

STATE OF MICHIGAN  
COURT OF APPEALS

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BRAD LEE DAVIS,

Plaintiff-Appellant,

v

KELLIE MARIE DAVIS,

Defendant-Appellee.

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UNPUBLISHED

July 27, 2004

No. 245250

Ionia Circuit Court

LC No. 02-021957-DM

Before: Fort Hood, P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, challenging the trial court's valuation and division of the marital estate and awards of alimony. We affirm.

The parties were married in 1986, and separated in 2002. Plaintiff maintained employment as a trucker, but also worked in farming. Defendant was predominantly a homemaker and cared for the couple's three children, but in recent years, she began to supplement the family income by obtaining employment as a hostess and waitress. Plaintiff alleged that defendant began a relationship with another man and went away for the weekend, refusing to tell him her whereabouts. Defendant contended that any relationship was platonic. She testified that plaintiff was verbally abusive during the marriage and had violent outbursts. There was testimony regarding an incident where plaintiff put a gun to his throat and threatened to kill himself. He was hospitalized following this incident and obtained mental health counseling for a period of time. Other than the value of the marital home, the parties testified regarding their belief about the valuation of various assets, including a tractor, calves, cows, and a bank account. Before trial, plaintiff submitted an interrogatory indicating that a bank account contained \$15,000. At trial, plaintiff confirmed that amount. However, after the trial court rendered its decision following a two-day bench trial, plaintiff alleged that only \$15.00 was contained within the account, and prior contradictions were attributed to a typographical error and his nervousness at trial. The trial court denied the motion for reconsideration and noted in its opinion and order dividing the marital assets and awarding alimony that the testimony of plaintiff was simply not credible.

In *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992), our Supreme Court articulated the applicable standard of review:

... [W]e hold here that the appellate standard of review of dispositional rulings is not limited to clear error or to abuse of discretion. The appellate court must first review the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. But because we recognize that the dispositional ruling is an exercise of discretion and that appellate courts are often reluctant to reverse such rulings, we hold that the ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable.

Whether and how much alimony to award constitutes a dispositional ruling. *Korth v Korth*, 256 Mich App 286, 288 n 3; 662 NW2d 111 (2003).

Although plaintiff takes issue with the valuation of personal property, the net value of the marital estate, the division of the estate as fair and equitable, and the award of spousal support, on this record, we cannot conclude that the trial court's factual findings were clearly erroneous and the ultimate dispositional rulings must be affirmed. *Sparks, supra*. At trial, plaintiff repeatedly changed or modified his testimony. At one point, the trial court noted that an audience member was signaling the answers to plaintiff during his testimony. Plaintiff acknowledged that he dispersed assets, including a tractor and calves, but contended that the proceeds were used to pay off marital debt. Other than plaintiff's self serving testimony (that the trial court did not deem credible), there was no documentary evidence from third parties to evidence that the transfers were made in forgiveness of a debt and the approximate amount of the debt in question.<sup>1</sup> Under the circumstances, plaintiff's challenge to the trial court's rulings is without merit.

Plaintiff also requests that the trial court's decision be set aside based on a claim of ineffective assistance of counsel. However, any *alleged* neglect of counsel is regarded as the client's own neglect, precluding relief from the consequences arising therefrom. *Everett v Everett*, 319 Mich 475, 482; 29 NW2d 919 (1947). Accordingly, this challenge is without merit. Lastly, the trial court did not abuse its discretion by denying plaintiff's motion for

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<sup>1</sup> We also note that plaintiff selectively attacks the trial court's factual findings on technical grounds. Although testimony indicated that plaintiff previously worked six days a week between his trucking and farming activities, at trial, it was estimated that he worked four days a week. The trial court indicated that plaintiff's contention, that he could no longer afford spousal support, was self-imposed. On appeal, plaintiff cites to federal trucking guidelines to indicate that he could not work additional hours. The trial court did not suggest that plaintiff increase his trucking employment in violation of federal law. Rather, the implication was that plaintiff could attempt to make the farming activity more profitable or engage in activities that might be more profitable. Indeed, plaintiff, at one point at trial, stated that he was trying to start a gravel business. At trial, plaintiff repeatedly questioned the ability of defendant to earn more by switching to a career in management or seeking employment in a different city. Plaintiff's construction of the trial court's rulings, based on his version or interpretation of the facts, do not make the factual findings clearly erroneous or the ultimate disposition inequitable.

reconsideration. It is not an abuse of discretion to deny a motion for reconsideration relying upon legal facts and theory, which could have been, plead or argued prior to the trial court's original order. *Charbeneau v Wayne Co General Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Affirmed.

/s/ Karen M. Fort Hood

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello