is a child's sole legal custodian, that individual is entitled to render all decision affecting that child's life without having to consult the other parent in the decision making process.

In the case at bar, defendant requested joint legal and joint physical custody while plaintiff requested sole legal and sole physical custody.[5] In accord with MCL 722.26a (1), where one of the parties so requests, "the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request." See also *Mixon v Mixon*, 237 Mich App; 159, 162; 602 NW2d 406 (1999). To this end, the court must determine whether joint custody serves the best interest of the child by considering the best interest factors contained in MCL 722.23, and determining whether the parents "will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." MCL 722.26a(1)(a), (b).

However, for a joint custody situation to work, "parents must be able to agree with each other on basic issues in child rearing—including health care, religion, education, day to day decision making and discipline – and they must be willing to cooperate with each other in joint decision making." *Fisher v Fisher*, 118 Mich App 227, 232; 324 NW2d 582 (1982). While it is certainly desirable for both parents to participate in decisions affecting the minor child's life post divorce, at the same time, "[i]f two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children." *Id*. at 233.

Bearing these guiding principles in mind, we now turn our attention to the trial court's specific findings in the case at bar. The trial court found that the parties were equal on all factors delineated in MCL 722.23 except factors (b), (e), (f), (h), and (j) which the trial court found weighted in favor of plaintiff. On appeal however, defendant only challenges the trial court's findings with regard to factors (b), (f), (h) and (j) respectively.[6]

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[5] Initially, the parties agreed to joint legal custody. In addition to joint legal custody, defendant also sought joint physical custody. However, during the trial, plaintiff altered her position and requested sole legal custody primarily based on the alleged inability of the parties to communicate on major issues. The trial court agreed with plaintiff and awarded plaintiff sole legal and physical custody of the parties' two minor children.

[6] Although defendant submits that the trial court's findings as regards factor (h) contravened the great weight of the evidence, defendant failed to provide argument or evidence to support his position. Consequently, consideration of this issue is not properly presented to this Court for review. Indeed, "[a] party may not merely announce his position and leave it to us to discover and rationalize the basis for his claim." *Toler v Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). Additionally, we note that in his brief on appeal, defendant raises issues under factor (l) which allows the finder of fact to consider other factors relevant to a particular child custody dispute. The trial court, however, did not make any specific findings as regards this factor in its Opinion and Order. Accordingly, this Court does not have any findings under factor (l) to

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MCL 722.23 (b) addresses the capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the educating and raising of the child in its religion or creed if any. The trial court found that plaintiff's trial testimony and her overall demeanor during the trial indicated that she has both the capacity and disposition to give the children love, affection and guidance. On the contrary, the trial court observed that defendant's demeanor and testimony during trial indicated that he lacked the capacity to place the needs of the minor children above his own. In accord with its observations, the trial court determined that as compared to plaintiff, defendant did not have a comparable capacity to give the children the requisite guidance.

A review of the record supports the trial court's findings. While we do not deny that defendant loves his children, the record evidences that defendant does not have the capability to put aside plaintiff's indiscretions and his own antipathy sufficient to give his children the requisite parental guidance. Accordingly, on review of the whole record, we cannot conclude that the trial court's findings relative to factor (b) were against the great weight of the evidence.

MCL 722.23 (f) addresses the parties' moral fitness. As our Supreme Court specified and it certainly bears repeating here, factor (f) relates to an individual's fitness *as a parent*. *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994). (Emphasis added.) Indeed, "[t]o evaluate parental fitness, courts must look to the parent-child relationship and the effect that the conduct at issue will have on that relationship." *Id*. Consequently, the relevant inquiry pursuant to this factor is not which party is the "morally superior adult" but rather, whether the conduct at issue significantly influences how that individual will function in a parental capacity. *Id*.

In its Opinion and Order, the trial court noted that defendant's repeated references to plaintiff's Internet activities were "distasteful and vengeful." While the trial court noted that plaintiff made a poor choice, the trial court did not find that her choices in this regard necessarily reflected upon her moral fitness as a parent. Although defendant argued that plaintiff's Internet activities interfered with her ability to tend to the children's needs, a review of the record does not support defendant's contention. Plaintiff testified that the children were unaware of her activities as she undertook them late at night or while the children were outside playing. Nothing in the record suggests that plaintiff's conduct in this regard significantly influenced how she functioned as a parent. *Id.* Accordingly, we cannot conclude that that the trial court's findings on this factor were against the great weight of the evidence.

MCL 722.23 (j) addresses the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent. The trial court noted that while plaintiff acknowledges that defendant should be involved in the children's lives, the testimony, coupled with the demeanor of the parties, convinced the trial court that defendant does not share plaintiff's willingness or ability to facilitate. At trial, plaintiff testified that defendant is a good father and that he loves his children. However, plaintiff also indicated that communication with defendant typically results in an argument. As a result, plaintiff testified that the parties are unable to have any meaningful discussions for purposes of making parental decisions.

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review on appeal.

The trial court found plaintiff's testimony credible and thus weighed this factor in her favor. Respecting the trial court's superior ability to judge the credibility of witnesses brought before it, questions regarding credibility are thus better resolved by the trier of fact. *Henry v City of Detroit*, 234 Mich App 405, 415; 594 NW2d 107 (1999). Considering the evidence presented upon the entire record, we cannot conclude that the trial court's findings with regard to factor (j) were against the great weight of the evidence.

Although the record establishes that both parents were attentive and loving parents, who contributed to the educational and social development of the children, nevertheless, after a full trial and ample opportunity to observe the demeanor of the parties as well as assess witness credibility, the trial court found that the parties are unable to generally cooperate as regards important decisions affecting the children and that the best interest of the minor children dictate that sole legal and physical custody vest in plaintiff. After review of the complete record, we cannot find that the trial court abused its discretion in this regard and thus affirm the trial court's ultimate custody determination. *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998).

IV. Child Support

Defendant next argues that the trial court erred when it determined the amount of child support. We disagree. A child support award lies within the sound discretion of the trial court and is presumed to be correct. *Calley v Calley*, 197 Mich App 380, 382; 496 NW2d 305 (1992).

After trial, the trial court determined that the amount of child support specified in the Final Recommendation submitted by the Friend of the Court was the appropriate amount of support. Defendant takes issue with the amount of child support ultimately arguing that contrary to evidence presented at trial that he only earned an annual income of $30,000, the recommendation was nevertheless calculated as if defendant earned $35,000 annually as estimated by plaintiff during the initial investigation.

Pursuant to the applicable statutes, the formula employed to calculate child support must reflect the needs of the child and the actual resources of the respective parents. *Ghidotti v Barber*, 459 Mich 189, 198; 586 NW2d 883 (1998). Indeed, "actual resources" include a payer's unexercised ability to pay. *Id*. Defendant argues that the trial court deviated from the child support guidelines when it accepted the Friend of the Court's recommendation using $35,000 as defendant's annual pay despite evidence that he only earned $30,000 without a concomitant finding on the record that application of the formula would be unjust or inappropriate. MCL 552.16(2). See also *Edwards v Edwards*, 192 Mich App 559, 562; 481 NW2d 769 (1992); *Calley*, *supra*.

A review of the record and file in the case sub judice reveals that defendant did not challenge the Friend of the Court's Preliminary Recommendation dated March 10, 2000. The Preliminary Recommendation was based upon plaintiff's representations that defendant gained employment as an attorney and was making between $30,000 - $35,000 per year. Additionally, the Preliminary Recommendation indicated that the Friend of the Court Evaluator would review the child support issue either upon interviewing defendant or by receiving documentation from defendant relative to his current employment and income situation. According to the

recommendation, if defendant did not submit the requested documentation within thirty days, the amount of support would be adjusted in accord with the Preliminary Recommendation.

A review of the Final Recommendation issued by the Friend of the Court dated May 31, 2000, reveals that despite an order requiring defendant to advise the Friend of the Court within two weeks of attaining new employment so that child support may be recalculated to reflect defendant's new employment status, defendant failed to do so. Additionally, the Final Recommendation noted that defendant did not submit income verification within thirty days of receiving the Friend of the Court Preliminary Recommendation even despite an additional seven day grace period. Accordingly, because of defendant's failure to notify the Friend of the Court of his new employment and failure to timely file documentation verifying employment and income, the Final Recommendation did not modify the amount of support initially ordered in its Preliminary Recommendation and further provided that defendant may petition the Friend of the Court for modification of support. A review of the file does not indicate that defendant ever sought modification.

The Friend of the Court thus calculated the amount of child support pursuant to the guidelines in accord with the information provided by plaintiff. Although defendant had the opportunity to submit documentation concerning his employment and income, defendant failed to do so in a timely fashion and otherwise failed to file a petition for modification. Thus, defendant's argument that the trial court deviated from the guidelines when it determined that the amount of support contained in the Friend of the Court's recommendation was appropriate is misplaced.

In its Opinion and Order dated September 28, 1999 the trial court initially stated that it found plaintiff's testimony to be "competent, sincere, earnest and believable." On the contrary, the trial court had serious reservations about defendant's conduct and demeanor at trial and also indicated that it found some of defendant's testimony incredible and insincere. Despite defendant's testimony that he only earned $30,000, the trial court nevertheless determined that the amount of support contained in the Friend of the Court's Final Recommendation was appropriate. Where a trial court makes independent findings that merely coincide with the Friend of the Court's ultimate recommendation concerning the amount of child support, no reversible error obtains. *Bickham v Bickham*, 113 Mich App 408, 411-412; 317 NW2d 642 (1982). To the extent that the trial court's determination rested upon the credibility of the testimony and demeanor of the witnesses, we decline to disturb the trial court's determinations respecting that "[q]uestions of credibility are best left to the trier of fact." *Phillips v Jordan*, 241 Mich App 17, 28; 614 NW2d 183 (2000). Considering the evidence presented, we cannot conclude that the trial court's determination constituted an abuse of its discretionary authority in this regard.

V. Attorney Fees

Finally, defendant argues that the trial court abused its discretion in awarding $3,000 in attorney fees to plaintiff. We disagree.

This Court reviews a trial court's grant of attorney fees for an abuse of discretion. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). In divorce actions, attorney fees are awarded "only as necessary to enable a party to prosecute or defend a suit." *Id*.

However, attorney fees are also appropriate "when the requesting party has been forced to incur expenses as a result of the other party's unreasonable conduct in the course of litigation." *Id*. See also *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992). Indeed, a trial court's discretion is broad with regard to the allowance of attorney fees in divorce actions. *Curylo v Curylo*, 104 Mich App 340, 352; 304 NW2d 575 (1981).

In the case at bar, the trial court found that a $3,000 attorney fee award to plaintiff was "necessary to enable her to prosecute this case." A review of the trial court's Opinion and Order evidences the trial court's serious concern over defendant's behavior during the course of the litigation noting that defendant's demeanor suggested "a level of emotional instability." Although this Court did not have the opportunity to observe the conduct of the parties during the proceedings, a review of the cold, hard, record nevertheless exposes defendant's hostility toward plaintiff largely due to her activities on the Internet. In fact, throughout the proceedings, we note that the trial court had to stop defendant from a line of questioning that precariously teetered on harassment.

During the trial, plaintiff testified that her attorney fees increased as a result of defendant's obstreperous conduct. Plaintiff indicated that the parties could not agree on anything requiring the parties to return to court to resolve many issues. A review of the record and the file in this matter supports plaintiff's testimony and the trial court's concern regarding defendant's conduct. The trial court awarded plaintiff attorney fees finding that plaintiff was unable to bear the expense of the litigation. Given defendant's conduct and his status as an attorney, on the record here before us, the trial court could have determined that plaintiff borne a greater financial burden every time that defendant's conduct required a court appearance thus requiring attorney fees to enable her to prosecute the case. We find no abuse of discretion.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ E. Thomas Fitzgerald
/s/ William B. Murphy