STATE OF MICHIGAN

COURT OF APPEALS

TAMARA A. WINDMILL, Plaintiff-Appellant,	UNPUBLISHED August 9, 2016
v	No. 331080 Macomb Circuit Court Family Division
KEITH P. WINDMILL, Defendant-Appellee.	LC No. 2013-006729-DM

Before: SHAPIRO, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right the opinion and order of the trial court denying her request for specific parenting time and for relief from the default judgment of divorce. We affirm.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant were married on May 31, 1986, and had four children during the course of the marriage; three reached the age of majority before the divorce proceedings, so only custody, parenting time, and support of the youngest child, Isabelle Victoria Windmill, DOB: March 22, 1999, were at issue in this case.

Plaintiff commenced this proceeding in December 2013 when she filed for divorce in the Macomb County Circuit Court; defendant filed a counter-complaint for divorce in January 2014. When plaintiff failed to appear for the hearing that was "date certain" and set to occur on September 24, 2014, a default judgment of divorce was entered. After taking the sworn testimony of defendant, the trial court determined it was clearly in the minor child's best interests that defendant be granted sole custody of the minor child and that plaintiff receive child initiated parenting time. When calculating child support, using the Michigan Child Support Formula, the trial court imputed full time employment onto plaintiff with zero overnights. Lastly, the trial court concluded that the proposed property and debt division, as well as the spousal support recommendation, articulated through the course of the proceedings was fair and equitable to each party, given the circumstances.

The following day, September 25, 2014, plaintiff filed a motion seeking a hearing to set aside the default judgment of divorce, among other prayers for relief, explaining to the court her rationale for having missed the hearing the day before. An order resulting from a hearing on

October 6, 2014, indicates that plaintiff's motion was denied. Plaintiff then retained new counsel and filed an amended motion for relief from judgment, alleging among other things, that defendant made misrepresentations to the trial court on the date of trial that, coupled with her inadvertent absence from the hearing, made her unable to meaningfully participate in the proceedings. Defendant filed an answer and a supplemental response and a hearing was held on October 8, 2015. The trial court issued an opinion and order following that hearing on December 21, 2015, declining to grant plaintiff's request for relief premised on both her mental condition and on mistake, misrepresentation, or inadvertence on the issues of custody, parenting time, support, and property distribution. The trial court did refer the matter to the Friend of the Court for investigation and recommendation "retroactive to August 14, 2015," on certain issues. Plaintiff filed her claim of appeal with this court on January 11, 2016.

II. REASONABLE PREFERENCE OF THE CHILD

Plaintiff contends the trial court erred in failing to make a specific finding on the best interest factor, MCL 722.23(i), regarding the reasonable preference of the minor child. In addition, plaintiff argues that the trial court improperly considered evidence that occurred post-judgment in ruling on her motion for relief from judgment.

This Court reviews "for an abuse of discretion a circuit court's ultimate decision to grant or deny relief from a judgment." *Rose v Rose*, 289 Mich App 45, 49; 795 NW2d 611 (2010). With regard to child custody disputes, and in accordance with MCL 722.28, "all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." *Dailey v Kloenhamer*, 291 Mich App 660, 664; 811 NW2d 501 (2011). Specifically:

> Findings of fact, such as the trial court's findings on the statutory best-interest factors, are reviewed under the "great weight of the evidence" standard. Discretionary rulings, such as to whom custody is awarded, are reviewed for an abuse of discretion. An abuse of discretion exists when the trial court's decision is "palpably and grossly violative of fact and logic[.]" Finally, "clear legal error" occurs when a court incorrectly chooses, interprets, or applies the law. [*Id.* at 664-665 (citations omitted).]

The best interest factors include consideration of a child's reasonable preference. MCL 722.23(i). Where a child is of sufficient age to express a preference, a trial judge is required to consider the child's preference. *Kubicki v Sharpe*, 306 Mich App 525, 545; 858 NW2d 57 (2014). Reversal, however, is not warranted where a child's preference, if one existed, "would not have changed the trial court's ruling[.]" *Sinicropi v Mazurek*, 273 Mich App 149, 183; 729 NW2d 256 (2006).

The trial court determined that a review of the best interest factors overwhelmingly favored defendant for an award of custody. The trial court did not interview the minor child to establish her preference, but indicated, "even if the minor child expressed a preference to reside with her mother, it wouldn't be enough to persuade this court not to grant him sole legal and physical custody." In making its determination, the trial court elicited testimony from defendant,

but also premised its decision on a review of the pleadings in this matter, its observation of the parties over an extended time period, as well as documentary evidence submitted by defendant.

Specifically, the trial court was in possession of a letter authored by the child's therapist, Kristine Vazzano, Ph.D., confirming the level of defendant's support and participation in the child's therapy, the "recurrent conflicts" between plaintiff and the minor child, and the child's stated preference to the therapist to reside with defendant. Similarly, the trial court had a report from Patrick K. Ryan, Ph.D., who evaluated defendant and the minor child following a referral from the Macomb County Department of Human Services. The minor child was extremely positive regarding her relationship with defendant; however, when asked, she "could not indicate anything positive about her mother," despite being afforded time to formulate a response. The minor child confirmed having observed incidents of domestic violence initiated by plaintiff against defendant and that plaintiff had previously struck the minor child and subjected the child to verbal abuse.

The trial court had access to various documents submitted for trial verifying plaintiff's prior suicide attempt, a multitude of police reports, a Child Protective Services (CPS) investigation report regarding an incident of domestic violence[1] involving plaintiff and the minor child, in addition to abusive communications initiated by plaintiff and directed to the minor child. The trial court clearly explained that defendant was overwhelmingly favored on the best interest factors and that any preference expressed by the minor child would not have altered the trial court's ultimate custody determination. Hence, although the trial court should have interviewed the child regarding factor (i), this omission is inconsequential because of the clear indication that the trial court would not have reached a different conclusion even if it had engaged in such an inquiry. *Sinicropi*, 273 Mich App at 183. Notably, plaintiff has not challenged that if the trial court had considered the child's preference, the best-interests determination would have significantly varied, or even that the child would express a preference for plaintiff's custody.

While speculative, it is important to note that the trial court appeared to have a substantive and justifiable reason for not interviewing the minor child. It became evident very early in the proceedings that plaintiff often tried to manipulate the minor child and blame her when matters did not proceed in the direction plaintiff preferred. There was significant and substantial evidence that plaintiff engaged in physical, verbal and emotional abuse of the minor child on an ongoing basis. Hence, subjecting the child to an interview, even if the content of that interview were not revealed, could place the child under undue scrutiny and pressure by plaintiff, further damaging their relationship and increasing the child's stress. Such reasoning by the trial court is suggested by its subsequent consideration of changing plaintiff's parenting time from child-initiated to a supervised and scheduled interaction in order to alleviate the burden of

[1] The trial court refers to violence directed towards the minor child, perpetrated by plaintiff, as "domestic violence" throughout its opinion. This violence could be considered domestic violence under MCL 400.1501, however, the more accurate terminology would be "child abuse" when discussing violence perpetrated by a parent onto a child.

placing responsibility for contact on the minor child based on concerns pertaining to plaintiff's mental health.

Plaintiff also alleges error regarding the trial court's consideration of additional text messages submitted by defendant in response to her motion for relief from judgment, indicating communications of a verbally and emotionally abusive nature directed by plaintiff to the minor child through threats of suicide.

Plaintiff filed both a motion seeking relief from judgment and a concurrent motion for parenting time. As noted by plaintiff, the trial court opined in considering the parenting time factors of MCL 722.27a, in relevant part:

> Plaintiff has placed [the minor child] in a mental quandary, using threats of suicide to manipulate and torture [the child] regarding their divorce. Credible evidence has been presented to establish that plaintiff has a tumultuous relationship with [the minor child], resulting in physical and emotional altercations between plaintiff and [the minor child]. Physical and mental domestic violence was found to exist between plaintiff and [the minor child] in 2010 and 2013. Plaintiff has traumatized [the child] through text messages that she was going to kill herself due to [the child]'s statements regarding her. [The minor child] has clearly endured mental and emotional abuse based upon the actions of plaintiff . . . Based upon clear and convincing evidence regarding plaintiff's actions, it is clear that parenting time should only be granted upon [the child]'s request. Consequently, the Court's determination of custody and parenting time should not be set aside to achieve justice.

MCL 722.27a governs the award of parenting time, mandating that parenting time "be granted in accordance with the best interests of the child." MCL 722.27a(1). Unless the presumption that it is in the child's best interests "to have a strong relationship with both of his or her parents" is disproved, the court is required to award parenting time "in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time." *Id.* Further, "[a] child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health." MCL 722.27a(3).

While plaintiff may be correct that the trial court erroneously considered evidence of plaintiff's post-judgment conduct in reviewing her motion for relief from judgment, she ignores that she concurrently filed a motion for modification of parenting time. In reviewing a motion for parenting time modification a trial "court should consider up-to-date information . . . arising since the trial court's original custody order." *Fletcher v Fletcher*, 447 Mich 871, 889; 526 NW2d 889 (1994). As such, in addressing what is essentially plaintiff's motion for modification of parenting time, the trial court could review the challenged text messages in rendering its decision. Further, given the plethora of evidence supporting the trial court's custody determination, any error by the trial court in considering the additional text messages submitted by defendant in support of his objections to the motion to grant post-judgment relief and for specific parenting time are deemed harmless and fail to justify disturbing the judgment. MCR 2.613(A).

III. PARENTING TIME

Plaintiff contends that the trial court erred in failing to grant her request for relief from the default judgment of divorce premised on a myriad of claims that defendant engaged in significant misrepresentations to the trial court. Specifically challenged are defendant's testimony and evidence regarding: (a) defendant's primary role as caretaker for the minor child, (b) representations that the minor child was a good student, (c) the existence of family and friends to assist defendant in the minor child's care, (d) incidents of domestic violence initiated by plaintiff and details of those allegations, and (e) incidents suggesting the minor child cannot tolerate unsupervised contact with plaintiff.

This Court reviews for an abuse of discretion a trial court's decision to grant or deny relief from judgment. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 404; 651 NW2d 756 (2002). An abuse of discretion is found to have occurred when the trial court selects "an outcome that falls outside the range of reasonable and principled outcomes." *Ewald v Ewald*, 292 Mich App 706, 725; 810 NW2d 396 (2011). A trial court's findings of fact are reviewed for clear error. *McNamara v Horner*, 249 Mich App 177, 182; 642 NW2d 385 (2002). A trial court's findings of fact are deemed to be clearly erroneous if, after a review of the entire record, this Court "is left with the definite and firm conviction that a mistake was made." *Id*. at 182-183.

A motion brought pursuant to MCR 2.612(C)(1)(c) addresses the ability of a trial court to "relieve a party or the legal representative of a party from a final judgment, order, or proceeding" premised on "[f]raud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." MCR 2.612(C)(1)(c). Relief from a judgment is typically granted only under extraordinary circumstances and when the failure to grant the requested relief would result in a substantial injustice. *Gillispie v Bd of Tenant Affairs of Detroit Housing Comm*, 145 Mich App 424, 428; 377 NW2d 864 (1985). In particular, this Court has recommended the "[c]autious application of MCR 2.612(C)(1) in divorce cases." *Rose*, 289 Mich App at 58.

At the outset, we note that other than providing language pertaining to MCR 2.612(C)(1)(c), plaintiff cites to no legal authority to support her contentions of error and relies predominantly on blatant denials or allegations with little to no evidentiary support. It is routinely recognized that:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Yee*, 251 Mich App at 406 (citation omitted).]

Such failures permit this Court to deem the issue abandoned on appeal and decline to address it. *Id.*

Nevertheless, plaintiff's claims regarding defendant's myriad of misrepresentations to the trial court lack evidentiary support by plaintiff and cannot be construed as fraud. Plaintiff claims that defendant could not have provided the majority of the caretaking responsibility for the minor

child because of his job and work schedule. However, it was undisputed by plaintiff that defendant was the primary and only financial provider for the family. While plaintiff asserts she scheduled medical appointments for the minor child, she provides no documentary evidence to support her claim and does not contradict documentation from the child's therapist indicating that defendant accompanied the child to her sessions, while plaintiff engaged only in periodic telephone contact with the therapist. Although plaintiff contends that certain credit card receipts, not provided at trial, demonstrate that she purchased some clothing for the minor child, this does not serve to dispute defendant's claim regarding his provision of care and clothing for the minor child. Notably, plaintiff does not dispute defendant's claims that he prepared meals, cleaned the home, and provided all transportation for the minor child.

Plaintiff also takes issue with defendant's alleged representation that the minor child was a good student. A review of the transcript indicates that defendant acknowledged that the minor child's academic strengths were centered on "English" classes and that her performance in other subjects was "not so good." While plaintiff disputes defendant's representation that friends and family are available to help him care for the minor child, evidence was provided that the minor child's adult sister resides with defendant and the minor child, and that an adult son of the parties also resides in close proximity and is available.

Plaintiff further suggests that defendant misrepresented victimization of himself and the minor child by plaintiff, regarding incidents of domestic violence, and denies that she ever threw an object at the minor child. Defendant's assertions at trial were supported by a significant amount of documentation including police reports, a CPS investigation report, and evaluations pertaining to the minor child. Given the amount and content of such documents, whether plaintiff ever threw an object at the minor child seems a relatively minor point of contention. Plaintiff ignores evidence that she was arrested, prosecuted, and pleaded guilty to an incident in 2010 of striking defendant in the minor child's presence. During a jury trial, defendant was found not guilty of assaulting plaintiff in 2015. The CPS investigation substantiated the minor child's claims of assault by plaintiff; plaintiff's reciprocal allegations against the minor child for assault, arising from the same incident, were dismissed. Finally, plaintiff provides no documentary evidence to contradict defendant's testimony that the minor child frequently requires intervention by defendant when she spends time alone with plaintiff.

Given the overwhelming amount of evidence presented by defendant and plaintiff's lack of evidence to the contrary, the trial court did not abuse their discretion by denying plaintiff's request for relief from judgment premised on fraudulent misrepresentations to the trial court.

IV. RELIEF FROM JUDGMENT – MCR 2.612(C)(1)(a)

Plaintiff contends the trial court erred in denying her motion for relief from judgment premised on mistake, inadvertence or excusable neglect in accordance with MCR 2.612(C)(1)(a). Specifically, plaintiff relies on a report from Gerald Shiener, M.D. to support her assertion of physical and mental incapacity preventing her attendance at court on the date set for trial. Plaintiff further alleges that defendant misrepresented plaintiff's medical condition to the trial court.

A court is authorized to relieve a party from a final judgment premised on "[m]istake, inadvertence, surprise, or excusable neglect." MCR 2.612(C)(1)(a). However, this court rule was not designed "to correct a failure to act or an ill-advised or careless decision . . . " *Mikedis v Perfection Heat Treating Co*, 180 Mich App 189, 200; 446 NW2d 648 (1989); *Lark v Detroit Edison Co*, 99 Mich App 280, 283; 297 NW2d 653 (1980).[2] Rather, the court rule's "application should be limited to extraordinary circumstances where the failure to set aside the court's final determination will result in substantial injustice." *Lark*, 99 Mich App at 283.

Plaintiff does not dispute that she had adequate notification that the scheduled trial date was certain and would not be subject to further adjournments. Plaintiff elected not to attend the trial and did not make any effort to contact the court, defendant, or defendant's counsel to be excused from the proceedings due to illness. Despite having the same diagnoses and medications earlier in the divorce proceedings, plaintiff was able to attend and participate in a variety of hearings. Hence, using her medical condition as her reason that precluded her attendance and participation is suspect. Further, plaintiff submits no documentation to demonstrate, commensurate with the relevant time period, that she secured medical assistance or other help due to her incapacity. Her claim of medical incapacity is belied by the fact that within 24 hours of the trial court's ruling, plaintiff drafted and filed a detailed motion for relief from the judgment indicating a level of clarity of thought and physical ability that contradicts her claims.

Shiener evaluated plaintiff more than two months after the relevant date and relied, in significant part, on plaintiff's own self reports. As a result, Shiener's opinion is speculative with regard to plaintiff's condition on the relevant date. Significantly, Shiener only opined that medications taken by plaintiff, involving the combination of Ambien, Lexapro, Progesterone, Ativan, Wellbutrin, and Tramadol, "have the *potential* for causing a toxic delirium and an altered level of consciousness," not that this condition was actually experienced on the date of the hearing. It is also interesting to note that at the time of her consult with Shiener, it appears that plaintiff was taking the same medications and Ritalin, yet was able to meet with Shiener and coherently provide her medical history and other information.

"Whether a given act of neglect is excusable is a matter for the [trial] court." *Muntean v City of Detroit*, 143 Mich App 500, 510; 372 NW2d 348 (1985). A trial court is always seeking to attain "a balance between the goal of remedying injustice, on the one hand, and the desire to achieve finality in litigation, on the other hand." *Id.* at 511 (citation omitted). In this case, the trial court questioned plaintiff's credibility based on numerous interactions with plaintiff and her frequent denials of wrongdoing, despite documentary evidence to the contrary and attempts to manipulate the trial court. The trial court did not abuse its discretion, and justifiably denied plaintiff's motion for relief from judgment based on the questionable content and credibility of Shiener's letter and the basis of his opinion, particularly given the trial court's familiarity and experience with plaintiff. "A reviewing court must treat the trial court's findings with substantial

[2] Although the *Lark* Court was examining the language of GCR 1963, 528.3(1), the predecessor of MCR 2.612(C)(1)(a), the reasoning is applicable given the consistency of the language used in the earlier and current court rule.

deference in light of its superior ability to assess the credibility of evidence." *Rigoni v Mich Power Co*, 131 Mich App 336, 341; 345 NW2d 918 (1984). "Findings of fact should be reversed only if this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

Similarly, plaintiff's assertion that she is entitled to relief from the judgment of divorce because defendant misrepresented the status of plaintiff's health and medical condition to the trial court on the day of trial lacks merit. The trial court explicitly acknowledged a familiarity with plaintiff's various health concerns and complaints, and had the opportunity during the pendency of the proceedings to directly observe plaintiff and interact with her. Initially, the trial court's inquiry was at the onset of trial in an effort to determine whether defendant was aware of any emergency that precluded plaintiff's attendance. Defendant's response merely indicated that plaintiff was at the marital home and had a vehicle available to her, and that he was unaware of any particular impediment precluding her attendance. Plaintiff has not disputed that she was at home or that a vehicle was accessible for her use. Any further references by defendant to plaintiff's health related to her ability to work and clearly comprised his personal opinion, not a medical determination, which the trial court was free to consider and weigh and is not relevant to plaintiff's contention of error on the issue of whether her failure to appear for trial comprised excusable neglect.

V. SPOUSAL SUPPORT

Plaintiff contends that the trial court erred in the award of spousal support by failing to evaluate all of the necessary factors and through the imputation of income to plaintiff. Plaintiff further argues that misrepresentations by defendant to the trial court negatively affected the spousal support determination.

The decision to grant or deny a request for relief from a judgment is reviewed for an abuse of discretion. *Rose*, 289 Mich App at 49. "Whether to award spousal support is in the trial court's discretion, and the trial court's decision regarding spousal support must be affirmed unless we are firmly convinced that it was inequitable." *Richards v Richards*, 310 Mich App 683, 690; 874 NW2d 704 (2015) (citation and quotation marks omitted).

"The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished, and spousal support is to be based on what is just and reasonable under the circumstances of the case." *Id*, at 691. Factors to be considered and weighed in a trial court's decision to award spousal support 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 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. [*Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

In awarding plaintiff $1,800 a month in spousal support, the trial court indicated an awareness of the length of the marriage, the age of the parties, their respective sources of income, health conditions and needs. While defendant's income is substantial, he is solely responsible for the care of the minor child who will be residing with him exclusively. The marital estate was depleted during the marriage and divorce proceedings, as the parties lived beyond their economic means, resulting in a reduced availability of assets for distribution. It was evident to the trial court that plaintiff's behavior during the marriage was a primary consideration in the breakdown of this marital relationship based on the frequent incidents of abuse inflicted by plaintiff upon defendant and the minor child. In addition, considerable money was spent, further depleting the marital estate, due to plaintiff's obstreperous and difficult behavior during the divorce proceedings. Plaintiff refused to cooperate in discovery and would not reveal the amount of debt she had personally incurred. She continued to spend money for educational pursuits, increasing her student loan debt, while simultaneously indicating she would be incapable of any form of employment. The trial court specifically noted that the parties' prior standard of living was impossible to maintain because it was an illusion and not premised on any financial stability. The distribution of marital assets, which were minimal, favored plaintiff and were equitable.

It is well-recognized that a trial court may consider the voluntary reduction of income when determining an award of spousal support. *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000). "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." *Id.*; *Healy v Healy*, 175 Mich App 187, 191-192; 437 NW2d 355 (1989). A finding of bad faith is not identified as a requirement for the imputation of spousal support. *Id.*

The evidence available at trial demonstrated that plaintiff had maintained employment as a nursing assistant for a period of time before being terminated for failing to appear for work or accept shifts. While plaintiff alleged various medical conditions preventing her ability to work, she had not submitted, until the motion for relief from judgment, any medical documentation suggesting she was precluded from employment. In imputing income, the trial court noted that plaintiff was intelligent and had completed various educational programs and was aspiring to a particular career as a medical case manager through a degree program. Plaintiff has apparently not explored the option of seeking qualification for disability through the Social Security Administration to supplement her spousal support income premised on her allegations of health conditions that preclude her ability for gainful employment.

While plaintiff challenges the potential earning capacity in her proposed career, she has provided no evidence to dispute the possible income figure suggested by defendant and asserts error in the trial court's lack of consideration of debts incurred by plaintiff. The contention that the trial court failed to sufficiently consider or award offsets for her personal debt obligations is without merit. Plaintiff repeatedly refused to cooperate with discovery and would not reveal the extent of her credit card and student loan debt. "An appellant cannot contribute to error by plan or design and then argue error on appeal." *Munson Med Ctr v Auto Club Ins Ass'n*, 218 Mich App 375, 388; 554 NW2d 49 (1996). Hence, any failure by the trial court to consider alternative factors in the imputation of income is directly attributable to plaintiff's failure to appear for trial and to cooperate with discovery throughout the proceedings.

In addition, plaintiff ignores that at the conclusion of her motion for relief from judgment the trial court acknowledged it would be appropriate to refer the issue of support to the Friend of the Court for investigation "regarding her ability to obtain and maintain full time employment, . . . retroactive to August 14, 2015." As such, we find that the issue of support and the propriety of income imputation are not ripe for this Court's review based on a pending investigation and recommendation by the Friend of the Court. In adhering to the ripeness doctrine courts will not act when the issue is only hypothetical or the existence of a controversy merely speculative. See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 738 n 4; 614 NW2d 607 (2000) (citation omitted).

Plaintiff once again contends that defendant made misrepresentations to the trial court regarding her ability to work and potential wage earning capacity. MCR 2.612(C)(1)(f) states: "On motion and on just terms, the court may relieve a party . . . from a final judgment, order, or proceeding [based on] [a]ny other reason justifying relief from the operation of the judgment." In order to successfully attain the setting aside of a judgment under MCR 2.612(C)(1)(f), a trial court is required to find that:

> (1) the reason for setting aside the judgment must not fall under [MCR 2.612(C)(1)(a) through (e)], (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. [*King v McPherson Hosp*, 290 Mich App 299, 304; 810 NW2d 594 (2010) (citation omitted).]

In general, "relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered." *Id.* (citation omitted). This Court's ruling in *Rose*, 289 Mich App at 58, recognized the existence of "[w]ell-settled policy considerations favoring finality of judgments circumscribe relief under MCR 2.612(C)(1)." Despite the relief available pursuant to subrule (C)(1)(f) comprising the "widest avenue for relief under this court rule, it nonetheless requires 'the presence of both extraordinary circumstances and a demonstration that setting aside the judgment will not detrimentally affect the substantial rights of the opposing party.' " *King*, 290 Mich App at 305, quoting *Rose*, 289 Mich App at 58.

Plaintiff has failed to come forward with evidence that defendant made any misrepresentations to the trial court or that his opinion on the issue of plaintiff's ability to work influenced the trial court's decision. While plaintiff challenges the assertion that her loss of prior employment was due to her own failure to appear for or accept a schedule of work, this allegation was substantiated by defendant's securing by subpoena plaintiff's employment discharge information from Beaumont Hospital. Similarly, plaintiff provides no evidence to contradict the alleged rate of pay received from this employment. Second, with reference to her purported earning capacity as a medical case manager, although plaintiff disputes the asserted level of income she does not provide any documentation to contradict defendant's opinion. Further, this amount is irrelevant because the trial court imputed income based on plaintiff's last known earnings and not any future earnings in this job capacity. Third, while plaintiff challenges her ability to be employed based on various medical conditions, the trial court has already indicated it would refer the matter to the Friend of the Court for investigation and recommendation. This issue requires a full and complete review, with the submission of medical

documentation, to evaluate plaintiff's claim of incapacity. This issue is not ripe for review by this Court having already been referred to the Friend of the Court.

VI. CHILD SUPPORT

Plaintiff also asserts that the award of child support is improper premised on the trial court's imputation of income in its calculation. Addressing the award of child support, this Court has explained the proper standard of review to be applied as follows:

> The Michigan Legislature has required that when a court orders child support as part of a divorce judgment, the court shall order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau unless to do so would be unjust or inappropriate and the trial court makes certain specified findings in writing or on the record[.] Thus, a trial court must presumptively follow the Michigan Child Support Formula (MCSF). If the court deviates, it must make an adequate record regarding the mandatory statutory criteria for doing so. We review de novo whether a trial court properly reached its determination within the framework of the MCSF or the statutory deviation criteria. We review for clear error, however, the trial court's factual findings underlying its determination of a child-support award. A finding is clearly erroneous if this Court, on all the evidence, is left with a definite and firm conviction that a mistake was made; the appellant bears the burden of showing that a mistake was made. We review for an abuse of discretion a trial court's discretionary rulings that are permitted by statute or the MCSF. An abuse of discretion occurs when a court selects an outcome that is not within the range of reasonable and principled outcomes. [*Stallworth v Stallworth*, 275 Mich App 282, 283-84; 738 NW2d 264 (2007) (citations and quotation marks omitted).]

As acknowledged previously by this Court:

> According to the 2004 Michigan Child Support Formula Manual, the first step in determining a child-support award is to ascertain each parent's net income by considering all sources of income. 2004 MCSF 2. In general, this is determined by ascertaining "the actual resources of each parent." MCL 552.519(3)(a)(vi); *Ghidotti v Barber*, 459 Mich 189, 198; 586 NW2d 883 (1998). But longstanding Michigan caselaw permits a court to impute income to a parent on the basis of the parent's unexercised ability to pay when supported by adequate fact-finding that the parent has an actual ability and likelihood of earning the imputed income. *Id*. at 198-199. Consistent with this caselaw, the MCSF grants a court the discretion to impute income to a parent, 2004 MCSF 2.10(B), which the manual defines as "treating a party as having income or resources that the individual does not actually have." 2004 MCSF 2.10(A). "This usually occurs in cases where there is a voluntarily [sic] reduction of income or a voluntary unexercised ability to earn." [*Id*. at 284-285.]

Evidence was submitted regarding plaintiff's previous work history, her level of compensation, education, possible future earning capacity, and the voluntary reduction of income. At the time of trial, plaintiff did not provide any evidence or documentation to contradict or call this information into question. "The trial court was in the best position to evaluate the credibility of the witnesses, and [this Court] will not second-guess the trial court's determination that [plaintiff] presented a less than credible accounting of [her] finances." *Id.* at 286.

As discussed, in conjunction with plaintiff's contention of error regarding the imputation of income in the computation of spousal support in her motion for relief from judgment, the same issue of ripeness exists given the trial court's order to refer the support awards, including the determination of plaintiff's ability to maintain employment, to the Friend of the Court for investigation and recommendation. As such, the matter of child support and imputation of income should, in accordance with the trial court's prior order, first be submitted to the Friend of the Court before any appellate review is undertaken.

VII. OTHER RELIEF

Plaintiff asserts the trial court erred in failing to address the myriad of concerns she has raised in support of her motion to obtain relief from the judgment of divorce. Effectively, plaintiff seeks to set aside every provision of her divorce judgment and re-litigate the entire matter.

Initially, we note that plaintiff fails to provide any citation to legal authority to support her contentions of error. As recognized in *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (citations and quotation marks omitted):

> A party may not leave it to this Court to search for authority to sustain or reject its position. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority. Argument must be supported by citation to appropriate authority or policy. An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue.

Based on this deficiency, plaintiff's issue could be deemed abandoned. In addition, many of the alleged errors by the trial court are directly attributable to plaintiff's failure to cooperate by providing documentation and discovery, for example, to verify her asserted debts. Plaintiff was afforded every opportunity by the trial court to submit documentation to support her claims during the divorce proceedings and repeatedly failed to cooperate or blatantly disobeyed orders of the trial court. Plaintiff failed to appear for trial and waited until the judgment of divorce was entered to seek resolution of her demands. "[E]rror requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence . . . " *Farm Credit Servs of Mich Heartland, PCA v Weldon*, 232 Mich App 662, 684; 591 NW2d 438 (1998).

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara*, 249 Mich App at 188; *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "The division need not be

mathematically equal, but significant departures from congruence must be explained by the trial court." *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). The distribution of property in this divorce was equitable. The assets of the parties were limited and depleted by years of living beyond their means and plaintiff's purposeful behaviors in unnecessarily prolonging the proceedings and obstructing resolution. While plaintiff alleges misuse of monies by defendant, she concurrently fails to explain how she expended the $800 to $900 a month she received in spousal support when all the major expenses, such as the marital home mortgage and debts, were being paid by defendant. Numerous items taken by plaintiff from the marital home, contrary to orders of the trial court, remain unaccounted for by plaintiff. Primarily, plaintiff seeks to obtain a lifestyle that is not available or sustainable.

Of greatest significance is plaintiff's confusion of the issue by equating relief from judgment with a right to re-litigate every factor of her divorce judgment. Pursuant to MCR 2.612(C)(1)(a), (c) and (f), a party may be relieved from a final judgment, order, or proceeding for:

> (a) Mistake, inadvertence, surprise, or excusable neglect.
>
> * * *
>
> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
>
> * * *
>
> (f) Any other reason justifying relief from the operation of the judgment.

Following the filing of pleadings and oral argument on plaintiff's motion for relief from judgment premised on various subsections of MCR 2.612(C)(1), the trial court definitively indicated plaintiff's lack of credibility on numerous matters. The trial court rejected plaintiff's claims regarding defendant's fraud and misrepresentations and assertions of mistake, inadvertence, or excusable neglect. The trial court also specifically reviewed the requirements for relief from judgment under MCR 2.612(C)(1)(f), finding "[t]he proofs submitted to the Court on September 24, 2014 were sufficiently presented." Hence, contrary to plaintiff's contention that the trial court improperly failed to consider the remainder of her arguments for relief from judgment, the trial court, having determined that plaintiff did not meet the threshold requirements of MCR 2.612(C)(1), was not required to consider plaintiff's additional claims of error.

Affirmed. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause