

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL JOHN STOCK,

Plaintiff/Counter-Plaintiff-Appellee,

v

JODY LYNN STOCK,

Defendant/Counter-Defendant-
Appellant.

UNPUBLISHED

November 29, 2007

No. 271360

Ingham Circuit Court

LC No. 05-002165-DM

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals as of right in this divorce action. The parties were married in 1990, had two daughters, and were divorced in 2006. At trial, the only issue involved the amount of spousal support defendant would receive and its duration. The trial court ordered plaintiff to pay defendant \$1,000 per month for three years. Because the trial court adequately considered each of the relevant factors, including fault, when it determined the amount of the spousal support required, and the record supports the conclusion that the spousal support award was not inequitable, we affirm.

Defendant first argues that the trial court erred when it relied on a case that did not require a consideration of fault as a factor in determining spousal support. This Court reviews questions of law de novo. *MacInnes v MacInnes*, 260 Mich App 280, 283; 677 NW2d 889 (2004). The record reveals that the trial court indeed cited *Parrish v Parrish*, 138 Mich App 546; 361 NW2d 366 (1984) and incorrectly stated that case law does not require consideration of fault. This was error because when a court determines whether and how much spousal support to impose, it should consider the fault of the parties in the breakdown of the marriage. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993).

But the error is harmless because the trial court did actually consider the parties' fault when it determined the spousal support award. The court explained that the statute authorizing the imposition of spousal support requires that all the circumstances be considered, including fault. MCL 552.23(1). Regardless whether the trial court misstated that case law does not require the consideration of fault, it specifically considered fault, determining that the parties were equally at fault. As such, there was no legal error requiring reversal. Furthermore, the record reflects that the trial court considered all the relevant factors found in *Ianitelli*, *supra*. See also *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

Defendant next argues that the court inappropriately found that plaintiff's income was \$105,000 and that both parties were at fault in the breakdown of the marriage. In a challenge to a court's dispositional award of property or spousal support, the Court must first review the trial court's finding of fact under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). Plaintiff presented factual support at trial to demonstrate his income for 2006 was \$105,000. Defendant argues that the trial court wrongly utilized that amount to calculate spousal support when a higher amount was used to determine child support. Plaintiff stipulated to an income for purposes of child support that was based on the salary he earned in 2005. But, after December 2005, plaintiff's contract for a guaranteed income expired, and he began earning straight commission which lessened his income. Plaintiff provided pay stubs from the first few months of 2006 that showed that he was earning approximately \$8,800 per month in 2006. The trial court was satisfied that plaintiff's explanation was credible and specifically found there was no evidence plaintiff was withholding income so he would have to pay less spousal support. Credibility determinations are left to the trial court and will not be disturbed on appeal. *Triple E Produce Corp v Mastronardi Produce*, 209 Mich App 165, 174; 530 NW2d 772 (1995).

There was also sufficient factual support in the record to affirm the trial court's finding that both parties were at fault for the breakdown of the marriage. Defendant and plaintiff both testified that marital conditions worsened in the years preceding the divorce. The parties led increasingly separate lives, barely saw each other, slept in separate bedrooms, and worshipped at different places. Ultimately, this separation was a factor in plaintiff's adultery. While plaintiff's actions certainly contributed to the breakdown of the marriage, there is sufficient evidence to conclude that the marriage did not end solely as a result of his actions. Therefore, we conclude that the court's factual findings were not erroneous.

Defendant finally argues that the spousal support awarded is not equitable because it does not reflect her sacrifices during the marriage and does not take into account the length of time it will take her to "get on her feet" in her new career. When we review a distribution of spousal support, we must determine whether the trial court's disposition was fair and equitable in light of those facts. *Sparks, supra* at 152. The trial court's ruling should be upheld "unless the appellate court is left with the firm conviction that the division was inequitable." *Id.*

The purpose of spousal support is to balance the needs of the parties without impoverishing either party. *Olson, supra*. In determining the amount of spousal support, the trial court should consider several factors, including: the ability to pay support; the circumstances and needs of the parties; the conduct of the parties, including fault; the length of the marriage; the ability of the parties to work; the source and distribution of property; contributions to the estate; the prior standard of living and whether either is responsible for the support of others; cohabitation; the ages of the parties; and general principles of equity. *Id.*

Our review of the record reveals that defendant provided no evidence she needed more than three years to achieve financial equilibrium. She simply asserted that she needed more time. Similarly, she merely asserts that she should receive \$1,800 in spousal support, but her only reason is that plaintiff paid that amount at the beginning of the divorce proceedings and was not economically disadvantaged by it at that time. But the trial court found that plaintiff's financial situation changed when the divorce progressed and he had to start paying rent for his living situation. The trial court considered this change in expenses along with plaintiff's change

in income and it determined that plaintiff could no longer afford to pay \$1,800 per month in spousal support. After subtracting plaintiff's taxes, child support, and work expenses, \$1,800 for spousal support left him little money to live. Such a result does not balance the needs of the parties without impoverishing either. *Olson, supra* In contrast, \$1,000 per month is reasonable and while it may leave defendant with a monthly deficit, that deficit is not more than she can reasonably earn working part time as she attends school.

Regarding defendant's contributions to the marriage, we do not discount all that she sacrificed to the marriage or the intangibles she contributed to her family. However, in balancing the equities, we must point out that during the marriage, defendant received tangible benefits from sharing in plaintiff's property and income including living in the same house, eating the same food, and enjoying the same comforts that he did. Furthermore, in the property settlement, defendant received six percent more than plaintiff in view of her contributions and her needs. Considering all of these facts together with the fact that defendant is young enough and healthy enough to reenter the work force, we cannot conclude that the amount of spousal support was inequitable. We are not left with the firm conviction that the spousal support was inequitable and therefore affirm the trial court's ruling.

Affirmed.

/s/ Pat M. Donofrio
/s/ Joel P. Hoekstra
/s/ Jane E. Markey