STATE OF MICHIGAN

COURT OF APPEALS

TERESA M. FOLKMIER,

Plaintiff-Appellee,

V

DAVID R. FOLKMIER,

Defendant-Appellant.

UNPUBLISHED
July 26, 2002

No. 229387
Muskegon Circuit Court
LC No. 98-003087-DM

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

PER CURIAM.

Defendant appeals by right from a judgment of divorce. We affirm in part, reverse in part, and remand.

Defendant contends that the trial court clearly erred when it valued his interest in his medical practice. "[T]he valuation of an asset by the trial court is a finding of fact that we will reverse only if it is found to be clearly erroneous." *Kowaleski v Kowaleski*, 148 Mich App 151, 155; 384 NW2d 112 (1986), citing MCR 2.613(C). A factual finding will be deemed "clearly erroneous only if, after reviewing the entire record, we are left with the definite and firm conviction that a mistake has been committed." *Id.*

Here, plaintiff's expert testified that defendant's share of his medical practice was worth $105,000—the midpoint between a range of $90,000 and $120,000. Plaintiff's expert did not make an adjustment to reflect that defendant only owned a minority interest in the business. In contrast, defendant's expert reduced his value of the medical practice from $92,000 to $69,000 because of the minority interest. Defendant's expert noted that defendant's interest was not actually marketable, while plaintiff's expert noted that he calculated the business's value *to defendant*, rather than its fair market value. Ultimately, the trial court valued defendant's business interest at $105,000, presumably accepting plaintiff's expert's testimony.

On appeal, defendant specifically contends that the trial court erred by failing to adopt his expert's valuation, where it properly reflected the fair market value of the business. The gravamen of defendant's argument is that plaintiff's expert's valuation was unreliable because it was not based on the value of the business pursuant to an "arm's length transaction," but was, as noted above, based on its value to defendant. However, in *McNamara v McNamara*, 178 Mich App 382, 393; 443 NW2d 511 (1989), mod on other grounds 436 Mich 862 (1990), we opined that the value of a law practice "should amount to its value to [the] defendant as a going

concern." Moreover, the purpose of valuing the asset was to guide the trial court in its distribution of the marital assets between the parties. Logically, the value of the business interest to defendant was substantially more than the value of the business interest to plaintiff or any third party. At the very least, by awarding defendant his entire business interest, rather than dividing it between the parties, the trial court maximized the value that could be attributed to this asset. As such, we are not persuaded that plaintiff's expert's valuation was erroneous, or that the trial court erred by adopting plaintiff's expert's valuation of defendant's interest in the business.[1]

Next, defendant asserts that the trial court erred when it awarded plaintiff an equitable award based on her efforts and contributions to the family during defendant's medical education. Plaintiff introduced testimony, through her valuation expert, estimating that she contributed $52,000 to defendant's medical degree. This figure included: (i) $1,000 per month for the thirty-four months that defendant was in medical school; (ii) $500 per month for the twenty-six months that defendant was completing his internship and residency; and (iii) $5,000 of a $10,000 gift that was made to the parties. Plaintiff's expert reduced this $52,000 by sixty percent—reflecting the parties' marriage for six years—resulting in his estimate that she was entitled to $20,800 on this claim. Ultimately, the trial court awarded plaintiff $20,000 based on her emotional and financial support during defendant's completion of medical school.

In *Postema v Postema*, 189 Mich 89, 94; 471 NW2d 912 (1991), we opined that "*fairness* dictates that a spouse who did not earn an advanced degree be compensated whenever the advanced degree is the end product of a *concerted family effort* involving mutual sacrifice and effort by both spouses." We explained:

> In our view, any valuation of a nonstudent spouse's equitable claim involving an advanced degree involves a two-step analysis. First, an examination of the sacrifices, efforts, and contributions of the nonstudent spouse toward attainment of the degree. Second, given such sacrifices, efforts, and contributions, a determination of what remedy or means of compensation would most equitably compensate the nonstudent spouse under the facts of the case . . . . [W]e agree . . . that the length of the marriage after the degree was obtained, the sources and extent of financial support given to the degree holder during the years in school, and the overall division of the parties' marital property are all relevant considerations in valuing a nonstudent spouse's equitable claim involving an advanced degree upon divorce.
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> Where, for instance, the parties remain married for a substantial period of time after an advanced degree is obtained, fairness suggests that the value of an equitable claim would not be as great, inasmuch as the nonstudent spouse will already have been rewarded, in part, for efforts contributed by virtue of having already shared, in part, in the fruits of the degree. [*Id.* at 105-106.]

