

STATE OF MICHIGAN
COURT OF APPEALS

PHYLLIS HUBER,

Plaintiff/Counter-Defendant-
Appellee,

v

CHRISTOPHER HUBER,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

June 19, 2008

No. 276235

Muskegon Circuit Court

LC No. 05-030286-DO

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

PER CURIAM.

Defendant appeals by right following a judgment of divorce. We affirm in part, reverse in part, and remand.

The parties were married in 1981, and lived together as husband and wife until 2005. The parties did not attribute fault in the breakdown of the marriage. During the course of the marriage, defendant worked full-time, making approximately \$30,000 per year, and he spent the ten years preceding this action employed with the same company. In addition, defendant earned approximately \$75 per week fixing cars. His monthly expenses average \$1,398, not including transportation, food or, incidentals.

When the parties were first married, plaintiff worked full-time, but eventually reduced her hours by agreement of the parties to care for the marital home. She subsequently suffered a back injury, and her doctor instructed her that she could not work full-time. At the time this action was filed, plaintiff made approximately \$13,000 per year and had no health insurance through her employment.

At trial, the parties disagreed about whether all the money and property they acquired during the marriage was marital property. They also disagreed concerning the value of their property on Ashland Road, which contained a house and a pole barn. The trial court ultimately distributed much of the parties' property according to their request. The court awarded the Ashland Road property to plaintiff. The trial court also ordered defendant to pay \$500 per month in spousal support for three years, \$350 per month toward plaintiff's health insurance premiums for one year, and \$1,000 toward plaintiff's attorney fees.

Defendant argues that the trial court erred when it failed to make specific findings on the record related to the value of the property it distributed, and that the trial court therefore erred in its subsequent distribution of the property. We agree.

Trial courts are required by court rule to “include a determination of the property rights of the parties in the judgment of divorce.” *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003). Before it distributes property, the trial court must determine which assets are marital assets and which assets are separate property. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). The trial court must then make specific findings regarding “the value of the property being awarded in the judgment.” *Olson, supra* at 627. “[A] trial court clearly errs when it fails to place a value on a disputed piece of marital property.” *Id.* at 627-628.

We conclude that the trial court in this case failed to make necessary factual findings on the record. The record reveals that the parties disputed the value of the Ashland property at trial. Therefore, the trial court was required to make specific findings related to the value of this property. *Id.* However, it did not do so. This problem was compounded when the trial court failed to decide whether plaintiff’s \$22,000 gift from her mother, which was used to pay off the mortgage on the Ashland property, was separate property or marital property. Because the trial court failed to make factual findings concerning the value of the property and with respect to whether certain assets were marital or separate in nature, we are unable to determine on appeal whether the ultimate property distribution in this case was equitable. Our review is further complicated by the trial court’s failure to make findings related to the individual *Sparks* factors for purposes of property distribution. See *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). Because the record before us does not provide sufficient detail to allow for meaningful appellate review, we remand to the trial court for findings of fact concerning the value of the property and concerning whether the disputed assets were marital or separate in nature. After making adequate findings with respect to these matters, the trial court shall revisit the ultimate disposition of marital property in this case.

Defendant next argues that the periodic spousal support awarded by the trial court was based on several factual errors and was ultimately inequitable. We agree in part.

The trial court’s dispositional ruling concerning the award of spousal support “should be upheld unless the appellate court is left with the firm conviction that the division was inequitable.” *Id.* at 152; *Olson, supra* at 630. The purpose of spousal support is to balance the needs and incomes of the parties without impoverishing either party. *Id.* at 631. Spousal support may be awarded when, considering all the circumstances of the case, the estate and effects were “insufficient for the suitable support and maintenance” of the other party. MCL 552.23(1).

The trial court found that defendant is relatively healthy and has a steady, long-term job, while plaintiff only has part-time work and may be prevented from increasing her hours because of her back injury. Further, the trial court found that defendant has an ability to pay a “small amount” of spousal support. The parties’ testimony on the record supports these findings, and we are not left with a firm conviction that the trial court erred with respect to any of these individual findings.

We are, however, left with the firm conviction that trial court’s ultimate award of alimony in the amount of \$500 per month for three years was inequitable. We acknowledge that

whereas plaintiff earns approximately \$1,000 per month, defendant earns approximately \$2,200 per month. However, the evidence shows that defendant's monthly expenses, including his mortgage, amount to approximately \$1,400. Spousal support in the amount of \$500 per month therefore represents a significant expense for defendant. As noted previously, spousal support is intended to balance the needs of the parties *without impoverishing* either party. *Olson, supra* at 631.

We recognize that the parties were married for 24 years and that plaintiff originally gave up working full-time to care for the parties' home. We also recognize that plaintiff subsequently injured her back, and now cannot work full-time. These facts clearly favor an award of *some* spousal support in this case. We agree with the trial court's observation that defendant is able to pay a "small amount" of spousal support. However, the award of \$500 per month for three years would essentially impoverish defendant at plaintiff's expense. This is especially true in light of the fact that defendant was ordered to pay \$350 per month toward plaintiff's health insurance premiums for one year.¹

We cannot conclude that the award of spousal support in the amount of \$500 per month for three years was equitable in light of the particular facts of this case. See *Sparks, supra* at 152. On remand, the trial court shall revisit the issue of spousal support and shall award alimony to plaintiff in an equitable amount.

Defendant also argues that the trial court's award of attorney fees to plaintiff was not supported by sufficient findings on the record and must therefore be reversed. Defendant does not challenge the reasonableness of the amount of attorney fees.

We review for an abuse of discretion the trial court's grant of attorney fees. *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007). Attorney fees in divorce actions may be awarded if the record supports a finding that the party to whom they are awarded is unable to bear the expense of the litigation. *Olson, supra* at 635. In divorce actions, attorney fees are discretionary, and are authorized under MCR 3.206(C). "[A] party who requests attorney fees . . . must allege facts sufficient to show that . . . the party is unable to bear the expense of the action, and that the other party is able to pay" MCR 3.206(C). Although specific findings should be made concerning the requesting party's specific need for attorney fees, any error in failing to make such findings may be harmless where there is clear evidence of necessity on the record. *Stackhouse v Stackhouse*, 193 Mich App 437, 445-446; 484 NW2d 723 (1992).

¹ The court specifically ordered defendant to pay \$350 toward plaintiff's monthly COBRA premiums for one year. The judgment of divorce provides that defendant is responsible for paying the first \$350 each month toward plaintiff's COBRA premium, and that plaintiff is responsible for any amount due that exceeds \$350 in a given month. We do not disturb on appeal the trial court's decision to order defendant to pay the first \$350 per month toward plaintiff's health insurance premiums for one year. This decision was clearly equitable in light of the particular facts of this case.

The trial court failed to make specific findings of fact on the record with respect to plaintiff's need for attorney fees and defendant's ability to pay attorney fees. However, the trial court expressly considered defendant's ability to pay and plaintiff's need within the context of spousal support. The trial court's findings in the context of spousal support, coupled with plaintiff's testimony that she struggled to pay her attorney fees, clearly supported an award of attorney fees in this case. Moreover, based on plaintiff's \$1,000 per month income, there was clear evidence of need. The trial court's failure to make specific findings with respect to the issue of attorney fees was therefore harmless. *Id.*

In light of plaintiff's need and defendant's ability to pay, we cannot conclude that the trial court abused its discretion by awarding attorney fees for plaintiff in the amount of \$1,000. *Stallworth, supra* at 284 (an abuse of discretion occurs only when the court's decision falls outside the range of reasonable and principled outcomes).

Lastly, we wish to provide further direction to the trial court with respect to defendant's pending personal injury case. The judgment of divorce entered by the trial court provides that the proceeds of "defendant's pending personal injury case shall be distributed between the parties" pursuant to *Lee v Lee*, 191 Mich App 73, 79; 477 NW2d 429 (1991), and *Postill v Postill*, 116 Mich App 578, 580; 323 NW2d 491 (1982). While this is currently a correct statement of the law, the trial court on remand shall further explain the manner in which the proceeds of defendant's civil claim are to be distributed. In particular, the court shall clarify whether economic damages are to be distributed in the same manner as noneconomic damages and shall explain what percentage of the damages is to be awarded to each party.

We affirm the trial court's award of attorney fees and the trial court's award of \$350 per month for one year toward plaintiff's health insurance premiums. In all other respects, we reverse and remand for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Brian K. Zahra

/s/ Elizabeth L. Gleicher