

STATE OF MICHIGAN
COURT OF APPEALS

DUANE G. MATOUSEK,

Plaintiff-Appellant,

v

KATHERINE L. MATOUSEK,

Defendant-Appellee.

UNPUBLISHED
December 1, 2005

No. 254360
Shiawassee Circuit Court
LC No. 02-008530-DM

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Following a bench trial in the circuit court, the parties were granted a divorce. Plaintiff now appeals as of right from the court's order awarding to defendant alimony in gross in the sum of \$100 a week for eight years. We reverse and remand. This case is being decided without oral argument under MCR 7.214(E).

Plaintiff's sole argument on appeal is that the trial court erred when it failed to consider any of the relevant factors before ordering alimony in gross payments to defendant. We agree. In a divorce action, a trial judge must "make special findings of fact and . . . state separately his conclusions of law thereon." *Nicpon v Nicpon*, 9 Mich App 373, 377; 157 NW2d 464 (1968); see also MCR 2.517(A)(1), (2). When the factual findings are not erroneous, this Court will not reverse a trial court's disposition unless it is left with the firm conviction that the disposition was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

"Alimony in gross is a sum certain and is payable either in one lump sum or in periodic payments of a definite amount over a specific period of time." *Bonfiglio v Pring*, 202 Mich App 61, 63; 507 NW2d 759 (1993). MCL 552.23(1) provides:

Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage as are committed to the care and custody of either party, the court may further award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to

pay and the character and situation of the parties, and all the other circumstances of the case.

In determining whether an award of spousal support is just and reasonable, the trial court should consider the following factors:

(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, (8) past relations and conduct of the parties, and (9) general principles of equity. [*Sparks, supra* at 159-160.]

Additional factors to consider when relevant include “the source and amount of property awarded to the parties, . . . the abilities of the parties to pay alimony, [and] . . . the prior standard of living of the parties and whether either is responsible for the support of others.” *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

The court need not, however, consider all factors with equal weight. “Indeed, there will be many cases where some, or even most, of the factors will be irrelevant.” *Sparks, supra* at 159. Where there are relevant factors, however, the court must make specific findings of fact regarding each one and the record must reflect that the trial court made these considerations before awarding alimony or distributing property. *Id.* at 159-162; *Thames, supra* at 308.

In the instant case, it is clear to us that the trial court intended to award defendant alimony in gross in order to address uncertainty with regard to the parties’ assets and to balance the marital asset distribution. Specifically, the court indicated that it was making this award in order “to offset the issue of unknown assets.” There is no indication in the record, however, that the court took any of the relevant factors into consideration before it made the award. While the court need not have considered all of the factors before awarding alimony in gross, it was required to consider those that were relevant to the instant case.¹

Because there is no record indicating that the trial court considered any of the relevant factors before awarding alimony in gross to defendant, the court’s award is reversed.² We remand this case for further proceedings consistent with this opinion.

¹ These factors would include the past relations and conduct of the parties, the ability of the parties to work, the source and amount of property awarded to the parties, the ability of the parties to pay alimony, the present situation of the parties; the needs of the parties, and general principles of equity.

² We wish to make clear that our decision only impacts the award of alimony in gross in the judgment of divorce.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter