STATE OF MICHIGAN

COURT OF APPEALS

SUSAN M. GREENSLAIT,

Plaintiff-Appellee,

v

MICHAEL W. GREENSLAIT,

Defendant-Appellant.

UNPUBLISHED
July 7, 2005

No. 254236
Mason Circuit Court
LC No. 01-000063-DM

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, challenging the trial court's valuation of defendant's share in his anesthesiology practice, and the court's awards to plaintiff of spousal support and reimbursement for the value of her efforts in assisting defendant through his residency and internship, in accordance with *Postema v Postema*, 189 Mich App 89; 471 NW2d 912 (1991).[1] We affirm.

Plaintiff testified that the parties married on August 4, 1990. Before the marriage, plaintiff earned a bachelor of science degree in medical technology (in 1985, the year she and defendant began dating), which was the extent of her postsecondary education, and by the time of the marriage was working full time. Also before the marriage, in June 1990, defendant completed medical school at Michigan State University's College of Osteopathic Medicine.

According to plaintiff, the parties discussed before the marriage defendant's desire to achieve a medical specialty in anesthesia through further training, before agreeing that defendant would continue his education, plaintiff would not, and that they would delay having children. Defendant completed an internship at the Ingham Medical Center in Lansing from July 1, 1990 (shortly before the wedding) through late June 1991, then a residency and specialized training at the Ingham Medical Center from July 1991 through June 1994, thus obtaining his specialty in anesthesiology. Plaintiff asserted that she performed household maintenance activities and had full time employment at Sparrow Hospital "as a medical technologist in the lab" during the

[1] Much testimony focused on each party's fitness for custody of their daughter, but this appeal involves no custody issues because the parties stipulated to a custody order on March 21, 2001.

lengthy hours of defendant's internship and residency; defendant did receive modest compensation in these periods, which plaintiff believed was less than she had earned.

Plaintiff took five months off from work after Abby was born on July 20, 1995. By this time, defendant had begun to earn more money, enabling plaintiff to return to work only two days a week, and take care of Abby (95% of the time) and the marital home. Plaintiff asserted that after the parties moved to Ludington in early 1998, she ceased working for approximately three years because defendant "wanted [her] to stay home" as Abby's primary caretaker and maintain the home; defendant claimed that plaintiff decided on her own not to work after the move. Since September 1997, defendant had worked at Memorial Medical Center of West Michigan, where he currently was the director of anesthesia.

Plaintiff described that while defendant's income increased after the move to Ludington, so did the number of hours he worked (at least ten to twelve hours a day, five or six days a week) and his stress level, which defendant disputed. According to plaintiff, defendant only spent a "little time with" Abby after arriving home from work, but defendant maintained that during the time he spent at home, he "spent the bulk of [it] watching for Abby."

The parties separated on February 12, 2001, and plaintiff filed for divorce the next day. Plaintiff explained that she had tired of defendant's heavy drinking/functional alcoholism, which had intensified since the move to Ludington and had resulted in a March 2000 drunk driving arrest in Florida.[2] Defendant also had had an affair with a hospital employee, about which he repeatedly lied to plaintiff before finally admitting it in July 2000, and which was the source of many arguments.

Shortly before filing for divorce, in late January 2001, plaintiff returned to working "at the hospital here in town" two days per week and earning $16 per hour. Plaintiff denied that she had turned down a full time offer of employment from the hospital where she worked at the time of trial, but said she knew that an open, applicable full time position currently existed that paid around $33,000 a year.

Plaintiff continued as Abby's primary caretaker until defendant began regular overnight visitation periods in the fall of 2001. At the time of trial, defendant earned around $300,000 per year. Since July 2001, defendant had paid the marital home mortgage of around $2,200 a month, and $2,000 a month for plaintiff's other living and child care expenses. Defendant continued to

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[2] Defendant did not dispute his drunk driving arrest, but denied that he had a drinking problem. Ron W. Sharpe, plaintiff's brother, who always got along well with defendant, recalled noticing within the last couple of years of the parties' marriage that defendant appeared to drink more heavily. Plaintiff's mother recounted that she saw defendant drink all day and pass out around July 2000, and that when she otherwise saw him, which was often, defendant "drank most of the time that I saw" and exhibited a bad temper. Many other witnesses offered testimony regarding the extent to which they saw defendant drink alcohol.

pay for insurance on a boat owned by plaintiff's mother,[3] and paid $16,500 in trial preparation expenses for plaintiff.

I

Defendant asserts that no evidence supported the trial court's alimony award, and that the court clearly erred by (1) finding that courts should "tend[] to favor alimony where the parties have been married for more than ten years"; (2) "placing significant weight on 'the fact that for nearly twelve years the parties have been comfortable with the fact the Defendant was the income producer and Plaintiff the home provider'"; and (3) finding "that Defendant had twelve years during the marriage to establish his career while Plaintiff was, basically, starting over." Defendant contends that plaintiff made no contribution to defendant's medical degree, "was receiving half of the marital estate," and the court "failed to make a finding regarding [plaintiff's] needs."

We conclude that notwithstanding minor inaccuracies in the court's various statements regarding the number of years involved, the record amply supports the trial court's factual findings concerning alimony or spousal support, and that the court's ultimate decision to award six years' of support at $1,200 per week, and six additional years' at $600, is fair and equitable under the circumstances.

This Court reviews for clear error a trial court's factual findings related to an award of alimony. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Clear error exists when, after considering all the evidence, a reviewing court possesses the definite and firm conviction that the trial court made a mistake. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). "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." *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). This Court should affirm the trial court's discretionary dispositive ruling unless "the appellate court is left with the firm conviction that the division was inequitable." *Id*. at 152.

"The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Moore*, *supra* at 654. Spousal support should constitute a just and reasonable amount in light of the following circumstances: (1) the parties' past relations and conduct, (2) the length of the marriage, (3) the parties' abilities to work, (4) the source and amount of property awarded to the parties, (5) the ages of the parties, (6) the parties' abilities to pay alimony, (7) the parties' present situations, (8) the needs of the parties, (9) the health of the parties, (10) the parties' prior standard of living, (11) the parties' contributions to the joint estate, and (12) general principles of equity, and (13) a party's fault in causing the divorce. MCL 552.23(1); *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996); *Thames v Thames*, 191 Mich App 299, 307-308; 477 NW2d 496 (1991).

The trial court reasoned in awarding plaintiff spousal support:

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[3] Sharpe testified that defendant performed a lot of tasks to help his mother in law.

> Regarding the past relations and conduct of the parties this case is no different than most of the cases the Court sees where in the course of an eleven year marriage the unresolved resentments accumulate to the point that each party becomes determined to have it his or her own way.
>
> Defendant chose to engage in an affair with someone who he did not appear to have ever intended as a close companion. He had the affair without waiting until after the parties were separated. The bluntness of Defendant's affair weighs on the side of Plaintiff regarding "past relations and conduct of the parties." Regarding length of marriage, in general the Court tends to favor alimony where the parties have been married more than ten years, which would thus apply in this case. Regarding ability to work Defendant will be earning over $330,000.00 a year. Plaintiff, at $16.50 per hour at forty hours a week, could earn an annual salary of $34,320.00. The disparity is obvious. Regarding source and amount of property and age of parties, neither side predominates in that virtually all the property was acquired during the marriage and both parties are similar in age. Regarding the ability of the parties to pay spousal support . . . there is a significant income advantage regarding Defendant. Regarding present situation of the parties and needs of the parties, the Court puts significant weight on the fact that for nearly twelve years that the parties have been comfortable with the fact that Defendant was the income producer and Plaintiff was the home provider. This relationship has given Defendant twelve years to solidly establish his standing in the medical world regarding his reputation and connections regarding job stability and continuity. Plaintiff clearly has not been able to establish that standing regarding her degree. At this point in mid-life Defendant has a well-established career whereas Plaintiff will be just starting her career development. The Court finds that the circumstances clearly favor Plaintiff's petition for alimony. Regarding health of the parties, both appear to be equally healthy. Regarding standard of living and general principles of equity, many of the above comments already address those issues. It is the determination of the Court that Defendant shall pay alimony to Plaintiff at a rate of $1,200.00 per week for six years and an additional $600.00 per week for the following six years for a total of twelve years of alimony. . . .