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[1] Moreover, in *Kowaleski*, we explained that no single method of valuation must be uniformly applied when valuing a professional practice. *Kowaleski*, *supra* at 155. In fact, we declined to find a trial court's valuation clearly erroneous because it fell within the range of values supplied by the testifying experts. *Id.* at 156-157.

We noted that the ultimate goal is to determine a remedy that will, consistent with fairness and equity, "compensate the nonstudent spouse for unrewarded sacrifices, efforts, and contributions toward the degree." *Id.* at 106. Thus, on appeal, we must determine whether the trial court's remedy was fair and equitable under the facts of the case, given the non-student spouse's sacrifices, efforts, and contributions towards the degree. *Id.* at 106-107.

Here, the evidence indicated that plaintiff's employment provided the primary financial support for the parties during the final three years that defendant was in medical school. Plaintiff's testimony suggested that she also provided non-pecuniary support to defendant during this necessarily difficult period. Accordingly, we do not believe that the trial court erred by concluding that plaintiff's sacrifices and efforts during these three years fairly and equitably entitled her to a remedy. Therefore, to the extent that the trial court's $20,000 award was based on plaintiff's contributions during the three years that defendant was in medical school, we would not disturb the award.

However, to the extent that the trial court's award was based on plaintiff's contributions after defendant graduated from medical school, we believe that the trial court clearly erred. During defendant's internship and residency, unlike the period of time when defendant was in medical school, he earned approximately the same amount as plaintiff. In other words, the parties were not relying solely on plaintiff's income for support; thus, plaintiff was not sacrificing part of her income to support defendant's obtaining of a degree that she would not be able to share. Rather, the parties shared their income much like any other dual-income family would in similar circumstances. Although defendant's internship and residency obviously benefited his career, plaintiff's employment at that time also benefited her career. Similarly, although we have no doubt that plaintiff provided defendant non-pecuniary support during this period, it is equally likely that defendant also provided plaintiff non-pecuniary support during this period. Simply put, it does not appear that plaintiff made unrewarded sacrifices during defendant's internship and residency. Accordingly, under the circumstances of this case,[2] we do not find the equitable concerns raised in *Postema* to be applicable to the time of defendant's internship and residency.

In addition, we find merit to defendant's contention that a $10,000 gift was improperly characterized as a contribution by plaintiff to defendant's degree. The facts plainly established that the $10,000 gift was received, not only after defendant completed medical school, but also after he completed his internship and residency. Accordingly, plaintiff's expert improperly included $5,000 as a pecuniary contribution by plaintiff to defendant's medical degree.[3] As noted above, we also believe that the valuation also erroneously included plaintiff contributions during defendant's internship and residency.[4] Thus, plaintiff's valuation expert's figure should

[2] To be sure, in some cases, the non-degreed spouse will continue to make sacrifices during the degreed spouse's completion of his or her internship and residency. In those cases, it would be appropriate to treat the non-degreed spouse's efforts as if the degreed spouse was still in school.

[3] Because the valuation expert reduced the award by sixty percent, the $5,000 error only corresponded to a $2,000 error in regard to the final valuation amount of $20,800.

[4] Again, in light of the sixty-percent reduction, the actual error with respect to this factor was only $5,200 ($500 x 26 months = $13,000 x 40% = $5,200).

be reduced from $20,800 to $13,600. Because the evidence only supported a $13,600 award, we conclude that the trial court clearly erred by awarding plaintiff $20,000. Therefore, we remand for an appropriate reduction of the award.[5]

Next, defendant contends that the trial court erred awarded plaintiff excessive alimony. The trial court awarded plaintiff $400 per week for the first five years, and $250 per week for the next seven years.

It is well established that the primary 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 trial court addressed each of the aforementioned factors. Although we agree with most of the trial court's findings with respect to these factors, we do find merit in defendant's contention that the trial court improperly attributed fault to defendant. In its discussion of the factors, the trial court found that there was an "inherent inequity" in defendant's "decision, without apparent cause, to turn his back on his wife of eleven years and set her adrift for the rest of her life while he enjoys the economic rewards of their joint efforts in working to build a comfortable life for themselves and their children." However, the trial court had already found that "fault" was not an issue in this case. Accordingly, there is an internal inconsistency between the trial court's findings.

Nevertheless, the trial court correctly recognized the income disparity between the parties. Defendant earns in excess of $120,000 annually. Even if we were to impute income to

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[5] Moreover, we reject defendant's assertion that the trial court failed to account for the years that plaintiff benefited from the fruits of the degree—after defendant finished his education and before this action began. Plaintiff's valuation expert reduced the award by sixty percent to account for this factor. The discount was based upon an assumption by the expert that ten years was a reasonable time period during which plaintiff should be entitled to benefit from defendant's degree. Because defendant had been in private practice for approximately six years, the valuation expert reduced the $52,000 by sixty percent. Defendant's contention that ten years is an arbitrary period of time is belied by his suggestion that an equally arbitrary period of six years should have been applied. In the absence of any evidence establishing a more reasonable time, we cannot conclude that applying a ten-year time period was clearly erroneous.

Moreover, although defendant received his medical degree in 1990, defendant notes that he was not the "exclusive breadwinner" until August 1992. It was at this point that both parties, and plaintiff, in particular, truly began to "enjoy" the benefits of his degree. Given defendant's relative youth, he will be able to "enjoy" the benefits of his degree for far longer than plaintiff did—which is the whole purpose of awarding the non-degreed spouse a remedy. Consequently, we find no error.

plaintiff based on her marketable skills, there is no evidence suggesting that she could earn more than $30,000 to $40,000 per year. Although the child support obligation partially balances out this disparity, the additional $400 per week in alimony certainly achieves the desired purpose of alimony, that is, balancing the incomes and needs of the parties. See *Moore, supra* at 654. Further, there is certainly no indication that defendant will be "impoverished" by the alimony award. See *id.*

In addition, plaintiff's needs are significantly greater than defendant's, inasmuch as she has primary physical custody of the children. Notwithstanding defendant's child support obligation, plaintiff will need substantial income to maintain the marital home. In fact, defendant's alimony obligation over the twelve years roughly approximates the cost of maintaining the marital home. Thus, in addition to balancing the needs of the parties, the alimony award will also allow the parties' children to reside in the marital home until they complete school. To the extent that the alimony award exceeds the mortgage obligation on the marital home during the first five years, this essentially could be characterized as an offset for plaintiff as she re-enters the workplace.[6] Accordingly, we conclude that—notwithstanding the trial court's inconsistency regarding the "fault" attributable to defendant—the alimony award was fair and equitable. *Moore, supra* at 654. Consequently, we reject defendant's contention that the alimony award was excessive.

Defendant's next argument is that the trial court erred when it calculated the child support award in this case. By statute, trial courts "shall order support in an amount determined by application of the child support formula developed by the state friend of the court bureau . . . ." MCL 552.605(2). Reference to that formula indicates that "income" for purposes of determining child support includes alimony or spousal support, and that, in determining net income, alimony should be deducted from the party's gross income. As defendant asserts, the trial court failed to follow the formula when it did not include, as income, the alimony payments to plaintiff. Plaintiff concedes that the trial court erred. Therefore, we remand this case for recalculation of the child support award, taking into account that the alimony award should be subtracted from defendant's income and added to plaintiff's income.

Finally, defendant contends that the trial court abused its discretion when it ordered defendant to pay plaintiff's costs for her valuation expert. Testimony during trial established that these costs were paid out of joint funds before judgment was entered in this case. Therefore, an award of costs was not necessary "to enable the . . . party to carry on or defend the action." MCL 552.13(1); See *Ianitelli v Ianitelli*, 199 Mich App 641, 645; 502 NW2d 691 (1993). Moreover, because these funds were already paid, requiring defendant to pay them post-

[6] Even if plaintiff is able to find full-time employment, her responsibilities as the parent with primary physical custody may interfere with her career aspirations. For example, if one of the children must leave school early because of illness, the burden will necessarily fall on plaintiff to leave work to attend to the child. It is also plausible that the hours and days that a hotel restaurant manager is expected to work will not harmonize with plaintiff's responsibilities as the parent with primary physical custody. Alternatively, it may benefit the children for plaintiff to pursue only part-time employment until the children are older. Finally, we note that defendant may pursue modification of the alimony if plaintiff's employment prospects end up being more lucrative than expected or if there is a significant change in circumstances.

judgment would force him to pay the costs twice. Thus, the trial court abused its discretion when it ordered defendant to pay plaintiff's costs associated with her valuation expert. Therefore, we reverse the trial court's award of costs to plaintiff for her valuation expert.

For the foregoing reasons, we affirm in part, reverse in part, and remanded for further proceedings consistent with this opinion. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full. We do not retain jurisdiction.

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