

STATE OF MICHIGAN
COURT OF APPEALS

CINDY ANN SMYTH,

Plaintiff/Counter-Defendant-
Appellee,

v

DANIEL L. SMYTH,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

July 26, 2002

No. 230124

Wayne Circuit Court

LC No. 98-830979-DM

AFTER REMAND

Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant Daniel L. Smyth appealed by right from the judgment of divorce entered by the trial court. The judgment contained no separate findings of fact, and we remanded the case with instructions to the trial court to make specific findings of fact regarding the challenged dispositions. *Smyth v Smyth*, unpublished opinion per curiam of the Court of Appeals, issued April 23, 2002 (Docket No. 230124). Having retained jurisdiction, the case is before us to review the trial court's findings and to determine whether the dispositions were fair and equitable. We affirm.

On June 3, 2002, the trial court held a hearing at which it stated its findings of fact on the record. In deciding the appropriate disposition of assets in a divorce case, a court must consider the following factors, wherever they are relevant to the circumstances of the particular case: (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. *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). The trial court may also consider any other factors which it deems relevant given the facts and circumstances of the case. *Id.* at 160.

A trial court's findings of fact are reviewed for clear error. *Id.* at 151. The trial court concluded that the marriage was one of significant length, which ended due to defendant's extramarital affair, the age of the parties were similar, and both parties' health was good. The trial court also concluded that defendant was the major source of financial support to the marriage and had a substantial earning capacity, while plaintiff was primarily a homemaker, but had been employed recently as a clerical worker and was attending college.

The trial court further concluded that at the time the judgment was entered the parties had four children, two of whom were minor and had reached the age of majority at the time the hearing on remand was held. The trial court determined that general principles of equity mandated that plaintiff receive spousal support. After reviewing the record, it is apparent that the parties did not dispute the above-stated facts, except for the award of spousal support. Therefore, we hold that the trial court's findings were not clearly erroneous, addressing the issue of spousal support separately below.

Defendant challenged on appeal three dispositions made in the judgment of divorce: (1) \$16,000 in yearly spousal support to plaintiff, (2) an award of a 1997 Pontiac Grand Am to defendant, and (3) an award to plaintiff of all the contents of the marital home. On remand, the parties agreed to work out the division of the contents of the marital home between themselves. Plaintiff indicated that defendant would be doing her a favor by taking the items he specifically requested. Therefore, we believe that defendant's argument is moot and only address defendant's challenge to the other two dispositions.

We review the trial court's dispositional ruling to determine if it was fair and equitable in light of the trial court's findings. *Sparks, supra* at 151-152. The trial court is given broad discretion in fashioning its dispositional ruling, and there can be no strict mathematical formula; while the division need not be equal, it must be equitable. *Id.* at 158-159.

When deciding whether to award spousal support, the trial court should consider

(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); citation omitted.]

The prognosticator run in this case placed the spousal support at \$19,500 per year. The mediator recommended spousal support in the amount of \$300 per week for a maximum of four years, which equates to \$15,600 per year. The trial court rounded this number up and did not limit the support to four years, stating,

[B]ecause of the length of the marriage, and the fact that during the course of the marriage the Plaintiff did not earn substantial income and was essentially a homemaker, the Court found that this was a case for permanent alimony. As such, permanent alimony should be modifiable from time to time where there's a change in circumstances.

So the Court submits these findings of fact, along with its modification of the award, that it's \$16,000 a year commencing with the same commencement date as I had in the judgment. But it is modifiable, and it will terminate upon death, remarriage, retirement, or further order of the Court.

The trial court declined to assign fault to either party, but noted that if its award seemed to favor plaintiff, the circumstances of defendant “leaving the family for another woman” warranted him taking on a greater financial responsibility, combined with the fact that he was the primary source of income for the family.

Defendant argued on appeal that the permanent alimony award was clearly excessive, given that plaintiff was healthy, had excellent marketable skills, especially given her recent education, and was receiving a substantial amount of the marital property. The purpose of alimony is to balance the incomes and needs of the parties in a way which will not impoverish either party. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Alimony is to be based on what is just and reasonable under the circumstances of the case. *Id.*

At the time the judgment was entered in 1999, defendant’s gross weekly income as an ironworker was approximately \$1800, while plaintiff was earning \$6-\$8 per hour as a clerical worker and was a part-time student at Schoolcraft College. At remand, defendant had been laid off for three weeks, but had a yearly income of \$73,868 in 2000 and \$67,686 in 2001. Plaintiff earned \$22,900 in 2001 as a clerical employee, but her employment was terminated in February 2002 due to downsizing. Plaintiff then became a full-time student and would be close to completing her two-year degree in 2003.

We believe that the trial court’s award of permanent spousal support was fair and equitable. The parties do not dispute that defendant was the primary financial supporter of the family during the lengthy marriage of 24 years. At the time of the divorce, defendant was still earning a substantial income and there is no indication that the alimony would cause defendant any financial hardship. We realize that plaintiff’s employment prospects and earning ability in the future is bright. However, we do not believe that this fact renders the alimony award inequitable, given that it is modifiable if there is a change in either parties’ circumstances. Furthermore, the record indicates that property division was fairly equal, especially given the modification regarding the contents of the marital home.

Defendant also argued that the award of the 1997 Pontiac Grand Am to him was inequitable because the car was repossessed when plaintiff failed to make payments on it, resulting in defendant being unfairly obligated to pay fines and costs. Regarding this disposition, the trial court stated,

I don’t think I made the mistake here of awarding that to [defendant]. I think that it’s not a typo or a mistake. And the fact is, at the time of the divorce there wasn’t income there for the Plaintiff to be able to pay for that vehicle. I know the circumstances are harsh with the repossession and such, but I’m going to stand by my award at that time. I feel that it was reasonable at the time, under the facts and circumstances of the case at that time.

The mediator awarded the car to defendant in its recommendation in July 1999. However, plaintiff did not immediately transfer the title to defendant and the car was repossessed because she could not make the payments.¹ On remand, defendant argued that he had given

¹ Plaintiff stated at the remand hearing that the car was repossessed in February or March of
(continued...)

plaintiff money in addition to child support; therefore, it is disingenuous for plaintiff to state that she could not make the car payments due to cash flow.

We believe that, at the time of the judgment, it is clear that plaintiff was unable to cover her financial obligations on her salary alone, which was substantially less than defendant's. In an effort to balance the income to debt ratio of each party, the trial court awarded the car to defendant. Given each party's financial picture, we conclude that this disposition was fair and equitable under the circumstances.

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael R. Smolenski
/s/ Patrick M. Meter

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1999. However, the record appears to indicate that the repossession occurred sometime between the mediation in July 1999 and the judgment of divorce in September of 2000.