

STATE OF MICHIGAN
COURT OF APPEALS

LORRAINE F. JENUWINE,

Plaintiff-Appellee,

v

MARK F. JENUWINE,

Defendant-Appellant.

UNPUBLISHED

February 1, 2002

No. 226882

Macomb Circuit Court

LC No. 98-006223-DO

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie,* JJ.

PER CURIAM.

Defendant appeals as of right from a divorce judgment. Defendant challenges the trial court's award of alimony, the division of marital property, and the award of attorney fees to plaintiff. We affirm.

Plaintiff and defendant were married in 1961. The parties had five children together, all of whom have reached the age of majority. In 1998, plaintiff moved out of the marital home and filed for divorce shortly afterwards.

First, defendant argues that the trial court abused its discretion when it awarded alimony. Defendant argues that the trial court failed to make the appropriate factual findings and that the factors did not favor an award of alimony. We disagree.

The award of alimony is in the trial court's discretion. *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). However, we review the trial court's factual findings for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). A finding is clearly erroneous if, on all of the evidence, we are left with a definite and firm conviction that a mistake has been made. *Id.* at 654-655.

"The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. Alimony is to be based on what is just and reasonable under the circumstances of the case." *Moore, supra* at 654 (citations omitted). The trial court, in deciding whether to award alimony, should consider:

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

(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. [*Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991) (internal citations omitted).]

The trial court is required to consider the relevant factors and "should make specific findings of fact regarding those factors that are relevant to the particular case." *Ianitelli v Ianitelli*, 199 Mich App 641, 643-644; 502 NW2d 691 (1993).

In this case, the trial court stated:

The Court is satisfied plaintiff is entitled to an award of spousal support. This is a long-term marriage of over 38 years. During the marriage, plaintiff developed no marketable job skills. Instead, she stayed home to raise the parties' five children. Defendant's income was the only income for the family. In addition, defendant has the ability to earn a substantial income while plaintiff has only been able to obtain employment paying \$7.40 per hour. Further, at trial, the testimony established defendant has been physically and emotionally abusive to plaintiff during the marriage. Defendant acknowledged the physical abuse during his testimony. This abuse led, in large part, to the disintegration of the marriage. The Court has considered defendant's claim that he is not able to work as much as he did in the past due to his heart attack. This heart attack occurred in 1995. Defendant's income, however, did not decrease until 1998, the year plaintiff initiated this litigation. The Court does not find defendant's testimony as to his income credible. The Court is satisfied defendant could earn more from his occupation as a pipe fitter but chooses not to.

The trial court then ordered defendant to pay plaintiff \$135 per week in alimony.

Although it is true that the trial court did not list its findings with regard to each factor, we do not find this problematic. The trial court recognized the factors it must consider when awarding alimony. Further, the trial court specifically detailed its reasons for awarding alimony and obviously gave consideration to those factors that were relevant. The trial court also made extensive factual findings. Thus, the trial court did not neglect to engage in the appropriate analysis.

Moreover, we disagree with defendant that the award of alimony was inequitable. An independent review of the factors indicates that the trial court's findings of fact were not clearly erroneous, but were well supported by the record. Additionally, we agree that the ages of the parties, the abuse inflicted by defendant on plaintiff, and the disparity of their potential incomes, due at least in part to plaintiff's having stayed out of the workforce in order to raise their children, all weigh in favor of awarding alimony. Thus, we affirm the trial court's award of alimony.

Second, defendant argues that the trial court's division of marital property was inequitable. Again, we disagree.

When the trial court's findings are not clearly erroneous, we then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division need not be mathematically equal, but any significant departure from congruence should be supported by a clear exposition of the court's rationale. *Id.* at 114-115. Our Supreme Court in *Sparks, supra* at 159-160, stated that, when distributing marital property, a trial court should consider the following factors whenever they are relevant:

- (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.

In addition, the trial court may find and consider other relevant factors; for the factors that are relevant, the trial court is required to make specific factual findings. *Id.* at 159. The trial court's decision, as to alimony, must be affirmed unless we are firmly convinced that it was inequitable. *Id.* at 151-152.

In this case, the trial court properly identified the factors it would consider when dividing the marital property. The trial court then awarded the marital property as follows: the marital home, farm implements, and household furnishings were to be sold and the proceeds divided equally; the 1987 Cutlass was awarded to plaintiff; the 1988 Oldsmobile was awarded to defendant; the cash value of defendant's pension and the parties' insurance policies were to be divided equally; and defendant was ordered to pay plaintiff \$3,148.90 to reimburse her for her portion of their federal income tax refund.

Defendant argues that, instead, the trial court should have ordered defendant to pay plaintiff \$75,000 and allowed defendant to keep the marital home, farm implements, and household furnishings. Defendant argues that plaintiff is not entitled to half of his pension. Instead, plaintiff should only be awarded half of defendant's pension up to 1978, the time that defendant claims the marriage essentially ended. Finally, defendant argues that he should not be required to pay plaintiff \$3,148.90 for plaintiff's portion of the federal income tax refund. Defendant points out that the trial court failed to consider that he used this money to pay the accountant and state income taxes.

The trial court's findings of fact were not clearly erroneous. As we stated when discussing the award of alimony, this was a marriage that lasted almost forty years. Both parties are the same age. During the marriage, plaintiff stayed home to care for the children and defendant worked as a pipe fitter. Defendant had a significantly higher earning ability after working as a pipe fitter for many years. In fact, defendant maintained an income of approximately \$50,000 until the divorce proceedings were initiated. In contrast, plaintiff, a high school graduate, has only one year of community college education and no work experience.

Since the divorce proceedings, plaintiff has acquired a job at which she earns \$7.40 per hour. Plaintiff's earning ability is clearly inferior to defendant's.

Furthermore, it was undisputed by defendant that he physically and emotionally abused plaintiff during the marriage. This abuse occurred in front of the parties' five children. The abuse only ended when the parties' eldest son warned defendant not to harm plaintiff any longer.

In any event, after consideration of these factors, we find the trial court's disposition of marital property equitable. Moreover, we do not agree with defendant that the trial court should have allowed defendant to pay plaintiff \$75,000 and keep the farm implements, marital home, and household furnishings. Defendant presents no evidence that the \$75,000 would have adequately compensated plaintiff for half of the marital estate. Instead, the only evidence presented at trial indicated that the marital home is located on 12½ acres of property and includes several other buildings. The value of the marital home when it was purchased in 1972 was \$50,000. However, no evidence was presented of the present value of the marital home. Therefore, we find that defendant's argument fails.

In addition, defendant's argument that plaintiff is only entitled to his pension until 1978 is equally without merit. The marriage did not end in 1978. See MCL 552.18(1); *VanderVeen v VanderVeen*, 229 Mich App 108, 110-111; 580 NW2d 924 (1998) (pension benefits accrued by a party during the marriage must be considered part of the marital estate). Finally, defendant's argument that he should not be required to reimburse plaintiff for her portion of the federal income tax refund fails. Defendant readily admitted at trial that he deposited the federal income tax refund check into his account without plaintiff's knowledge or consent even though the check was made payable to both parties. Defendant argued that he used this money to pay the accountant and to pay the state income taxes. The trial court heard defendant's testimony on this matter and rejected that argument. We do not find that this was error. Therefore, the disposition of marital property is affirmed.

Third, defendant argues that the trial court's award of attorney fees to plaintiff was an abuse of discretion. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997). Attorney fees can be awarded when the requesting party has been forced to incur expenses as a result of the other party's unreasonable conduct. *Id.* The trial court found that such unreasonable conduct in the present case and ordered defendant to pay \$3,000 of plaintiff's attorney fees. The trial court reasoned:

The disparity in the parties' income has been discussed above. In spite of this, defendant has objected throughout these proceedings to the award of any temporary spousal support for plaintiff. As a result, plaintiff has been required to file motions for support as well as attend hearings before the Friend of the Court. In addition, in spite of being ordered to pay temporary spousal support defendant has refused to do so. As a result, plaintiff has been required to file show cause motions. The Court concludes defendant has unnecessarily delayed this matter and caused plaintiff to incur legal fees which could otherwise have been avoided.

This reasoning is well supported by the record. Thus, we conclude that the trial court's award of attorney fees was not an abuse of discretion.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Janet T. Neff

/s/ Barbara B. MacKenzie