

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT ALLEN HARTWIG,

Plaintiff/Counter Defendant-Appellant,

v

CAROL ANN HARTWIG,

Defendant/Counter Plaintiff-Appellee.

UNPUBLISHED

July 30, 2002

No. 229578

Manistee Circuit Court

LC No. 98-009058-DO

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

PER CURIAM.

Plaintiff appeals as of right the trial court's judgment of divorce, dividing the parties' marital assets and awarding defendant lifetime alimony. We affirm.

I

The parties separated on June 20, 1998, after thirty-seven years of marriage. They own no real estate and have lived for most of their marriage on plaintiff's family farm, where plaintiff still resides. They have three adult children. Plaintiff filed for divorce. Defendant filed a counter-complaint and alleged that plaintiff was involved in an extramarital affair, which led to a breakdown in the marriage. Following a trial, the court granted a judgment of divorce on August 17, 2000. The court found that the parties had contributed equally to the acquisition of marital assets, that plaintiff was at fault for the breakdown of the marriage, and thus the parties' assets should be divided equitably, but not necessarily equally. The court awarded defendant alimony of \$230 a week until her death or remarriage.

II

Plaintiff first contends that the trial court erred in its findings of fact and ultimate decision regarding alimony. On appeal, we first review the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). Findings of fact will not be reversed unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the "definite and firm conviction that a mistake has been committed." *Id.* Findings of fact are presumptively correct, and the burden is on the appellant to show clear error. *Id.*, 804.

If the trial court's findings are not clearly erroneous, we then decide whether the dispositional ruling was "fair and equitable" in light of the facts. *Sparks, supra*, 151-152; *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000). The trial court's decision regarding alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Sparks, supra*. This Court gives special deference 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).

A

Plaintiff argues that the trial court placed too much reliance on its finding of fault in its alimony award. We find this contention without merit. Although the trial court found plaintiff to be at fault for the breakdown in the marriage, it discussed the fault factor only with regard to the property division and did not address it in its determination as to the award of alimony. Plaintiff's argument is not supported by the record.

B

Plaintiff contends that the trial court erred by failing to make specific findings of fact with regard to alimony and, further, that the amount of alimony awarded was excessive and inequitable.

The award of alimony is within the trial court's discretion. *Thames v Thames*, 191 Mich App 299, 307; 477 NW2d 496 (1991). The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is "just and reasonable" based on the facts of the case. *Moore, supra*, 654. In awarding alimony, a court should consider various factors: (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; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames, supra*, 308.

Plaintiff argues that the trial court erred in failing to consider and make specific findings with regard to each factor relevant to this case. A trial court need not specifically state its findings regarding each of the alimony factors where our review of the record indicates that the court was aware of the appropriate factors, and we would not have reached a different result, i.e., the result is fair and equitable in light of the facts. *Lee v Lee*, 191 Mich App 73, 77, 80; 477 NW2d 429 (1991); see also *Sparks supra*, 151-152.

In its opinion, the trial court discussed the length of the parties' marriage, the disparity in the parties' incomes, defendant's precarious employment situation, defendant's poor health, and other facts related to the present situations of the parties. Because we conclude that based on the court's findings, the amount of alimony awarded was just and reasonable, *Moore, supra*, we affirm the award of alimony.

The trial court awarded defendant \$230 a week in alimony. Plaintiff argues that because this amount is equal to nearly one-half of his gross income, and because plaintiff was also ordered to pay defendant's health insurance, the trial court's award was unjust and excessive and therefore, inequitable. Plaintiff asserts that after defendant's wages, alimony and health insurance are totaled, defendant's income would be double his. The record does not support this contention because there is no support for the argument that defendant earns or is capable of earning \$10,400 annually. In fact, the record shows that defendant's employment is spotty at best and because of her precarious health that her prospects for earning anything close to that amount are slim. Plaintiff lives rent-free on his mother's farm while defendant has had to live with various relatives because she cannot afford a place of her own. We conclude that the alimony award is just and reasonable on the facts as established at trial and relied on by the trial judge.

III

Next, plaintiff argues that the trial court's property distribution was inequitable. The standard of review for property division is the same as that for alimony awards. *Lee, supra*, 80. We first review the trial court's findings of facts for clear error. *Sparks, supra*, 151. If the trial court's findings of fact are upheld, we must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra*, 151-152. The dispositional ruling should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3); *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002); *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division need not be mathematically equal, but any significant departure from congruence should be supported by a clear exposition of the court's rationale. *McNamara, supra*; *Byington, supra*, 114-115.

To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks, supra*, 159-160. The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *McDougal, supra*, 88. Nevertheless, just as the final division may not be equal, the factors considered need not always be weighed equally. *Id.*

The trial court in this case emphasized plaintiff's fault in its property distribution, determining that the parties had equally contributed to the acquisition of the marital assets, and "that inasmuch as the plaintiff is at fault for the breakdown of the marriage the marital assets shall be divided equitably, not necessarily equally." While the trial court failed to specifically articulate its foundation for this fault determination, based on the record, this conclusion is supported by defendant's allegations and testimony regarding plaintiff's extramarital affair.

The trial court awarded the parties the personal property in their possession. Accordingly, defendant received property valued at \$7,705, whereas plaintiff received property valued at \$6,338. Additionally, defendant was awarded the family life insurance policy with a cash surrender value of \$9,306.92, her own life insurance policy with a cash surrender value of \$1,727.71, the GMC vehicle, the value of which was not determined, subject to a balance due of \$4,600, one-half of plaintiff's pension of \$260 per month, a house trailer valued at \$2,500 and one-half of the proceeds from the sale of the parties' travel trailer.

Plaintiff was awarded the remainder of the marital assets, including one-half of his pension, the other half of the proceeds from the sale of the parties' travel trailer and his life insurance policy with a cash surrender value of \$4,530.41. Excluding the family life insurance policy, the property division would have been somewhat equal, based on the stated values. However, due to the relatively small size of the estate, after adding the \$9,306.92 family life insurance policy to defendant's property award, defendant would receive approximately two-thirds of the marital estate.

Plaintiff contends that, especially "[i]n light of the alimony award, the property division is clearly inequitable under all of the circumstances relevant to this divorce proceeding." Plaintiff argues that in formulating the property division, the trial court inaccurately assessed, and placed an inordinate amount of emphasis on the fault factor. He asserts that the family life insurance policy should be awarded to him in its entirety "to equalize the property distribution."

Giving the requisite deference to the trial court's determination of credibility, we find no clear error in the court's finding that plaintiff was at fault in causing the breakdown in the marriage. The court's finding is fully supported by evidence in the record. The trial court is in the best position to determine the extent to which each party contributed to the breakdown of the marriage. *Hanaway v Hanaway*, 208 Mich App 278, 297; 527 NW2d 792 (1996).

Furthermore, even if the trial court placed unequal weight on the fault factor, no error will be found, as long as fault was not the only factor that the court considered, and it did not consider fault solely for punitive reasons, where the division is otherwise equitable. *McDougal, supra*, 88-90. It is clear from the record that the trial court weighed factors other than fault in the property division. For example, the trial court considered the parties' comparative needs and emphasized the disparity in the parties' incomes, noting that plaintiff earns \$30,000 annually compared with defendant's earnings of \$10,400. The court also noted the disparities in the parties' earning potentials, defendant's health problems, and defendant's lack of a permanent residence—facts addressing other relevant factors. There is no indication that the court's fault analysis was an attempt to punish plaintiff.

Giving the requisite deference to the trial court's determinations, we are not firmly convinced that the property division was inequitable. Accordingly, the trial court's property disposition is affirmed.

Affirmed.

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