

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

ERICA LYN WESLER, a/k/a ERICA LYN  
STENDER,

Plaintiff-Appellee,

v

SCOTT WILLIAM WESLER,

Defendant-Appellant.

---

UNPUBLISHED  
July 26, 2002

No. 228513  
Van Buren Circuit Court  
LC No. 99-045328-DO

ERICA LYN STENDER, f/k/a ERICA LYN  
WESLER,

Plaintiff-Appellant,

V

SCOTT WILLIAM WESLER,

Defendant-Appellee.

---

No. 229843  
Van Buren Circuit Court  
LC No. 99-045328

Before: Neff, P.J., and White and Owens, JJ.

PER CURIAM.

In this consolidated action, the parties appeal as of right the trial court's order granting a judgment of divorce. We affirm.

Plaintiff and defendant were married in September 1993, at the ages of 20 and 24, respectively. The parties have no children. Plaintiff filed for divorce in March 1999, maintaining that the breakdown in the marriage was the result of the parties' inability to communicate and defendant's controlling nature. However, plaintiff also admitted to having engaged in an extramarital affair. The majority of the marital estate in this action was comprised of the marital home in Gobles, lakefront property on Clear Lake, and Alloy Steel, a business that defendant owns. Ultimately, the trial court awarded plaintiff \$10,000 alimony-in-gross and

divided the marital estate equally between the parties. Pursuant to the judgment, defendant received the marital home and Alloy Steel while plaintiff was awarded the Clear Lake property and a portion of the value of Alloy Steel.

In docket no. 228513, defendant contends that the trial court, in its attempt to arrive at an equal property division, erred by awarding the Clear Lake property to plaintiff. We review a property distribution in a divorce case by first reviewing the trial court's factual findings for clear error, and then determining "whether the dispositional ruling was fair and equitable in light of the facts." *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). In determining whether the property distribution was fair and equitable, the following factors may be considered:

[T]he source of the property; the parties' contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity . . . [as well as] the interruption of the personal career or education of either party. [*Id.* at 292-293.]

Generally, a property distribution "will be affirmed unless we are left with the firm conviction that the distribution was inequitable." *Id.* at 292. Further, special deference is given to a trial court's findings when based on the credibility of the witnesses. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

Specifically, defendant argues that the trial court failed to properly assess "equitable factors" in its award of the Clear Lake property to plaintiff. For example, defendant notes the evidence indicating that he learned that the land was for sale first, recruited a friend to aid in its purchase, borrowed money to purchase it from his company, and had a strong sentimental interest in the land because he had played on the land as a child. Defendant contends that these facts indicate that the trial court should have, at the very least, awarded him the Clear Lake property and had him pay plaintiff half of its value in cash.

Plaintiff, on the other hand, set forth a similar argument in relation to the Clear Lake property. Specifically, plaintiff testified that "[E]ver since we bought it, I initially wanted to build a house there. And I have enjoyed it and been out there on the property as much as I could be." Plaintiff also stated that she derived more use and pleasure from the land than defendant, and that defendant simply viewed the land as an investment. Plaintiff also refuted defendant's contention that he had played on the land as a child, calling into question whether it held sentimental value to defendant.

The trial court opined that both parties "spoke from the heart" when they talked about the Clear Lake property. In other words, the trial court essentially found that both parties were credible in expressing their desire for the property. Because the trial court was in a better position to assess the parties' credibility, the trial court's findings are entitled to "special deference." *Draggoo, supra* at 429. Regardless, in light of plaintiff's testimony establishing her similar interest in the property, we do not believe that the trial court's findings were clearly erroneous. *Hanaway, supra* at 292. Moreover, given the trial court's finding that plaintiff's

interest in the property was also genuine, we conclude that the trial court's disposition of the Clear Lake property was both fair and equitable. See *id.*

Defendant also challenges the trial court's order awarding plaintiff \$10,000 in alimony-in-gross. Defendant contends that plaintiff is able to work, and that she has suffered no lost opportunity because of the marriage. In fact, defendant suggests that she has actually benefited from the marriage because it enabled her to pursue and complete her college education—a nursing degree. Defendant further contends that the trial court erred by failing to take fault into consideration when making its alimony determination. Defendant also contends that the alimony award unfairly rewarded plaintiff for defendant's hard work in acquiring and developing Alloy Steel.

It is well established that 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). Among the relevant factors for the trial court to consider are “the length of the marriage, the parties’ ability [sic] to pay, their past relations and conduct, their ages, needs, ability to work, health and fault, if any, and all other circumstances of the case.” *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996). We review a trial court's factual findings regarding an award of alimony for clear error. *Moore, supra* at 654. If the factual findings are not clearly erroneous, we then decide whether the dispositional ruling was fair and equitable in light of those facts. *Id.* at 655.

Here, the evidence plainly established defendant's superior income earning ability, inasmuch as plaintiff currently earns approximately \$35,000 annually, compared to defendant's annual salary that, conservatively, exceeds \$100,000. Thus, there is no indication that the alimony award will impoverish defendant. In fact, such a large difference in annual income-earning potential would typically justify an even greater alimony award; indeed, the \$10,000 alimony award will certainly fall short of balancing the incomes and needs of the parties. Moreover, this income differential exists notwithstanding plaintiff's ability to work and her nursing degree. Accordingly, we are not persuaded the trial court's alimony award was excessive in light of these factors.

In addition, there was evidentiary support for the trial court's finding that defendant's behavior towards plaintiff was as much a cause of the marital breakdown as plaintiff's extramarital affair. Similarly, we reject defendant's contention that the alimony award was excessive because of his greater contribution to Alloy Steel. There was evidence indicating that both parties' worked at Alloy Steel before the marriage, and that it was defendant's “plan” for plaintiff to stop working there after the marriage. In addition, there was evidence suggesting that the parties were jointly presented with the opportunity to purchase Alloy Steel. Thus, we conclude that the alimony award was fair and equitable under the circumstances. *Moore, supra* at 655.

In docket no. 229843, plaintiff contends that the trial court abused its discretion by “failing to provide a lien to secure the payment of the cash award.” Plaintiff's only action taken below with respect to this issue was a motion to amend the judgment of divorce to include the lien. The trial court “view[ed] the plaintiff's motion as a motion to enforce the judgment,” and ruled as follows:

The court now orders that in the event the defendant misses three monthly payments of \$2,726.76 or is at any time a total of \$8,180.28 in arrears of these payments, the plaintiff can apply to this court for a real estate lien on the marital property. To clarify this order, if the defendant becomes in arrears in excess of \$8,180.28 at any time, the plaintiff can apply for the real estate lien regardless of whether the defendant catches up to the extent the arrearage is less than \$8,180.28. Likewise, three missed payments in a row will allow the plaintiff to apply for the lien regardless of attempts by the defendant to make up the payments.

Plaintiff correctly notes that we review a trial court's ruling on a motion to amend a judgment for an abuse of discretion. *McDonald's Corp v Canton Twp*, 177 Mich App 153, 158; 441 NW2d 37 (1989).

Plaintiff contends that this action was "inadequate to ensure Mr. Wesler's compliance . . . because it does not prevent Mr. Stender [sic] from selling his home, business, and assets, declaring bankruptcy and becoming uncollectable." Accordingly, plaintiff requests that a lien be immediately placed on defendant's property.

In *Simmons v Simmons*, 58 Mich App 480, 483; 228 NW2d 432 (1975), we reversed a trial court order requiring the defendant to sell his apple orchard as part of a property settlement, noting that the trial court ordered the defendant to make a cash payment to the plaintiff to balance the property distribution. We further noted that the trial court could "direct that the orchard be subject to a lien securing the payment of the cash award." *Id.*

Accordingly, in the instant matter, we agree with plaintiff's assertion that the trial court could have secured defendant's cash payment obligation with a lien. However, that a lien *may* be ordered does not mean that a lien *must* be ordered. In other words, the *Simmons* decision falls short of establishing that the trial court was required to secure the cash award with a lien. In addition, the trial court's judgment of divorce appeared to leave defendant with ample income and assets to satisfy the cash award. Moreover, the trial court provided plaintiff some relief by entering the aforementioned order. Although this order did not provide plaintiff the specific relief requested, it was certainly within the discretion of the court to grant this intermediate relief. Consequently, we are not persuaded that the trial court's failure to secure defendant's cash payment obligation with a lien was an abuse of discretion.

Affirmed.

/s/ Janet T. Neff  
/s/ Helene N. White  
/s/ Donald S. Owens