

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE LOTURCO,

Plaintiff/Counterdefendant-
Appellant,

v

SHIRLEY LOTURCO,

Defendant/Counterplaintiff-
Appellee.

UNPUBLISHED

May 21, 2002

No. 231426

Wayne Circuit Court

Family Division

LC No. 99-930784-DM

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

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. Plaintiff challenges the trial court's decision to award defendant primary physical custody of the parties' minor children, certain aspects of the court's division of property, and the court's award of attorney fees to defendant. We affirm.

I.

The litigants were married July 30, 1993. Two children were born of the marriage, Karli (born 3/4/96) and Christine (born 4/11/97). The marriage was troubled subsequent to the birth of the children. On or about August 28, 1999, while plaintiff was vacationing with friends, defendant packed up her children and personal belongings and drove to her mother's home in California.

On September 29, 1999, plaintiff filed this action for divorce. Attempts at a reconciliation were unsuccessful. A trial commenced on September 13, 2000. At the conclusion of the proofs, the trial court rendered her findings of fact and conclusions of law from the bench. Applying the twelve factors of the Child Custody Act, MCL 722.23, the trial court determined it was in the best interest of the minor children that sole physical custody be awarded to the mother.

In distributing the marital property, the trial court noted that the only asset of any value to plaintiff's plumbing business was a lawsuit seeking compensation for services. The trial court awarded defendant 50% of the net proceeds payable to plaintiff from the lawsuit. Finally, due to a disparity of income between the litigants, the trial court required plaintiff to pay defendant

\$8,500 for attorney fees. A judgment of divorce was entered November 17, 2000. This appeal followed.

II.

Plaintiff first argues the trial court erred on several of its findings on the statutory best interest factors, MCL 722.23. All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence or the trial court committed a palpable abuse of discretion or a clear legal error on a major issue. MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994), after remand 229 Mich App 19 (1998); *York v Morofsky*, 225 Mich App 333, 335; 571 NW2d 524 (1997). A trial court's findings as to each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. *Fletcher, supra*, 447 Mich 879; *Ireland v Smith*, 214 Mich App 235, 242; 542 NW2d 344 (1995); modified 451 Mich 457 (1996). The abuse of discretion standard applies to the trial court's discretionary rulings; to whom custody is granted is such a discretionary ruling. *Fletcher, supra*, 447 Mich 879-880. An abuse of discretion occurs when the result is so grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or the exercise of passion or bias. *Id.* at 879-880.

We have considered plaintiff's claims regarding the challenged factors and conclude that none of the court's findings are against the great weight of the evidence. The trial court made detailed findings as to each of the statutory factors. The trial court's findings were cogent, well reasoned and have more than sufficient support in the record. Simply put, the evidence does not clearly preponderate toward a contrary finding with respect to any of the challenged factors. *Fletcher, supra*, 447 Mich 879. The trial court's ultimate decision to award primary physical custody to defendant was not an abuse of discretion. *Id.* at 879-880.

III.

We also reject plaintiff's claim that the trial court erred in awarding each party one-half of the net proceeds of plaintiff's share of the Stop Leak Plumbing business. This Court reviews for clear error the court's findings of fact relating to the division of property. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Dispositional rulings are affirmed unless this Court is left with "the firm conviction that the division was inequitable." *Sparks, supra*, 440 Mich 152. We discern no clear error with regard to the division of the net proceeds of the lawsuit. There was no dispute that the plumbing business was a marital asset or that the unpaid plumbing services that formed the basis of the lawsuit were performed during the marriage. Thus, defendant was entitled to a fair and equitable portion of the net proceeds of the lawsuit. Plaintiff testified at trial that the lawsuit was the plumbing company's only significant asset and that the company had certain liabilities as well. However, the evidence presented by plaintiff demonstrated that the company's liabilities did not outweigh the amount expected from the lawsuit. Furthermore, contrary to plaintiff's claim, the trial court did take into account the company's liabilities when dividing the asset. The trial court set aside a portion of the settlement proceeds so that certain company liabilities could be satisfied before the net proceeds were distributed to plaintiff and his brother.

We reject plaintiff's claim that he should have received a larger portion of the net proceeds of the lawsuit because defendant was at fault for the breakdown of the marital

relationship. There was no evidence that defendant was involved in any extra-marital relationships. Both parties, not just defendant, became intoxicated at times during the marriage, but plaintiff also used cocaine during the marriage. Furthermore, plaintiff was verbally and physically abusive towards defendant during the marriage. Under these circumstances, the trial court did not clearly err in failing to find that defendant was at fault for the breakdown of the marital relationship.

IV.

Lastly, we reject plaintiff's claim that the trial court abused its discretion in awarding defendant attorney fees in the amount of \$8,500. An award of legal fees in a divorce action is authorized when it is necessary to enable the party to carry on or defend the suit. MCR 3.206(C)(2); *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997); see also MCL 552.13(1). This Court reviews a trial court's decision to award attorney fees for an abuse of discretion. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999); *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995).

Defendant had been, for the most part, a stay-at-home mother during the marriage. Defendant worked at a series of low paying jobs during the course of these proceedings, and received no child support from plaintiff for over a year while this matter was pending. Clearly, defendant was unable to bear the expense of this action. Plaintiff, on the other hand, had his own plumbing business, was expecting to receive a large award in a lawsuit against a customer, and offered no testimony to indicate that he could not afford to pay a portion of defendant's attorney fees. Plaintiff had ready access to cash during these proceedings. Plaintiff admitted to spending between \$16,000 and \$20,000 on vacations and trips during the year prior to the divorce hearing. Under these circumstances, the trial court did not abuse its discretion in granting defendant's request for attorney fees.

We find no merit to plaintiff's claim that because defendant received one-half of plaintiff's share of the net proceeds of the Stop Leak Plumbing lawsuit, she was capable of paying her own attorney fees. Defendant needed her share of the net proceeds of the lawsuit in order to support herself and the children. We will not require a party to invade assets to satisfy attorney fees when the party is relying on the same assets for support. *Hanaway, supra*, 208 Mich App 298.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Brian K. Zahra