

STATE OF MICHIGAN  
COURT OF APPEALS

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DONALD PAUL GRISHAM,

Plaintiff-Appellant,

v

MAVIS MAE GRISHAM,

Defendant-Appellee.

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UNPUBLISHED

July 27, 2004

No. 250537

Marquette Circuit Court

LC No. 01-038899-DO

Before: Whitbeck, C.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce finding plaintiff at fault for the breakdown of the marriage, granting defendant sixty percent of the parties' assets, half of plaintiff's pension, spousal support, and attorney fees. We affirm in part and reverse in part.

In a divorce action, the trial court's findings of fact are upheld unless they are clearly erroneous, whereas the trial court's dispositional rulings are affirmed unless the reviewing court is firmly convinced that the ruling was inequitable. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). If the trial court's view of the evidence is plausible, this Court may not reverse unless it is left, on the basis of all the evidence, with a definite and firm conviction that a mistake has been committed. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). Dispositional rulings should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997). A spousal support award must also be affirmed unless this Court is firmly convinced it was inequitable. *Olson v Olson*, 256 Mich App 619, 630; 671 NW2d 64 (2003). Although an alimony award is discretionary with the trial court, the trial court should consider several factors when deciding what is just and reasonable under the circumstances. *Id.* at 631. A trial court's decision whether to award attorney fees in a divorce action is reviewed for an abuse of discretion. *Id.* at 634.

Plaintiff first alleges that the evidence did not support the trial court's finding that he was at fault. We disagree.

In this context, "fault" refers to conduct of a party contributing to the breakdown of the marital relationship. *Welling v Welling*, 233 Mich App 708, 711; 592 NW2d 822 (1999). Although the trial court did not specify its basis for finding plaintiff at fault, the finding was supported by the evidence. The evidence showed that plaintiff's alcohol abuse caused him to

lose his job and contributed to his complained-of conflicts with his wife. Furthermore, the evidence supported the conclusion that plaintiff's relationship with his secretary contributed to the parties' separation. Based on the evidence presented, we conclude the trial court's ruling that plaintiff was at fault was not clearly erroneous.

Plaintiff next alleges that the property division was inequitable and impermissibly based on fault to the exclusion of any other factors. Even where there is fault, it is only one element to be considered in a search for an equitable property distribution. *McDougal, supra* at 89-90. When relevant, a number of factors should be considered by a trial court in dividing property, including: (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, and (9) general principles of equity. *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). The trial court did not make findings of fact regarding all these factors, despite evidence from which the trial court could have made determinations. However, the property division, including plaintiff's pension, ultimately awarded defendant only fifty-six percent of the assets, most of which were not liquid. A property division need not be mathematically equal. *Sparks, supra* at 159. In the present case, the division is not inequitable, so it must be affirmed. *Draggoo, supra* at 429-430.

Plaintiff next argues that the spousal support award was inappropriate because it was unnecessary. When determining spousal support, a trial court should consider a number of factors, similar to property division. *Olson, supra* at 631. However, unlike property division, an award of spousal support is not mandatory because it is a discretionary mechanism "to balance the incomes and needs of the parties in a way that will not impoverish either party." *Id.* The trial court's Memorandum of Decision contains the following factual findings regarding spousal support:

The Court has considered the factors including fault for spousal support and sets spousal support at \$1,500.00 per month. The Court is mindful of Plaintiff's employment situation and believes he will not be optimally employed for some time. The liquid assets available to him, however, and the relative earning capacity of the two compel this payment.

While the above factual findings are brief, the trial court's findings recognize the income needs of the parties and the disparity of their earning capacities. Following our review of the record, we conclude that the discretionary award of spousal support was fair and equitable and is therefore affirmed. *Draggoo, supra*.

Finally, plaintiff argues that the trial court abused its discretion by awarding defendant attorney fees. We agree.

Although an award of attorney fees is discretionary with the court, *Olson, supra* at 634, such an award is not recoverable unless authorized by a statute, court rule, or common-law exception to the general rule. *In re Adams Estate*, 257 Mich App 230, 236-237; 667 NW2d 904 (2003). Attorney fees are not recoverable on general equitable principles. *Id.* at 237. Instead, attorney fees in divorce actions may be awarded when the record supports a finding that the party to whom they are awarded is unable to bear the expense of the litigation. *Olson, supra* at 635.

Plaintiff's argument that the property and spousal support awarded to defendant negate any need for further payment of attorney fees is without merit. *Olson, supra* at 635. Defendant argues that the attorney fees were justified by plaintiff's misconduct that unnecessarily prolonged the litigation and caused defendant to incur extra expenses. *Thames v Thames*, 191 Mich App 299, 309-310; 477 NW2d 496 (1991). However, the evidence did not show that the action was unnecessarily prolonged or that defendant incurred any debts or required financial assistance to defend the action. Instead, the evidence showed that defendant paid her attorney's bill every month and had access to the parties' substantial joint bank account during the litigation. Because the evidence did not support a finding that defendant was unable to bear the expense of the litigation, the trial court abused its discretion in awarding attorney fees.

The trial court's ruling that plaintiff was at fault and its property division and award of spousal support are affirmed. The trial court's grant of attorney fees is reversed. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ William C. Whitbeck

/s/ Richard Allen Griffin

/s/ Stephen L. Borrello