

STATE OF MICHIGAN  
COURT OF APPEALS

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JESSE SCOTT SOPER,

Plaintiff-Appellant,

v

DEBORAH SOPER,

Defendant-Appellee.

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UNPUBLISHED

November 22, 2005

No. 255343

Lapeer Circuit Court

LC No. 02-032140-DM

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right a divorce judgment and a subsequent order increasing defendant's award of spousal support. We affirm.

The parties were married in 1979, and are the parents of three children, two of whom were minors at the time of trial. After a nonjury trial, the trial court: awarded physical custody of the parties' minor children to plaintiff; ordered defendant to pay child support; awarded the marital home to plaintiff and ordered plaintiff to pay defendant \$50,000 for her share of the equity in the home; divided plaintiff's pension and 401k funds equally between the parties; required plaintiff to pay insurance benefits for defendant for three years; and ordered plaintiff to pay defendant permanent, modifiable spousal support in the amount of \$200 per week.

Defendant moved for reconsideration, arguing, inter alia, that the trial court's award of spousal support in the amount of \$200 per week was insufficient given the duration of the marriage, the disparity of the incomes of the parties, and the fact that she was obligated to pay defendant in excess of \$300 per month in child support. The trial court granted the motion, and awarded defendant the sum of \$1,319 per month in spousal support.

An award of spousal support is in the trial court's discretion. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). The principal objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. Spousal support is to be based on what is just and reasonable under the circumstances of the case. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Among the factors that should be considered are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay spousal support; (7) the present situations of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior

standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003). The trial court retains jurisdiction over the issue of spousal support, and may adjudicate the issue even after an award of spousal support has terminated. *Rickner v Frederick*, 459 Mich 371, 378-379; 590 NW2d 288 (1999).

On appeal, we review the trial court's findings of fact for clear error. *Moore, supra*. The findings are presumptively correct, and the appellant bears the burden of showing error. A finding is clearly erroneous if, after viewing all the evidence, we are left with a firm and definite conviction that a mistake was made. *Id.* at 654-655. If the trial court's findings are not clearly erroneous, we must then determine whether the dispositional ruling was fair and equitable in light of all the facts. *Id.* at 655. We will affirm the trial court's decision regarding spousal support unless we are firmly convinced that it was inequitable. *Gates, supra* at 433.

On appeal, plaintiff neither contests the trial court's findings of fact nor argues that the trial court abused its discretion by awarding any amount of spousal support to defendant, but rather asserts that the permanent award of \$1,319 per month was not fair and equitable under all the circumstances. We disagree and affirm. The evidence showed, and the trial court found, that for the duration of the parties' twenty-four-year marriage, plaintiff had been the primary income earner. Plaintiff's earning capacity of \$80,000 was significantly higher than that of defendant's earning capacity of \$20,000, and no evidence showed a finding that the disparity would be reduced to any significant degree in the future. After the divorce, defendant would be obligated to maintain employment sufficient to pay all household expenses, apparently for the first time during her life. Moreover, defendant was required to pay child support in excess of \$300 per month to plaintiff. Defendant's remaining spousal support, combined with her attributed earning capacity, placed her income at less than one-half of that earned by plaintiff.

The trial court's conclusion that defendant was entitled to permanent spousal support in the amount of \$1,319 was made after considering the relevant factors. *Olson, supra*. The trial court's findings were not clearly erroneous. *Moore, supra* at 654-655. We conclude that in light of all the evidence, the trial court's decision as to spousal support was fair and equitable, *id.* at 655, and thus must be affirmed. *Gates, supra*. Finally, we note that when circumstances change, as for example when defendant is no longer obligated to pay child support, plaintiff has the option of seeking a modification of his obligation to pay spousal support. MCL 552.28; *Rickner, supra*.

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder