STATE OF MICHIGAN

COURT OF APPEALS

LINDA LOUISE FORSHEE,

Plaintiff-Appellee/Cross-Appellant,

v

RALPH GERALD FORSHEE,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
July 26, 2002

No. 229051
Osceola Circuit Court
LC No. 99-008226-DM

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

PER CURIAM.

Defendant appeals and plaintiff cross-appeals from a judgment of divorce, challenging, respectively, the trial court's decision to treat as part of the marital estate certain properties conveyed to others by plaintiff and defendant between the time of the separation and divorce, and to require each party to pay its own costs. We affirm.

Defendant argues that the trial court erred by ruling that certain properties the parties ostensibly conveyed to others between the time of the separation and filing for divorce ought to be included in the marital estate. In support of his argument, he states, correctly, that property settlements in contemplation of divorce, like other contracts, cannot be undone on the ground that they were made under duress or distress unless the duress or distress amounted to virtual coercion or compulsion. *Beachlawn Building Corp v St Clair Shores*, 370 Mich 128, 133; 121 NW2d 427 (1963). However, while the trial court did refer to plaintiff's "duress" and "distress," it never found that the conveyances were part of a property settlement, and there was evidence to the contrary. Plaintiff testified that when the conveyances were made, she had not yet decided to file for divorce, and that the purpose of the conveyances was to shield the property from attachment in the event that the parties' teenaged babysitter obtained a judgment against defendant as a result of his and the parties' twelve-year old sons' sexual relationships with her. Defendant's own testimony on this subject was contradictory. Thus there was a credibility question on this issue, the resolution of which is entitled to deference on appeal. *Whitson v Whiteley Poultry Co*, 11 Mich App 598, 601; 162 NW2d 102 (1968).

Further, rather than finding that the property was transferred out of the marital estate, the trial court found that no valid transfer took place. We review factual findings on property issues in a divorce for clear error. *Stoudemire v Stoudemire*, 248 Mich App 325, 336-337; 639 NW2d 274 (2001). Here, the trial court's findings were amply supported by the evidence that defendant

continued to collect rents and mineral royalties on the properties, and to pay the taxes, insurance and other expenses on the properties. The trial court noted that defendant testified at his deposition that he owned the properties, although he tried at trial, contrary to the plain meaning of his earlier testimony, to assert that what he actually had meant was that he had once owned the properties. In light of defendant's own testimony, we cannot say that the trial court committed clear error in concluding that notwithstanding the purported transfers, the properties remained part of the marital estate. *Id*.

Plaintiff cross-appeals, claiming that it was error for the trial court not to have ordered defendant to pay a share of her expert witness fees. An award of costs may be made in a divorce suit upon a showing of need, such that the party will lack means adequately to litigate the suit without such an award, MCL 552.13(1); MCR 3.206(C); *Stackhouse v Stackhouse*, 193 Mich App 437, 443; 484 NW2d 723 (1992), or where the expenses were incurred as the result of the opposing party's unreasonable conduct during the litigation. *Id.* at 445. Here, as a result of the property disposition made by the trial court, plaintiff has assets of approximately $600,000, in addition to the income from her job. The costs at issue total approximately $6,000, which expense plaintiff was able to meet during trial by taking out a loan. Plaintiff makes arguments based on defendant's fault in causing the divorce, but does not point to any unreasonable conduct in the litigation causing unwarranted expert fees. In light of these facts, we cannot say that the trial court, in denying the award of costs, abused its discretion. *Ianitelli v Ianitelli*, 199 Mich App 641, 645; 502 NW2d 691 (1993).

Affirmed.

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