STATE OF MICHIGAN

COURT OF APPEALS

LARRY GREGORY ALTON,

Plaintiff/Counter-Defendant-Appellee,

v

RITA LYNN ALTON,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
June 17, 2008

No. 267802
Genesee Circuit Court
LC No. 03-250096-DO

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right following a judgment of divorce. We affirm.

Defendant first challenges several of the trial court's findings of fact. We review a trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been committed." *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

Defendant argues that the trial court's finding that she did not contribute to plaintiff's medical office was clearly erroneous. We disagree. Defendant's efforts with respect to the medical building were sporadic and primarily consisted of short-term projects, some taking only a few minutes to complete, such as replacing a ball float on a toilet or changing a light bulb. No evidence was presented that defendant contributed to the upkeep of the building on a consistent daily, weekly, or even monthly basis. Although redecorating the office was perhaps a long-term project, contractors were hired to perform the work and defendant acknowledged only hanging pictures herself. It appears that defendant's assistance with the project consisted mostly of selecting colors and patterns.

Defendant relies on a 2003 warranty deed purporting to convey the office building from plaintiff and defendant to Montrose Medical Plaza, L.L.C.[1] But defendant did not testify that she ever had an ownership interest in the medical building, and plaintiff testified that defendant's name was never on the title to the property. Thus, neither party maintained during trial that defendant at any time had an ownership interest in the property. The origin of the purported deed is unknown. The trial court's determination that defendant did not contribute to the upkeep of the medical building was not clearly erroneous.

Defendant next argues that the trial court erroneously determined that she unreasonably refused to refinance the marital home to reduce the parties' credit card debt. Again, we disagree. During the divorce proceedings, plaintiff made both of the parties' numerous credit card payments. Plaintiff's and defendant's credit card interest amounted to approximately $900 per month. During the proceedings, plaintiff's CPA, Ryan Lowe, paid approximately $31,000 in credit card payments, which brought the principal balances down by only approximately $10,000 because of the high interest rates. Defendant testified that she refused to refinance the marital home to pay down the parties' credit card debt because "that is [her] home and that is the only place that [she has] to be."

Although defendant claims to have contributed at least equally to the mortgage payments, the evidence showed a large disparity in the incomes of the parties. In the years 1999 through 2003, plaintiff reported wages of $199,023, $446,600, $164,900, $95,100, and $155,800. During those same years, defendant reported incomes of $50,450, $54,400, $28,000, $18,204, and $0. Therefore, while defendant may have signed the checks and mailed the mortgage payments, the evidence showed that plaintiff's salary constituted most of the parties' collective income. Defendant relies on plaintiff's 1996 deposition testimony from her previous divorce case in which plaintiff testified that the parties contributed equally toward household expenses, including the mortgage payments. But this testimony was given more than three years before the parties were married. In any event, this deposition testimony does not show that plaintiff's refusal to agree to refinance the marital home was not unreasonable, as the trial court opined.

Defendant next argues that the trial court clearly erred by finding that the extensive amount of time that she spent with her children and mother was a cause of the breakdown of the marriage. Plaintiff testified that the parties separated because the marital home was in disarray, defendant showed no affection toward him, and he was unable to earn enough money to satisfy defendant. No evidence was presented that defendant's extensive time with her children and mother contributed to the breakdown of the marriage. However, this finding did not affect the trial court's property division or spousal support determination and therefore does not require reversal. It is well settled that we will not reverse on the basis of harmless error. *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 529; 730 NW2d 481 (2007).

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[1] It is unclear whether this deed was introduced as an exhibit at trial. Although defendant submitted numerous proposed exhibits, including an appraisal of the medical building containing the purported deed, our review of the record does not disclose whether the appraisal documents were actually admitted at trial.

Defendant next challenges the trial court's attorney fee order. She argues that no evidence was presented that her conduct of "keying" plaintiff's vehicle increased litigation costs. To the extent that the trial court's finding in paragraph nine of the attorney fee order can be interpreted as a determination that defendant's keying of plaintiff's vehicle resulted in increased litigation costs, even if clearly erroneous, it did not affect the trial court's attorney fee determination. The trial court did not reference defendant's keying of plaintiff's vehicle in the discussion section of its order. Rather, the court stated that this case should have been settled because the only primary matters at issues involved spousal support and property division. In addition, the court found that the stubbornness of both parties contributed to the excessive litigation costs. Therefore, even if the trial court determined that defendant's keying of plaintiff's vehicle increased litigation costs, because this finding did not affect the trial court's $35,000 attorney fee award to defendant, it does not require reversal.

