

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH ANN DAVIDSON,

Plaintiff-Appellant,

v

RICHARD DAVIDSON,

Defendant-Appellee.

UNPUBLISHED
December 6, 2005

No. 255784
Tuscola Circuit Court
LC No. 00-019181-DM

Before: Cooper, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiff, Elizabeth Ann Davidson, appeals as of right from the amended judgment of divorce entered May 24, 2004. She challenges the trial court's division of the marital property, and the adequacy of the awards of spousal support and attorney fees. We affirm.

I. Factual Background

At the time the judgment of divorce was entered, plaintiff was 49 years old and defendant, Richard Davidson, was 53. They had been married for 33 years and had five children together, all of whom were over the age of majority. During their marriage, defendant started three businesses—Ricky D's Truck Stop, Davidson Cement Grooving, and Davidson Hoof Trimming—while plaintiff managed the home and did paperwork for the family's companies. Over the years, they established an extremely comfortable lifestyle.¹ Following their separation in 2000, however, defendant filed for bankruptcy. According to the couple's tax returns, they had only earned around \$60,000 annually for several years in a row.² According to plaintiff, the

¹ The parties lived in a large home with an indoor pool and a ten-foot waterfall in the courtyard.

² Plaintiff testified that defendant told her that his assets were worth \$4 million and that they earned \$200,000 a year. She also presented evidence that defendant represented in an application for a home equity loan that he earned over \$15,000 a month. However, the trial court calculated the Davidsons' income only from their 2000, 2001, and 2002 income tax returns.

couple had maintained their lifestyle because many bills were paid directly by defendant's companies.³

Plaintiff separated from defendant in 2000, following an alleged incident of domestic violence.⁴ Following their separation, plaintiff worked for Flagstar Bank until she was permanently disabled due to a preexisting cervical spine injury. It is not disputed that plaintiff is permanently unable to work and collects \$760 per month in social security disability benefits. She moved into a mobile home with the couple's youngest daughter. Defendant remained in the family home until the court ordered its sale and division. The court also ordered the sale and division of the truck stop, which was not operating at a profit at the time of the divorce. While the sale was pending, defendant was ordered not to take a salary from this company's profits and to pay plaintiff half of the company's profits, less debts incurred.

Defendant continued to earn his income from Davidson Cement Grooving and Davidson Hoof Trimming and, therefore, the court did not order their sale. The value of these companies was greatly disputed. Plaintiff's expert valued the companies at \$1,457,500, while defendant's expert, an independent contractor who helped manage the truck stop, valued the companies between \$75,000 and \$232,000. The trial court accepted the valuation of defendant's witness. The court determined that the companies were worth \$150,000 and ordered defendant to pay plaintiff an equal share. Defendant was also ordered to pay plaintiff \$1,803 per month in alimony, bringing her annual income to \$30,756.

II. Division of Marital Estate

Plaintiff argues that the trial court improperly relied solely on the testimony of defendant's expert regarding the value of the parties' businesses, and, therefore, grossly undervalued these assets. Plaintiff also contends that the court failed to distribute the entire marital estate in the property division. We disagree. We review a trial court's findings of fact in a property division for clear error.⁵ Where the court's findings are proper, we must determine if the ultimate property division was fair and equitable under the circumstances.⁶

The parties presented highly divergent evidence regarding the value of the family businesses. The valuation of marital assets is within the sound discretion of the trial court.⁷ "A trial court has great latitude in determining the value of . . . closely held corporations, and where a trial court's valuation of a marital asset is within the range established by the proofs, no clear

³ Plaintiff asserted that their cars, insurance, phones, food, and certain credit cards were paid for by the businesses.

⁴ Plaintiff contends that defendant was physically and verbally abusive throughout their marriage. However, plaintiff presented no evidence to support this allegation.

⁵ *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

⁶ *Olson v Olson*, 256 Mich App 619, 629-630; 671 NW2d 64 (2003).

⁷ *Gates v Gates*, 256 Mich App 420, 427; 664 NW2d 231 (2003).

error is present.”⁸ Where the parties present conflicting evidence, “[t]he trial court may, but is not required to, accept either parties’ valuation evidence.”⁹

Plaintiff’s expert witness, Laurie Miller, was a certified business appraiser and valuator accredited in litigation and employed by Business Valuation Group. Using an earnings capitalization method, Ms. Miller analyzed the companies’ projected earnings for a five-year term and valued the businesses at \$760,000 and \$690,000. Defendant’s expert, James L. Dale, was also a certified business appraiser. Mr. Dale first testified that Ms. Miller’s income projections were unrealistic based on the recent experience of the businesses in a changing competitive market.¹⁰ Using the market approach, Mr. Dale determined that the combined value of the companies was between \$107,000 to \$232,000. Using the same approach as Ms. Miller, Mr. Dale determined that the companies were worth between \$75,000 and \$100,000.

Based on the evidence regarding the market in which these companies competed, the trial court accepted the valuations of Mr. Dale. The court determined that the companies should be valued at \$150,000 combined, an approximate average of Mr. Dale’s highest and lowest estimations. While plaintiff challenges the court’s reliance on the testimony of an interested expert witness, the trial court was in the best position to judge the witnesses’ credibility.¹¹ As the court’s ultimate valuation was within the range established by the evidence, this finding was not made in error.

Furthermore, plaintiff’s claim that the trial court overlooked the parties’ vehicles and life insurance policies in the property division is without merit. In fact, the trial court held that each party would retain exclusive possession of any life insurance policies or contracts they held, and of any personal property currently in hand, which would include vehicles. As the court equally divided the marital assets and gave each party possession of their personal property, the division of property was fair and equitable.

III. Award of Spousal Support

Plaintiff contends that the trial court awarded an inequitable amount of spousal support, as it inadequately assessed the support factors. We disagree. We also review the trial court’s findings of fact relating to an award of spousal support for clear error.¹² “The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish

⁸ *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

⁹ *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988).

¹⁰ Mr. Dale testified that an experienced employee with a high school education and a small capital investment could, and actually did, form a competing company and take clients from defendant.

¹¹ *Pelton*, *supra* at 26.

¹² *Olson*, *supra* at 629.

either party.”¹³ The award must be just and reasonable under the circumstances.¹⁴ In making this determination, the court should consider the following factors:

(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 alimony, (7) the present situation 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.^{15]}

The trial court properly determined that plaintiff was entitled to and needed spousal support. Plaintiff spent more than 30 years raising the couple’s five children and assisting her husband with the family’s businesses. She was only 49 years old and no longer able to work when the judgment of divorce was entered. However, defendant continued to earn an income from his business endeavors and was able to contribute to the support of his wife. The trial court recognized that plaintiff’s half of the marital estate was insufficient to generate any future income for her support. As a result, the trial court awarded plaintiff support equal to half of defendant’s then-reported income. The court further ordered defendant to continue to provide plaintiff with copies of his tax returns so that she could petition the court for future modifications if defendant’s circumstances changed.¹⁶

While the parties maintained an affluent lifestyle while married, it appears that defendant’s businesses have been less profitable in recent years. Defendant recently filed for bankruptcy and each party has a significant amount of credit card debt. The trial court specifically noted that its award of spousal support could not maintain the lifestyle desired by plaintiff. However, given defendant’s recent financial status, the trial court’s award was fair and equitably balanced the incomes of the parties.

IV. Attorney Fees

Finally, plaintiff argues that the trial court erred in awarding plaintiff only \$10,000 in attorney fees and \$5,000 in expert witness fees.¹⁷ We review a trial court’s decisions on motions

¹³ *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

¹⁴ MCL 552.23(1).

¹⁵ *Olson*, *supra* at 631.

¹⁶ See MCL 552.28.

¹⁷ Plaintiff contends that she currently owes \$30,050 for the expert valuation of the marital estate and over \$100,000 in attorney fees.

for attorney and expert witness fees for an abuse of discretion.¹⁸ It is well settled that no party should have to deplete the resources necessary for their support in order to pursue or defend a divorce action.¹⁹ While no party has an absolute right to attorney fees in a divorce action, the court may award such fees when necessary to enable a party to obtain representation.²⁰

Plaintiff is clearly unable to pay the hefty attorney and expert witness fees she has accrued based upon her property settlement and income. However, the trial court properly found that defendant is equally unable to pay these excessive fees. In reducing the amount awarded to plaintiff, the trial court explained that its decision was based on plaintiff's role in delaying and extending the litigation and her unrealistic financial expectations, which increased the costs to both parties. Under the circumstances, the trial court properly determined that defendant should not have to deplete the resources necessary for his support to pay plaintiff's excessive and inflated litigation costs.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello

¹⁸ *Olson, supra* at 634.

¹⁹ *Id.* at 635; *Gates, supra* at 438; *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993).

²⁰ *Olson, supra* at 635.