STATE OF MICHIGAN

COURT OF APPEALS

KRYSTAL DINU,

Plaintiff-Appellant,

v

MICHAEL DINU,

Defendant-Appellee.

UNPUBLISHED
August 10, 2004

No. 253014
Oakland Circuit Court
LC No. 2003-675418-DM

Before: Cavanagh, P.J., and Jansen and Saad, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a judgment of divorce that awarded the parties joint legal and physical custody of the parties' two children, with plaintiff receiving primary physical custody. Plaintiff subsequently filed a motion for a new trial challenging the adequacy of the trial court's findings and conclusions with regard to custody, and also challenging other aspects of the judgment. After making additional findings and conclusions, the trial court issued an amended judgment of divorce. Plaintiff now appeals as of right. We affirm.

Before trial, the friend of the court (FOC) advised the trial court that the parties had reached an agreement concerning custody, specifically, that "[t]he parties would like to share joint legal custody of their two minor children with the mother having the physical custody and the father having reasonable and liberal rights of parenting time." At the trial, plaintiff's counsel advised the court, "There has basically been agreement as to the children. Mother to have physical custody, joint legal custody." At the conclusion of the hearing, the trial court stated:

> The Court will adopt the Oakland County Friend of the Court recommendation of May 15th, 2003, indicating that the parties would like to share joint legal custody of their two minor children. But I'm going to change it to some extent. I'm going to give joint legal and physical custody to these parties. The children can have—the mother can be the primary physical custodian of the child [sic].

The court did not address whether there was an established custodial environment, nor did it discuss any of the statutory best interest factors, MCL 722.23(a) – (l).

In her motion for a new trial, plaintiff argued that the trial court's findings and conclusions with regard to custody were deficient. The court agreed and thereafter issued an

opinion and order in which it made specific findings and conclusions concerning the existence of an established custodial environment and the best interest factors.

On appeal, plaintiff argues that the trial court erroneously issued its new findings and conclusions in reliance on the testimony presented at trial, and instead should have conducted a new trial or evidentiary hearing. We disagree.

Generally, the trial court must consider and explicitly state its findings and conclusions regarding the existence of an established custodial environment and each of the best interest factors, and the failure to do so is usually requires reversal. *Foskett v Foskett*, 247 Mich App 1, 9; 634 NW2d 363 (2001); *Jack v Jack*, 239 Mich App 668, 670; 610 NW2d 231 (2000). Here, however, on plaintiff's motion, the trial court issued additional findings of fact and conclusions of law, and issued an amended judgment, thereby curing its earlier deficiency in this regard. The trial court's action is consistent with MCR 2.611(A)(2), which provides:

> On a motion for new trial in an action tried without a jury, the court may
>
> * * *
>
> (c) amend findings of fact and conclusions of law or
>
> (d) make new findings and conclusions and direct the entry of a new judgment.

Similarly, MCR 2.517(B) states, in part:

> On motion of a party made within 21 days after entry of the judgment, the court may amend its findings or make additional findings, and may amend the judgment accordingly.

Plaintiff cites no authority for her position that the trial court was required to hold a new trial or evidentiary hearing to correct its failure initially to make appropriate findings and conclusions.

Further, to the extent that plaintiff challenges the adequacy of the trial court's findings in the argument section of her brief, that issue is not properly before us because it is not included in the statement of the issues presented. MCR 7.212(C)(5); *Persinger v Holst*, 248 Mich App 499, 507 n 2; 639 NW2d 594 (2001). Additionally, the issue is inadequately briefed.

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Plaintiff's failure to properly address the merits of her assertion of error, as discussed above, constitutes abandonment of the issue. See *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Plaintiff next argues that reversal is required because the trial court erred in refusing to allow her to make an "offer of proof" concerning her proposed questions to the children.[1] We conclude that reversal is not required because the court did not abuse its discretion. See *Orlich v Buxton,* 22 Mich App 96, 100; 177 NW2d 184 (1970).

The discussion on the record at the outset of the hearing on November 7, 2003, indicates that there was some confusion regarding the scope of the hearing as it pertained to custody. Plaintiff's counsel anticipated that the court would interview the children in conjunction with its efforts to remedy its earlier failure to make findings concerning a custodial environment and the best interests of the children. Accordingly, plaintiff's counsel submitted "proposed questions." After the trial court determined that it would issue findings of fact and conclusions of law based on the existing record, plaintiff's counsel sought to make an "offer of proof" concerning the proposed questions to the children. Plaintiff's counsel then began referring to incidents that occurred before trial. Defense counsel objected, and the trial court sustained the objection. The court refused to allow plaintiff to make an offer of proof concerning the matters that occurred before trial and explained, "[T]here's no offer of proof, because I'm basing it on what the trial transcript and the trial proofs were, not on what you're going to tell me now."

On appeal, plaintiff asserts that the trial court's refusal to allow an offer of proof requires reversal absent a compelling reason for the denial on the record. In this regard, plaintiff's reliance on *Hileman v Indreica,* 385 Mich 1; 187 NW2d 411 (1971), is misplaced. The purpose of an offer of proof is to provide the trial court with an adequate basis on which to make its ruling and to give a reviewing court the information to evaluate the claim of error. *Orlich, supra,* 100. That purpose would have been served in *Hileman, supra,* inasmuch as the proposed offer of proof concerned evidence that a party sought to use at trial. Here, however, the "offer of proof" concerned proposed questions for the children. But the trial had already concluded and the "offer or proof" occurred in the context of a proceeding where the court was merely required to make additional findings and conclusions based on the evidence that had already been presented. In this context, an offer of proof would not have aided the trial court in its task, nor was it necessary to aid appellate review of the court's decision. Under these circumstances, the trial court did not abuse its discretion by disallowing the "offer of proof," plaintiff's counsel attempted to make.

Plaintiff also challenges the trial court's July 2, 2003, order requiring that the marital home be listed and sold.

However, plaintiff waived any error in this regard by affirmatively consenting to the trial court's action. At a hearing on April 30, 2003, plaintiff's counsel agreed with the court's proposal to list the property for sale.

---

[1] Although plaintiff's second stated issue identifies four subparts, only the trial court's failure to permit an offer of proof is adequately briefed. She mentions that the court invited proposed questions and then failed to accept them or interview the children, but she cites no authority concerning the propriety of the court's actions. These matters are inadequately briefed and we deem them abandoned. See *Mudge, supra* at 105.

> THE COURT: List property for sale with proviso that if [sic?] the parties can't close until 60 days after listing. Is that agreeable?
>
> MS. PALETZ [Plaintiff's counsel]: That's agreeable.
>
> MS. RONAYNE [Defense counsel]: That's fine by me.

Plaintiff's counsel also indicated that plaintiff had told defendant that the house needed to be sold and they would divide the proceeds. Having agreed through counsel that the property should be listed for sale,[2] plaintiff should not be heard to complain that the trial court's action was improper. "Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997); *Hibbard v Hibbard*, 27 Mich App 112, 116; 183 NW2d 358 (1970); *Curylo v Curylo*, 104 Mich App 340, 346; 304 NW2d 575 (1981); see also *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Plaintiff also challenges the trial court's order requiring her to pay $1,000 for her failure to comply with the court's previous order to sign a listing agreement.

In an order dated July 2, 2003, the trial court ordered plaintiff to sign a listing agreement as recommended by the realtor and to follow the recommendations of the realtor. The order further provided that if plaintiff did not sign the listing agreement, she would be assessed $1,000 as a sanction. Subsequently, when plaintiff failed to sign the listing agreement as directed, defendant filed a motion for an order to show cause for the noncompliance. The trial court then entered an order requiring plaintiff to appear on July 9, 2003, and show cause "why she should not be held in contempt of Court for violation of this Court's order." Following the hearing, the trial court ruled:

> The Court ordered that this lady sign a listing agreement forthwith, as recommended by the realtor and follow the recommendations of the realtor. The letter indicates there is a recommendation of the realtor. The proof is that she didn't sign it on July 2nd, so she's assessed $1000.

Plaintiff challenged the sanction in her motion for a new trial, complaining that the trial court improperly fined her without making a determination that she was in contempt of court and was in violation of the contempt statute, MCL 600.1715. The trial court rejected this argument, explaining:

> The Court properly enforced the terms of the July 2, 2003 Order by assessing Plaintiff $1,000.00. Therefore, the Court will not rescind the $1,000.00 sanction, which was not a fine, but costs.

---

[2] We reject plaintiff's argument that the trial court erroneously relied on her attorney's consent. See *Nelson v Consumers Power Co*, 198 Mich App 82; 497 NW2d 205 (1993) (an attorney has apparent authority to settle claims connected with the matter).

On appeal, plaintiff's argument on this issue consists of the following paragraph:

> Second, the trial court committed clear error of law when it assessed a $1,000 attorney fee sanction without a rudimentary hearing to demonstrate if she had in fact violated the Court's order. Also, the assessment of the $1,000 attorney fee sanction was a violation of the Michigan Contempt Statute which limits fines to not more than $250. MCL 600.1715. Further, the attorney fee sanction does not comply with the requirements of MCR 2.114(C) Signature and (D) Effect of Signature.

In her limited treatment of this issue in her brief, plaintiff does not discuss the basis of the trial court's order. The trial court indicated that the sanction was not a fine, but was costs. Plaintiff's brief only addresses the sanction as a fine. Plaintiff's failure to address the basis for the trial court's decision precludes appellate relief. See *Roberts & Son Contracting, Inc v North Oakland Development Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987). In addition, plaintiff's citation to MCL 600.1715 and MCR 2.114(C) and (D), without explaining or rationalizing her position, is insufficient to properly present this issue for this Court's consideration. See *Mudge, supra* at 105.

Next, relying on *George v Sandor M Gelman, PC*, 201 Mich App 474; 506 NW2d 583 (1993), plaintiff argues that the trial court's award of a lien to her former lawyer was an error of law because no retainer agreement had been submitted in evidence. We disagree.

In *George, supra*, the defendant represented the plaintiff in a divorce action pursuant to an oral agreement. *Id.* at 475. After they were unable to resolve a dispute over the defendant's bill, the defendant recorded a lien against a condominium that was awarded to the plaintiff in the divorce judgment. *Id.* The plaintiff brought an action to remove the lien. *Id.* at 476. The trial court granted summary disposition in favor of the defendant and denied the plaintiff's motion for summary disposition. *Id.* This Court reversed both orders and ordered the release of the lien. *George, supra* at 479. The Court recognized that attorneys have a right to charging liens, which "automatically attach to funds or a money judgment recovered through the attorney's services." *Id*. at 477. The Court also acknowledged that an attorney may obtain a lien on real property by way of a court order. *Id*. at 477-478, citing *Wolter v Wolter*, 332 Mich 229, 236; 50 NW2d 771 (1952); *Tyrrell v Tyrrell*, 107 Mich App 435, 438-439; 309 NW2d 632 (1981). But the attorney in *George* had asserted a lien on real property without obtaining a court order. The Court held that an attorney's charging lien for fees may be imposed upon real property if the parties have a written agreement providing for the lien, the attorney obtains a judgment and follows the proper procedure for enforcement, or if there are "special equitable circumstances." *Id*. at 478. None of those situations was present in *George, supra.*

Here, however, plaintiff's former attorney obtained the lien through a court order, which *George* and *Tyrrell* both recognize is proper. Moreover, plaintiff waived any error because she signed the order before it was presented to the trial court. *Phinney, supra*; *Hibbard, supra*; *Curylo, supra*.

Next, plaintiff complains that the trial court failed to indicate how its award of child support was calculated, i.e., whether it complied with or deviated from the child support formula.

MCL 552.605(2) states that the court "shall order child support in an amount determined by application of the child support formula" and "may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate," and sets forth the amount calculated under the formula, the deviation, the value of property or other support award and the reasons why the amount calculated by the formula would be "unjust or inappropriate in the case."

Here, the discussion of this issue at the conclusion of the trial demonstrates that the trial court relied on the calculation completed by defendant's counsel, as depicting the amount determined by the child support formula, as the basis for its support award. "The party appealing a support order has the burden of showing that a mistake has been made." *Calley v Calley*, 197 Mich App 380, 382; 496 NW2d 305 (1992). Plaintiff does not argue, much less demonstrate, that the amount of the trial court's award inaccurately reflects the amount determined by the child support formula. In addition, to the extent plaintiff wanted to challenge the calculation, she failed to raise the issue below. Under these circumstances, appellate relief is not warranted. See *Jansen v Jansen*, 205 Mich App 169, 172; 517 NW2d 275 (1994); *Edwards v Edwards*, 192 Mich App 559, 561; 481 NW2d 769 (1992) (indicating that a challenge to the amount of the child support calculation should be first raised before the trial court).

Plaintiff next argues that the trial court failed to make findings of fact and conclusions of law regarding the "values of all assets as of an evaluation date and equitable division of these assets." She contends that the court failed to determine the values of the following assets: (1) the marital home; (2) personal property; (3) the parties' Barbie doll and ham radio collections; and (4) the boat.

Generally, "[t]his Court reviews a property distribution in a divorce case by first reviewing the trial court's factual findings for clear error, and then determining whether the dispositional ruling was fair and equitable in light of the facts." *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003). In *Olson*, *supra* at 627-628, this Court addressed the need to make factual findings where the value of property is in dispute as follows:

> [I]t is settled law that trial courts are required by court rule to include a determination of the property rights of the parties in the judgment of divorce. As a prelude to this property division, a trial court must first make specific findings regarding the value of the property being awarded in the judgment. There are numerous ways in which a trial court can make such a valuation, but the most important point is that the trial court is obligated to make such a valuation if the value is in dispute. Accordingly, we have held that a trial court clearly errs when it fails to place a value on a disputed piece of marital property. [Citations omitted.]

We reject plaintiff's contention that the trial court erred in ordering the sale of the marital property without determining its value. In *Olson, supra* at 627 n 5, this Court observed that "[a] court could, for example, order the sale of a marital home (if that is an option in the case) without determining its value and splitting whatever equity exists in the house between the parties." Here, the position of the parties at trial was that the home would be sold; therefore, selling the home was "an option." Accordingly, the trial court properly could order the sale of

the marital home "without determining its value and splitting whatever equity exists in the house between the parties." *Id.*

With regard to the trial court's failure to divide the personal property, we conclude that plaintiff is precluded from challenging the trial court's ruling because she caused or contributed to the alleged error. In plaintiff's closing argument, counsel requested the trial court to allow the parties an opportunity to resolve the distribution of the personal property. Plaintiff is correct that the determination of the property rights of the parties should have been made in the judgment of divorce. *Olson, supra* at 627. Yet, "[e]rror requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Phinney, supra*; *Hibbard, supra*; *Curylo, supra.* Therefore, plaintiff is not entitled to relief on this basis.

With respect to the trial court's failure to place a value on the parties' respective collections, plaintiff also caused or contributed to the alleged error and, therefore, is precluded from arguing this issue on appeal. In plaintiff's closing argument, counsel suggested awarding the collections to their respective owners. Plaintiff may not now complain about the court's decision to follow her recommendation. *Phinney, supra*; *Hibbard, supra*; *Curylo, supra.*

With respect to the boat, as well as the collections, no findings concerning the values were necessary because the values were not in dispute. *Olson, supra* at 627. Neither party presented any evidence concerning the values of their collections. Nor did plaintiff challenge defendant's testimony that the boat and trailer were worth $1,500. Therefore, this case is unlike those cited by plaintiff wherein issues concerning the valuation of assets were litigated below. See *Thompson v Thompson*, 189 Mich App 197; 472 NW2d 51 (1991); *Burkey v Burkey (On Rehearing)*, 189 Mich App 72; 471 NW2d 631 (1991). Therefore, appellate relief is not warranted.[3]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Henry William Saad

---

[3] It is noted, plaintiff also asserts that this case must be reassigned to another trial judge on remand. However, based on our resolution it is unnecessary to address this issue as we are not remanding the case for further proceedings. Regardless, none of the following criteria have been shown to exist in this case, which would require remand to a different judge:

> [A]n appellate court may remand to a different judge if the original judge would have difficulty in putting previously expressed views or findings out of his or her mind, if reassignment is advisable to preserve the appearance of justice, and if reassignment would not entail excessive waste or duplication. [*Feaheny v Caldwell*, 175 Mich App 291, 309-310; 437 NW2d 358 (1989) citing *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986).]