As this excerpt shows, the court expressly considered twelve of the thirteen above-listed factors relevant in determining spousal support. Further, the court's most important findings were supported by the evidence that the parties were married for more than ten years at the time plaintiff filed for divorce in 2001, that defendant had a casual affair with a coworker, that defendant earned approximately ten times more than plaintiff could earn even by working full time, and that between 1998 and 2001, plaintiff had not worked at all, and had worked only two days a week from the time of Abby's birth in 1995 until the parties relocated to Ludington. Given this evidence, we do not possess the definite and firm conviction that the court made a mistake in its factual findings, or the firm conviction that the spousal support award qualifies as inequitable. *Beason*, *supra*, 435 Mich 805; *Sparks*, *supra*, 440 Mich 151-152.

To the extent that defendant suggests that the trial court erred by finding that the parties had remained married for twelve years, we view the court's remark as a minor error, when the

parties in fact married in August 1990 and they separated and plaintiff filed for divorce in early 2001, over ten years later. Whether ten or eleven or twelve years, the marriage was of significant duration. No indication exists that the court considered the period before the parties' marriage during which they lived together.

II

Defendant also contends that plaintiff plainly has no entitlement to a *Postema* claim because

> [h]ere, the parties married after [defendant] had already acquired his Doctor of Osteopathy degree. Although he did complete his internship and residency in the early years of the marriage, testimony clearly established that the parties earned equal amounts during this time period. Further, testimony showed that [defendant] handled the stresses well and still found time to work on the couples' home, including finishing the basement and building a cabinet. . . . There was simply no showing that [plaintiff] contributed financially to the acquisition of the advanced degree nor did she bear the brunt of maintaining the home life.

We conclude that the trial court did not clearly err by awarding plaintiff $8,000 for her contributions toward defendant's attainment of his specialization in anesthesiology.

"*[F]airness* dictates that a spouse who did not earn an advanced degree be compensated whenever the advanced degree is the end product of a *concerted family effort* involving mutual sacrifice and effort by both spouses." *Postema*, *supra*, 189 Mich App 94 (emphasis in original).

> . . . [A]ny valuation of a nonstudent spouse's equitable claim involving an advanced degree involves a two-step analysis. First, an examination of the sacrifices, efforts, and contributions of the nonstudent spouse toward attainment of the degree. Second, given such sacrifices, efforts, and contributions, a determination of what remedy or means of compensation would most equitably compensate the nonstudent spouse under the facts of the case. In this regard, . . . the length of the marriage after the degree was obtained, the sources and extent of financial support given to the degree holder during the years in school, and the overall division of the parties' marital property are all relevant considerations in valuing a nonstudent spouse's equitable claim involving an advanced degree upon divorce. [*Id.* at 105.]

The trial court correctly summarized the applicable legal principles discussed in *Postema*, before finding as follows that plaintiff should receive reimbursement in this case:

> Defendant argues that Defendant's advanced degree was acquired shortly before marriage thus there is no *Postema* right on behalf of Plaintiff. This Court is not persuaded by this argument in that the testimony clearly showed Defendant, after being married, completed his residency and internship. Clearly these are matters that significantly benefited Defendant as he obtained standing to practice anesthesiology and/or should he wish to become Board Certified. The possession