Moreover, the trial court's determination that defendant was stubborn was not clearly erroneous. As previously discussed, defendant refused to agree to refinance the marital home despite the fact that plaintiff was paying $900 per month in interest on his and defendant's credit card debt. In addition, defendant engaged in other conduct, such as refusing to return plaintiff's personal property, that warranted the trial court's finding regarding defendant's stubbornness.

Defendant next argues that the trial court's finding that plaintiff significantly assisted with the property tax payments for the Manistee home is clearly erroneous. Defendant's own testimony belies her argument. She testified that both she and plaintiff had paid the property taxes for the home since the early 1990s and that she made the property tax payments from the parties' joint account. Accordingly, the trial court's finding that plaintiff significantly contributed toward the property taxes for the Manistee home was not clearly erroneous.

Defendant next challenges the trial court's dispositional rulings. We review a trial court's dispositional rulings to determine if they are fair and equitable in light of the circumstances. *Baker v Baker*, 268 Mich App 578, 582; 710 NW2d 555 (2005). We will affirm a dispositional ruling unless we are left with the firm conviction that the division was inequitable. *Id.*

"In dividing marital assets, the goal is to reach an equitable division in light of all the circumstances." *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). The division need not be mathematically equal, but the trial court must explain any significant departure from congruence. *Id.* Factors to consider when dividing marital property include:

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

A trial court may invade the separate property of a spouse if, after division of the marital estate, the property awarded to either party is insufficient for the suitable support and maintenance of that party. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). In other words, "invasion is allowed when one party demonstrates additional need." *Id.* A trial court may also

invade the separate property of a spouse "when the other spouse 'contributed to the acquisition, improvement, or accumulation of the property.'" *Id*. at 494-495; see also MCL 552.401.

Defendant contends that she contributed equally to all mortgage payments for the marital home. As previously discussed, however, her income during the years 1999 through 2003 was significantly less than plaintiff's income. Although defendant may have signed the checks and mailed the mortgage payments, the checks were drawn from an account consisting of funds that plaintiff primarily earned. Defendant also contends that she contributed to the home through her child support and alimony payout from her second husband. She testified, however, that her alimony payout was used to pay off credit card debt. She further offered contradictory testimony regarding the use of the proceeds from the sale of a Lipizzan horse that she received in her second divorce. She testified that the $25,000 from the sale of the horse was used to remodel the basement of the parties' home. She also testified, however, that $20,000 from the sale of the horse was used to purchase a Ford Coupe and that the remaining $5,000 was used for household expenses. Thus, it is unclear whether defendant used any of her premarital funds to contribute to the marital home.

Defendant also argues that the trial court's failure to award her equity in the medical office building was unfair and inequitable. As previously discussed, however, defendant's contributions to the medical building were sporadic and insignificant; they did not justify granting her an equitable interest in the property. Moreover, there was no clear evidence that she was ever a titleholder of the property.

Defendant contends that the award to plaintiff of a one-third interest in the Manistee property was a windfall. The record shows, however, that defendant's mother granted plaintiff an interest in the property in the early 1990s, before the parties married, and that plaintiff and defendant paid the property taxes on the Manistee home. The trial court did not grant plaintiff an interest in the property in the divorce judgment.

The trial court's division of the parties' assets was fair and equitable considering all the facts and circumstances of this case. The parties began living together while they were both engaged in divorce proceedings with their previous spouses. Ultimately, the parties' marriage lasted less than four years. During their cohabitation and marriage, they lived beyond their means and accumulated significant debt. Both defendant's excessive spending and plaintiff's affair caused the breakdown of the marriage. During the marriage, plaintiff earned significantly more than defendant and primarily supported defendant, her three children from her previous marriage, and her mother, who resided in the marital home for several months of every year. Plaintiff also paid for a significant portion, if not all, of the costs of defendant's children's extracurricular activities, including $15,000 to $20,000 per year for defendant's daughter's competitive roller skating. Defendant worked in plaintiff's medical office only one or two days per week at best and was compensated for her work.

While it appears that defendant contributed some portion of her child support payments, alimony payments, and paychecks to the marital estate, it is also clear that defendant was responsible for a considerable portion of the parties' consumer debt. Defendant testified that she used her $27,000 alimony payout to pay credit card debt and that only a very small balance existed after the payment. By the end of 2003, however, only four years later, the credit card debt in defendant's name amounted to $31,586. It also appears from the evidence that defendant

diverted income from plaintiff's medical practice to her own personal use. Accordingly, although plaintiff had an affair and was untruthful regarding depositing money into his girlfriend's account, neither party was without fault contributing to the breakup of the marriage. Further, although plaintiff has a significantly higher earning potential than defendant, the trial court's spousal support determination allowed for an extension of alimony if defendant was enrolled in school to allow her to obtain a better job. Because we are not left with a firm conviction that the property division was inequitable, we affirm the trial court's dispositional ruling. *Baker, supra* at 582.

Defendant next challenges the trial court's spousal support award of $950 weekly, or $4,132.50 per month, for 18 months. We review a trial court's spousal support award for an abuse of discretion. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). We review a trial court's findings of fact regarding spousal support for clear error. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003).

The main objective of a spousal support award is to balance the incomes and needs of the parties such that neither party will be impoverished. *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003); *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). An award of spousal support should be just and reasonable under the circumstances of the case. *Korth, supra* at 289. Factors that a trial court should consider in determining whether an award is just and reasonable include:

> "(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 health of the parties, (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, and (12) general principles of equity." [*Gates, supra* at 435-436, quoting *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).]

The trial court's spousal support award did not constitute an abuse of discretion. The trial court awarded defendant more than what she received after her second divorce on a monthly basis. After her second divorce, defendant was awarded weekly spousal support of $400 for life. Although it is contested which party engineered the lump sum payout of spousal support from defendant's ex-husband, defendant would not have continued to receive spousal support from her ex-husband after the parties married because all payments would have ceased upon defendant's remarriage pursuant to her previous judgment of divorce.

The trial court's finding that there was no reason why defendant could not work was not clearly erroneous. Although defendant underwent surgery for cancer in 1992, no evidence was presented to establish that she continued to suffer from cancer or its associated effects since her surgery. While her doctor testified that defendant suffered from depression, migraines, high blood pressure, arthritis, reflux, and asthma, her doctor also specifically stated that defendant was not unable to work.

The parties' marriage lasted less than four years and plaintiff continued to support defendant throughout the duration of the lower court proceedings. At the time of trial, defendant was working as a substitute "para pro" at a school earning $8.90 an hour. Her job was not a full-time job and she only worked, if called, for up to six hours a day. She earned only $1,000 in 2004. Despite the fact that she was making very little at this job, it was the only job defendant had looked for by the time of trial.

During trial, defendant expressed an interest in going to school to become a special education teacher. Defendant opined that if she were able to go to school full time, she could work as a teacher in three years. The trial court reserved the right to extend defendant's spousal support for up to 48 months if defendant was enrolled in school and provided adequate proof of enrollment. This provision allowed defendant to obtain necessary job skills while continuing to collect spousal support. Considering the short duration of the marriage, the trial court's spousal support determination was not an abuse of discretion.

Defendant next argues that the trial court abused its discretion by failing to sanction plaintiff for his failure to provide full and complete answers to interrogatories and requests for production and for his violation of a standing order prohibiting him from concealing assets. We disagree. We review for an abuse of discretion a trial court's decision regarding sanctions for discovery violations, including violations of court orders. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999).

MCR 2.313(B)(2) provides in pertinent part:

> (2) *Sanctions by Court in Which Action Is Pending*. If a party or an officer, director, or managing agent of a party, or a person designated under MCR 2.306(B)(5) or 2.307(A)(1) to testify on behalf of a party, fails to obey an order to provide or permit discovery, including an order entered under subrule (A) of this rule or under MCR 2.311, the court in which the action is pending may order such sanctions as are just, including, but not limited to the following:
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> * * *
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> (c) an order striking pleadings or parts of pleadings, staying further proceedings until the order is obeyed, dismissing the action or proceeding or a part of it, or rendering a judgment by default against the disobedient party;
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> (d) in lieu of or in addition to the foregoing orders, an order treating as a contempt of court the failure to obey an order . . . .

Further, MCL 600.1701 provides in relevant part:

> The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
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> * * *

(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court.

Although the trial court had discretion to sanction plaintiff for violating the standing order and engaging in discovery abuses, the court did not abuse its discretion by declining to do so. These divorce proceedings were very contentious and both parties committed discovery abuses. Plaintiff filed numerous motions for orders compelling discovery and for the recovery of his personal belongings, which defendant refused to return. At the time of trial, a number of plaintiff's belongings still had not been returned to him. Moreover, when plaintiff retrieved a portion of his personal property that had been placed in garbage bags in the garage of the marital home, he discovered that most of the shoes in the bags were only left shoes. In addition, plaintiff became aware that defendant had rummaged through the trash at the curb of his new residence and that defendant had disparaged him in front of his patients. It was also undisputed that defendant secreted assets by hiding plaintiff's Ford Roadster and sports memorabilia during the divorce proceedings.

Additionally, plaintiff filed motions regarding the appraisals of certain properties relevant to this action, alleging that defendant refused to allow access to an appraiser. Plaintiff also alleged that defendant entered plaintiff's property without authorization and stole certain items that belonged to plaintiff, that defendant repeatedly parked her car in plaintiff's driveway and blew the horn until plaintiff called the police, and that defendant keyed plaintiff's Mercedes after a court hearing in March 2004. Defendant's keying of plaintiff's vehicle, which was observed by the initial trial judge, caused this case to be reassigned to a different judge. Considering defendant's conduct throughout the course of the lower court proceedings, we cannot conclude that the trial court abused its discretion by failing to sanction plaintiff.

Defendant next challenges the trial court's award of attorney fees. We review for an abuse of discretion the trial court's decision regarding an award of attorney fees. *Olson*, *supra* at 634.

Attorney fees in a divorce action are not recoverable as a matter of right. *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001). Rather they should be awarded only when necessary to preserve a party's ability to prosecute or defend a suit. *Id*.; see also *Gates*, *supra* at 438. "They may also be awarded when the party requesting payment has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation." *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997).

The trial court did not abuse its discretion by failing to award defendant her actual attorney fees and costs and instead requiring plaintiff to pay $35,000 of defendant's attorney fees. Defense counsel asserted at the March 2005 hearing that defendant's attorney fees amounted to $81,523. In contrast, plaintiff's attorney fees totaled only $47,000. Thus, after the trial court's award of $35,000 in attorney fees to defendant, plaintiff was obligated to pay $82,000 of both parties' total attorney fees but defendant was required to pay only $46,523 of her total fees. As the trial court correctly opined, the unreasonableness and stubbornness of both parties contributed to the excessive litigation costs in this action. See *id*. As previously discussed, defendant engaged in conduct that required the filing of numerous motions by plaintiff to obtain discovery, to recover his personal belongings, and to arrange for the appraisal of real property at issue in this case. Also, as previously discussed, defendant worked only sporadically

during the proceedings and earned only $1,000 in 2004. Despite her low earnings, she chose not to look for a different job that would better enable her to pay her attorney fees.

Moreover, throughout the duration of the proceedings, plaintiff supported defendant by providing her $250 a week for living expenses, paying all household expenses for the marital home, of which defendant had exclusive use, paying defendant's automobile expenses as well as those of defendant's mother and son, paying defendant's credit card bills, and paying defendant's health insurance premiums. Further, the trial court awarded defendant spousal support in the amount of $4,132.50 per month for 18 months, and the court thereafter extended this spousal support award for additional time. In light of all the facts of this case, we cannot conclude that the trial court's attorney fee award constituted an abuse of discretion.

Defendant next argues that the trial court erred by failing to enter an order reflecting the prior judge's discovery ruling. We disagree. Whether the trial court violated MCR 2.602(B) by failing to enter a discovery order is a question of law. We review questions of law de novo. *Cowles v Bank West*, 476 Mich 1, 13; 719 NW2d 94 (2006).

Defendant asserts that the trial court was required to enter an order effectuating the prior judge's oral discovery ruling pursuant to MCR 2.602(B), which provides in relevant part:

> **Procedure of Entry of Judgments and Orders.** An order or judgment shall be entered by one of the following methods:
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> * * *
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> (2) The court shall sign the judgment or order when its form is approved by all the parties and if, in the court's determination, it comports with the court's decision.
>
> (3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.
>
> (a) If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall then sign it if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.
>
> (b) Objections regarding the accuracy or completeness of the judgment or order must state with specificity the inaccuracy or omission.

> (c) The party filing the objections must serve them on all parties as required by MCR 2.107, together with a notice of hearing and an alternate proposed judgment or order.

Defendant contends that this court rule does not give a trial court authority to decline to enter an order following a ruling.

MCR 2.602(B)(2) and (B)(3)(a) require a trial court to sign a proposed order if no objection to the order is filed and the order, in the court's determination, comports with its oral ruling. If the order does not comport with the court's decision, however, the court is required to direct the parties to appear before the court to settle the matter. Here, the parties appeared before the court several times, but were never able to settle the matter. Nothing in the court rule required the trial court to enter an order if the parties and the court were unable to reach a settlement regarding the substance of the prior judge's ruling. The trial court in this case was particularly at a disadvantage because the earlier oral ruling was made by a different judge.

In any event, the record indicates that defendant did not present the court with a proposed order that accurately reflected the prior judge's oral ruling. Defendant sought entry of an order requiring Lowe and plaintiff's estate lawyer, William Shaheen, to answer interrogatories. In his ruling, however, the prior judge did not require Shaheen and Lowe to answer interrogatories, but rather directed them to provide documents and other materials that plaintiff had indicated were in their possession. Because defendant's proposed order did not accurately reflect the prior judge's oral ruling, the trial court would not have violated MCR 2.602(B) by declining to enter the order, even absent plaintiff's objection.

Finally, defendant challenges the trial court's finding that there existed no arrearage on the interim temporary order. We review the trial court's finding for clear error. *Sparks*, *supra* at 151.

Defendant contends that the trial court's finding that no arrearage existed was clearly erroneous because (1) plaintiff failed to pay property taxes on the marital home during the proceedings, (2) plaintiff failed to pay for expenses related to defendant's automobile, and (3) plaintiff retained a medical reimbursement check that was intended to cover defendant's expenses related to a urological procedure.

The interim order required that the status quo be maintained and stated that "Plaintiff shall continue to pay all household expenses . . . ." Lowe testified that the property taxes on the marital home were outstanding and that neither the 2003 nor the 2004 taxes had been paid. Thus, the taxes were outstanding at the time the interim temporary order was entered in January 2004, and the status quo was maintained during the lower court proceedings.

Regarding expenses for defendant's automobile, we acknowledge that the trial court's interim temporary order required plaintiff to pay "Defendant's automobile expenses." However, defendant's sole argument concerning this issue is confined to the following sentence in her brief

on appeal: "The trial court's finding that there was no arrearage on the temporary order . . . was clearly erroneous, given Lowe's testimony . . . that Dr. Alton directed Ryan Lowe not to pay Defendant's automotive expenses as reflected on Exhibit Y[.]"[2] An appellant may not give issues cursory treatment with little or no citation of supporting authority. *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003); see also MCR 7.212(C)(7). Defendant's failure to properly address the merits of this assertion of error constitutes an abandonment of the issue on appeal. *Peterson Novelties, supra* at 14.

Finally, defendant asserts that plaintiff improperly retained a medical reimbursement check from her health insurance provider. Even if this allegation is true, plaintiff's conduct did not violate the interim temporary order. The order required plaintiff to pay "Defendant's health insurance premiums." Defendant does not allege that plaintiff failed to pay her health insurance premiums. Therefore, even if plaintiff withheld the reimbursement check, this action did not contravene the temporary interim order as defendant contends.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen

[2] Exhibit Y, a bill from Discount Tire Company in the amount of $119.56, is contained in the lower court file.