

STATE OF MICHIGAN
COURT OF APPEALS

CHERYL A. RAY,

Plaintiff-Appellee,

v

WILLIAM RAY, JR.,

Defendant-Appellant.

UNPUBLISHED
February 10, 2004

No. 242901
Ionia Circuit Court
LC No. 01-021322-DO

Before: Murray, P.J., and Murphy and Markey, JJ.

PER CURIAM.

In this divorce action, defendant appeals by right from a judgment of divorce. We affirm.

In the judgment of divorce, the trial court divided the couple's retirement benefits by ordering defendant to transfer up to \$75,462¹ from defendant's 457 account to plaintiff's 457 account with any deficiency resolved through a cash payment. The trial court further ordered defendant to pay \$800 toward plaintiff's attorney fees.

Defendant first asserts that requiring him to transfer the entire amount of funds in his 457 deferred compensation account to plaintiff's account was unfair and inequitable. We disagree. In reviewing a trial court's property division in a divorce action, this Court first reviews the trial court's findings of fact for clear error. *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003), citing *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*, citing *Beason v Beason*, 435 Mich 791, 802; 460 NW2d 207 (1990). If the findings of fact are upheld, this Court then decides whether, in light of those facts, the disposition was fair and equitable. *McNamara, supra* at 670. "The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable." *Id.* 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), citing

¹ The parties agree that this amount needed to be transferred from defendant to plaintiff in order to equalize the parties' marital assets.

Byington v Byington, 224 Mich App 103, 114; 568 NW2d 141 (1997). 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, as well as each party's earning ability, age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *McNamara*, *supra* at 185. The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *Sparks*, *supra* at 158.

As noted, the parties agreed that \$75,462 must be transferred from defendant to plaintiff to complete an equitable division of the remaining marital property. Accordingly, defendant's argument relates to the source of the transferred funds rather than the amount. Defendant argues that the loss of his 457 account funds will leave him with only his pension check and without the liquidity provided by 457 account funds when he retires in the near future. However, the trial court found that defendant, age 58, is in good health with a good income at a position he could continue working in for the foreseeable future. Plaintiff, on the other hand, although only 45, is unlikely to be employed to any significant degree in the future because of the seriousness of her kidney disease and other medical problems. Similarly, plaintiff's expenses will increase because of her medical needs and the needs of those dependent on her. Thus, the liquidity of the 457 deferred compensation plan would also benefit plaintiff. The trial court's division of retirement benefits also leaves both parties with equal retirement amounts, albeit in different forms. Therefore, defendant has failed to demonstrate how the trial court's division of retirement benefits is unfair and inequitable in light of *all* relevant circumstances.

Defendant next asserts that the trial court abused its discretion by awarding plaintiff \$800 in attorney fees. We disagree. This Court reviews an award of attorney fees for abuse of discretion. *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 231 (2003). An abuse of discretion occurs only if the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.*, citing *Fletcher v Fletcher*, 447 Mich 871, 879-880; 526 NW2d 889 (1994).

MCR 3.206(C) allows for the award of attorney fees as follows:

- (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action.
- (2) A party who requests attorney fees and expenses must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay.

Plaintiff requested attorney fees during trial, and the trial court heard testimony regarding plaintiff's serious medical condition, inability to work, and living expenses and found that plaintiff's recently received civil settlement would be needed to pay such expenses. In addition, the trial court noted that defendant is working at a well-paying job, without dependents and in good health. Under these circumstances, the trial court's modest award of \$800 in attorneys fees

to plaintiff does not evidence a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Gates, supra*. Therefore, the trial court did not abuse its discretion by awarding attorneys fees to plaintiff.²

Affirmed.

/s/ Christopher M. Murray
/s/ William B. Murphy
/s/ Jane E. Markey

² We will not entertain plaintiff's one line request for attorney fees on appeal as the issue is deemed abandoned for failure to adequately argue or brief the issue. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).