> of only a medical degree did enhance his job opportunities such as the possibility to work at a teaching facility or doing research, but it clearly is not sufficient to place Defendant in the present market he finds himself with a completed residency and internship whereby he earned $291,000.00 in the year 2000. Because the marriage has lasted for nearly twelve years, the Court recognizes however that according to *Postema*, Plaintiff already has significantly benefited from her assistance to Defendant . . . from his substantial salary. Further the Court also observes that Defendant testified he was paid approximately $42,000.00 a year while he did his residency and presumably he had an income either through student loans and/or salary while he did his internship. The Court is not attempting to break down the six months prior to the marriage wherein the parties were live-in boyfriend and girlfriend but also where Defendant was frequently required to work outside of town at other hospitals . . . . Thus although Defendant did provide an income approximately equal to Plaintiff's during the residency and internship and Plaintiff has already benefited substantially from the high income ability of Defendant, an equitable argument nevertheless exists that she would have borne the majority of maintaining the household, caring for Defendant, and providing meals during the residency and internship. According to the analysis by Expert DeBoer, the Court observes, using rounded numbers, that in 1990 Plaintiff earned $26,000.00 and Defendant earned $12,000.00, in 1991 Plaintiff earned $27,000.00 and Defendant earned $28,000.00, and in 1992 each party earned $29,000.00. Thereafter Defendant earned more than Plaintiff did. Based on the factors referred to above, the Court finds that Plaintiff would be entitled to $8,000.00 regarding her *Postema* claim when she worked and maintained the house while Defendant completed his residency and internship.

Although neither party cites authority specifically holding that a spouse may recover reimbursement for contributions toward the other spouse's completion of a postdoctoral internship and residency (or other post graduate school education and training), the pursuit of a residency or medical specialty would appear to fall within the scope of *Postema* as "part of a larger, long-range plan intended to benefit the family as a whole." *Id*. at 95. With respect to the factors relevant to the inquiry, the following evidence supports the trial court's findings that plaintiff should receive a modest award for the work and sacrifice she put in while defendant pursued his anesthesiology specialty: at time plaintiff filed for divorce in 2001, she had enjoyed the benefits of the increase in defendant's salary attributable to his internship and residency experience for more than five years; although plaintiff earned only significantly more than defendant in the year defendant began his internship (1990), earned almost exactly as much as defendant in 1991 and 1992, and thereafter earned less money than defendant, plaintiff testified that during the long hours of defendant's work and training, she had primary responsibility for taking care of the parties' various household responsibilities, see *Postema*, *supra*, 189 Mich App 96 (observing that concerted family effort exists when the supporting mate helps pay for the spouse's education or family living expenses, or "other intangible, nonpecuniary efforts and contributions, such as where a spouse increases the share of the daily tasks . . . responsibilities, or other details of household and family management undertaken in order to provide the mate with the necessary time and energy" to pursue advanced education); plaintiff also testified that the parties placed on hold their desire to start having children until defendant completed his residency.

While defendant disagreed that he had worked extended hours throughout his residency and that plaintiff consistently tended to most of the household necessities, the evidence did not preponderate against the trial court's findings. Because the trial court recognized the applicable legal principles guiding plaintiff's request for reimbursement, made no clearly erroneous factual findings, and gave plaintiff a limited award that recognized her enjoyment of defendant's post residency salary increase for several years and not overwhelming assumption of household responsibilities, we do not possess the firm conviction that the trial court's $8,000 award was inequitable. *Sparks*, *supra*, 440 Mich 152.

III

Defendant also asserts that in attempting to ascertain the value of defendant's practice, the trial court correctly observed that the experts found hard assets worth about $100,000, "that there was no good will component to this practice," that defendant's salary in 2000 fell "below the Midwest median for people in his profession," "that holder's interest was the correct approach to use when the practice was anticipated to continue beyond the divorce," and that "about 35% of the billings of the practice are actually collectable." Defendant maintains that contrary to any testimony or Michigan law, however, the court "developed some kind of new methodology" by which to determine "a benefit to the professional spouse of continuing in his or her profession," and that "[t]he trial court clearly erred in developing a new, non-legal accounting methodology, and should be reversed."

We conclude that the trial court did not clearly err in valuing defendant's share of his anesthesiology practice at $136,000.

This Court reviews a circuit court's findings of fact concerning the valuation of marital assets for clear error, which exists if after considering the entire record, the reviewing court is left with the definite and firm conviction that the circuit court made a mistake. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999); *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). "In cases where marital assets are valued between divergent estimates given by expert witnesses, the trial court has great latitude in arriving at a final figure." *Stoudemire v Stoudemire*, 248 Mich App 325, 338-339; 639 NW2d 274 (2001). This Court has observed,

> We believe that neither Revenue Ruling 59-60 *nor any other single method should uniformly be applied in valuing a professional practice*. Rather, this Court will review the method applied by the trial court, and its application of that method, to determine if the trial court's valuation was clearly erroneous. [*Kowalesky v Kowalesky*, 148 Mich App 151, 156-157; 384 NW2d 112 (1986) (emphasis added).]

When "it appears that [the practitioner spouse] would continue the . . . practice, the valuation of the practice should be the value of the practice to [the practitioner spouse] as a going concern." *Id*. at 157.

The parties presented several CPA expert witnesses, who testified extensively regarding the calculation procedures they utilized in estimating the value of defendant's practice, as well as

with respect to perceived errors made by the other CPA experts, and offered ultimate conclusions regarding the value of defendant's share of Anesthesia Associates of West Michigan, P.C.; although all experts agreed that the minimal asset value of the corporation as a whole amounted to approximately $100,000, the experts' income valuations for defendant's interest ranged from $614,255 by Conn, $0 by Dupke, $275,000 by DeBoer, and $0 by Fitch.

A review of the trial court's opinion reveals that the court extensively recounted the valuation evidence presented, and that evidence supported the court's findings that (1) defendant had a one-third interest in the practice's hard assets, (2) the hospital's exclusive contract with defendant to provide anesthesia services through the practice meant that the practice would not have goodwill value, as defined by the experts, to a potential anesthesiologist purchaser, (3) the MGMA survey obtained its information from the largest sample and was commonly relied on by medical recruiters, and (4) on the basis of the median income reported for Midwest anesthesiologists ($327,157), defendant's practice, which paid him $292,000 in 2000, did not have "a rate of income in excess of the normal rate for other firms in the same business".

Regarding the applicable valuation formula, the trial court found instructive a Michigan Bar Journal article by Joseph Cunningham, which the experts agreed at trial set forth the basic formula they all attempted to follow. The trial court did not adopt any one expert's valuation of defendant's practice. But we find no error in the trial court's logic that, apart from any possible goodwill value that might apply in the context of a potential purchaser, the anesthesiology practice still has significant value to defendant, especially in light of the facts that the evidence did not show that defendant intended to abandon the practice, and that, although defendant had an exclusive and renewable yearly contract with the hospital, defendant had popularity with the staff and the hospital administrator characterized him as a good anesthesiologist. As the trial court mentioned, defendant built the practice entirely during the marriage, and therefore, it would seem reasonable, fair and equitable for plaintiff to share to some degree in the practice's value to defendant, despite its perceived lack of goodwill. The experts agreed that applying a multiple of four to future incremental earnings resulted in a fairly conservative estimate of these values, and thus the court's multiple of defendant's one-third interest in the value of the practice's assets (which all experts agreed was around $100,000), for a total valuation of $136,000, also appears sound, given that defendant will continue to earn well over $300,000 a year during his tenure as a practice partner.

We agree with the following observations of this Court in a business asset valuation case:

> The valuations of the parties' experts varied widely and were the subject of much dispute at trial. The trial court made its own evaluation on the basis of all the evidence presented, and, while some of the trial court's individual determinations may have been miscalculated, the court's valuation was within the ranges established by the testimony. A trial court has great latitude in determining the value of stock in closely held corporations, and where a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present. [*Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994) (emphasis added).]

In summary, although the trial court did not adopt the view of any particular CPA expert witness, the court recognized and applied the various concepts and values contained within their testimony and the other evidence presented at trial to the unique circumstances of the case.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski