

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN J. HUTCHISON,

Plaintiff-Appellant,

v

DEBORAH M. HUTCHISON,

Defendant-Appellee.

UNPUBLISHED

July 28, 2009

No. 284259

Muskegon Circuit Court

LC No. 05-030607-DO

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's determination that the parties' prenuptial agreement was unenforceable because of a change of circumstances. Plaintiff also challenges the trial court's grant of spousal support and the division of marital property in the judgment of divorce. We affirm.

Plaintiff asserts the trial court abused its discretion when it determined the parties' prenuptial agreement was unenforceable. Specifically, plaintiff contends that the trial court's finding of fact that defendant involuntarily quit her employment was clearly erroneous and that a change in circumstances did not warrant the trial court's conclusion that the prenuptial agreement was unenforceable. We review a trial court's findings of fact under the clearly erroneous standard, which gives deference to the trial court's special opportunity to assess the credibility of the witnesses. MCR 2.613(C); *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Additionally, we review a trial court's refusal to enforce a prenuptial agreement for an abuse of discretion. *Rinvelt v Rinvelt*, 190 Mich App 372, 382; 475 NW2d 478 (1991).

MCL 557.28 states "[a] contract relating to property made between persons in contemplation of marriage shall remain in full force after marriage takes place." However, "[a] prenuptial agreement may be voided (1) when obtained through fraud, duress, mistake, or misrepresentation or nondisclosure of material fact, (2) if it was unconscionable when executed, or (3) when the facts and circumstances are so changed since the agreement was executed that its enforcement would be unfair and unreasonable." *Reed v Reed*, 265 Mich App 131, 142-143; 693 NW2d 825 (2005). To determine if a prenuptial agreement is unenforceable because of a change in circumstances, the focus is on whether the changed circumstances were reasonably foreseeable either before or during the signing of the prenuptial agreement. *Id.* at 144.

The record shows that defendant suffered years of mental and physical abuse by plaintiff. Plaintiff harassed and bullied defendant when she was at work. When plaintiff retired, he insisted that defendant quit her employment and threatened that he would make her life miserable if she did not comply. Because neither the abuse defendant suffered nor plaintiff's insistence that defendant terminate her employment and subsequent financial dependence were foreseeable at the time the parties' entered into the prenuptial agreement, the trial court did not abuse its discretion when it determined that the agreement was unenforceable due to a change in circumstances. *Reed, supra* at 144.

Plaintiff also asserts that the trial court abused its discretion when it awarded defendant spousal support. Plaintiff contends the award of spousal support was unwarranted because the trial court failed to consider the pension benefits defendant would receive, defendant's voluntary termination of her employment and ability to work. This Court reviews the trial court's factual findings regarding the award of spousal support for clear error. *Moore v Moore*, 242 Mich App 652, 654-655; 619 NW2d 723 (2000). "A finding is clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made. If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts." *Id.*

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.

To determine if spousal support is warranted, a trial court should consider:

(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. [*Berger v Berger*, 277 Mich App 700, 726-727; 747 NW2d 336 (2008).]

"The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished; spousal support is to be based on what is just and reasonable under the circumstances of the case." *Id.* at 726. "The voluntary reduction of income may be considered in determining the proper amount of alimony. If a court finds that a party has

voluntarily reduced the party's income, the court may impute additional income in order to arrive at an appropriate alimony award.” *Moore, supra* at 655.

In awarding defendant spousal support of \$1,087.50 a month, the trial court considered all relevant factors and explained the award was based on several factors, including: (1) the abuse defendant suffered, (2) plaintiff’s ability to earn additional funds through his rental properties and car repair hobby, (3) defendant’s current inability to work, (4) that plaintiff was already paying \$1,000 in spousal support pursuant to a temporary order and “the rental properties belonging to the husband are potentially income-producing and would provide a home for him with limited outlay of funds,” and (5) defendant’s need of support. The lower court record supports the trial court’s factual findings. The trial court did not abuse its discretion when it granted spousal support considering the economic disparity between the parties, defendant’s poor health, her financial contribution during the marriage, her current impoverished financial situation and lack of employment prospects when compared to plaintiff’s situation and financial circumstances. Despite plaintiff’s claims to the contrary, the trial court did consider defendant’s retirement benefits, which would not be available for another 15 years, until she reached the age of 67. Thus, defendant’s future receipt of these benefits does not impact the decision to award modifiable spousal support.

Finally, plaintiff contends the trial court’s decision to award defendant 55 percent of the marital property was inequitable. The distribution of marital property is governed by MCL 552.19, which provides

Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.

The trial court must consider the following factors when dividing the marital property

wherever they are relevant to the circumstances of the particular case: (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.]

“The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise.” *Byington v Byington*, 224 Mich App 103, 115; 568 NW2d 141 (1997). “The goal of a court when apportioning a marital estate is to equitably divide it in light of all the circumstances. The trial court need not achieve mathematical equality, but the trial court must clearly explain divergence from congruence.” *Reed, supra* at 152 (citations omitted). In general, “assets earned by a spouse during the marriage are properly considered part of the marital estate and are subject to division, but the parties’ separate assets may not be invaded.” *Korth v Korth*, 256 Mich App 286, 291; 662 NW2d 111 (2003). “When apportioning marital property, the court must strive for an equitable

division of increases in marital assets ‘that may have occurred between the *beginning* and the end of the marriage.’” *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997) (emphasis in original, citation omitted). “Notwithstanding Michigan’s no-fault divorce law, fault is still a consideration in the division of marital property.” *Zecchin v Zecchin*, 149 Mich App 723, 727, 386 NW2d 652 (1986).

The trial court made factual findings on all of the required elements before awarding defendant 55 percent of the marital assets. This division is fair and equitable in light of the attribution of fault based on plaintiff’s history of harassment and abuse of defendant. In an attempt to mitigate fault, plaintiff repeatedly notes defendant’s voluntary return to the relationship despite the occurrence of multiple separations during the marriage. However, defendant’s return to the relationship does not serve to negate the abuse she suffered or the impact of that abuse. Based on the substantiated history of abuse, the length of the relationship, the respective financial positions of the parties, defendant’s current health status, and both parties’ contributions to the marital estate, we find the trial court’s division of the marital property to be fair and equitable. See *Welling v Welling*, 233 Mich App 708, 710-713; 592 NW2d 822 (1999).

Plaintiff also asserts that the award did not adequately take into account the five years of separation that occurred during the marriage. “Marriage is a status that legally terminates only upon the death of a spouse or upon entry of a judgment of divorce.” *Byington, supra* at 109-110. Even though the parties were separated, the pension and other property remained marital assets and were subject to distribution as part of the marital property. *Pickering v Pickering*, 268 Mich App 1, 8-9; 706 NW2d 835 (2005); *Byington, supra* at 109-110. The record indicates that the trial court explicitly recognized that the parties separated for a number of years. However, the separations did not render a portion of the pension and other assets separate property because the parties remained married until entry of the judgment of divorce. *Pickering, supra*; *Byington, supra* at 109-110.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra