

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DULSEY WOLLARD,

Plaintiff-Appellee,

v

LYNN WOLLARD,

Defendant-Appellant.

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UNPUBLISHED

January 12, 2012

No. 299490

Midland Circuit Court

LC No. 09-005659-DM

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce, challenging the trial court's award of spousal support and aspects of the property division. We affirm.

The parties were married in November 1992. Plaintiff filed for divorce in April 2009, and defendant moved out of the marital home at the end of May 2009. During the pendency of the divorce, defendant continued to pay the bills for plaintiff's household, as plaintiff could not afford to do so.

Defendant worked for Kent Power as vice-president and corporate pilot. His base salary was \$95,000, and he indicated that his 2009 gross income was \$113,000. Plaintiff asserted that defendant's annual income was \$130,000, and the trial court stated that it would attribute an income of \$120,000 to defendant for purposes of calculating spousal support. Plaintiff grossed \$7,430 in 2008 from her part-time job with Bullock Creek Schools.

In 1986, defendant began participating in a National Electrical Annuity Plan (NEAP), a defined contribution plan, and he contributed to it throughout the marriage. The balance of the NEAP was \$439,307 shortly before the time of trial, but it was valued at just over \$300,000 at the time the divorce complaint was filed; the plan had a value of approximately \$17,000 at the time the parties married. The parties, who were in their 40s at the time of trial, both agreed that defendant made the majority of the financial contributions to the marriage and that by mutual agreement plaintiff had remained in the home to raise and care for the couple's two children.

Plaintiff was a cosmetologist and hair stylist; after the birth of the children, the couple renovated the marital home to include a cosmetology shop, so plaintiff could work from home. However, plaintiff did not continue working as a hair stylist, and she unsuccessfully sought full-time employment with the Bullock Creek Schools.

The trial court ordered defendant to pay plaintiff pay spousal support of \$750 per month for three years and then \$1000 per month for the following eight and one-half years. With respect to the NEAP, the court took the defined contribution plan's value at the time the complaint was filed and its value approximately one month before the divorce trial and averaged the dollar amounts, before subtracting the premarital portion of the plan's value. The total value of the NEAP subject to division as marital property was \$392,055, with plaintiff being awarded \$115,902 pursuant to a Qualified Domestic Relations Order (QDRO). In regard to other matters, the court ordered joint legal and physical custody relative to the parties' two minor children, ordered defendant to pay child support in the amount of \$1,629 per month for two children and then \$1,053 per month for one child, ordered the sale of the marital home, with plaintiff to receive the first \$50,000 from the sale after satisfaction of the mortgage and the parties to evenly split any remaining proceeds, ordered that real property owned by defendant prior to the marriage was non-marital property and was to remain solely in his name, ordered a Janus Joint Account valued at \$161,274 to be split evenly but with defendant then giving plaintiff an additional \$25,000 from his half share, and ordered that each party would retain their own Roth IRAs.

On appeal, defendant first argues that the trial court erred by failing to make specific factual findings on all factors relevant to an award of spousal support and by ordering the payment of spousal support in too high of an amount and for too long a time period. We disagree.

We review the trial court's factual findings regarding an award of spousal support for clear error. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). If the factual findings are not clearly erroneous, we will evaluate the award to determine if it was fair and equitable in light of the facts and circumstances. *Olson v Olson*, 256 Mich App 619, 629-630; 671 NW2d 64 (2003); *Moore*, 242 Mich App at 655. "The trial court's decision regarding [spousal support] must be affirmed unless the appellate court is firmly convinced that it was inequitable." *Olson*, 256 Mich App at 630. This Court has also stated that we "review[] a trial court's award of spousal support for an abuse of discretion." *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). In *Wright v Wright*, 279 Mich App 291, 307; 761 NW2d 443 (2008), this Court indicated that we review for an abuse of discretion an award of spousal support and that a dispositional ruling relative to spousal support should be affirmed unless the appellate court is left with a firm conviction that the decision was inequitable. An abuse of discretion occurs when the trial court's decision falls outside a range of reasonable and principled outcomes. *Woodington*, 288 Mich App at 355. We conclude that the trial court's spousal support award did not constitute an abuse of discretion, nor do we have a firm conviction that the award was inequitable.

The purpose of spousal support is to balance the income and needs of the parties, while not impoverishing either party. *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). An award of spousal support must be just and reasonable under the circumstances of the case. *Id.* The trial court should consider the following factors:

"(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.” [Id. at 726-727, quoting *Olson*, 256 Mich App at 631.]

The trial court should make specific factual findings regarding these factors when relevant to the case. *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010). With respect to findings by a court in a bench trial, “[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.” MCR 2.517(A)(2). The trial court here made the following findings:

The parties do not seem to disagree that an amount of spousal support is appropriate for this case, as it’s a [17] year marriage and the plaintiff had essentially been maintaining the home during this time. She has some experience of working in a hair salon and has some skills in that; however, in the current economy, her marketable skills would be somewhat limited.

The youngest child in this case is 13 years old. The plaintiff will be losing her healthcare coverage as a result of this divorce proceeding.

The Court is of the opinion the defendant does have the ability to make payment for spousal support. . . .

The Court has calculated that the defendant’s income after taxes would be approximately \$7,500 per month. The plaintiff’s, based upon the information provided, would be approximately \$1,200, including the child care credit that she will get for income tax purposes. . . .

[J]ust so you understand the logic of the breakdown, after three years . . . one of the children will no longer be eligible for coverage under the child support provision, that’s why the first three years are at [\$750] and the last eight-and-a-half are at [\$1000].

The trial court’s opinion set forth the facts upon which it based the award of spousal support. The trial court did not discuss every factor listed in *Berger*, but it was not required to do so. *Myland*, 290 Mich App at 695. The trial court specifically noted plaintiff’s limited ability to earn an income, the length of the marriage, defendant’s income compared to plaintiff’s income, defendant’s ability to pay spousal support, plaintiff’s loss of health care coverage, the ages of the children, and that one child would no longer be eligible for child support in three years.

Defendant reviews and analyzes each of the spousal support factors, noting that they weigh against the court’s award. However, on our review of the factors, we are not persuaded that defendant has established error necessitating reversal. In addition, defendant has not demonstrated that the trial court’s factual findings were clearly erroneous.

Based on the facts as found and the reasoning set forth by the trial court, we conclude that the trial court's decision to grant spousal support for a total of 11½ years in the amounts ordered did not constitute an abuse of discretion, nor do we have a firm conviction that the award was inequitable.

Next, defendant argues that the trial court failed to make specific findings necessary to support the property division, making it difficult to determine if the division was equitable.

Marital property should be divided equitably in the light of all the circumstances. *Berger*, 277 Mich App at 716-717. The division need not be mathematically equal, but any significant departure from an equal division must be clearly explained. *Id.* at 717. To reach an equitable division, the trial court may consider the following factors:

(1) the duration of the marriage, (2) the contributions of the parties to the marital estate, (3) the age of the parties, (4) the health of the parties, (5) the life situation of the parties, (6) the necessities and circumstances of the parties, (7) the parties' earning abilities, (8) the parties' past relations and conduct, and (9) general principles of equity. [*Id.*]

The determination of relevant factors varies from case to case, and no one factor should be given undue weight. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992).

We find that the property division was fair and equitable; minimally, we are not left with a firm conviction that the division was inequitable. *Berger*, 277 Mich App at 717-718. The trial court divided the property almost equally. This Court has held that only significant departures from equal division need to be specifically explained in detail. *Id.* at 717. Defendant complains that the court did not review and analyze any of the property division factors before dividing the property, yet he fails to explain how review of the factors would have served as a basis to make an unequal division of property in defendant's favor. Moreover, after the trial court carefully reviewed each of the assets, it asked defendant's attorney, "any questions from your perspective on property issues?" And counsel responded, "No, your Honor." If defendant desired an explanation of the division predicated on the property division factors, he could have spoken up. Moreover, the spousal support factors reviewed by the court tend to overlap with the property division factors. Reversal is unwarranted.

Finally, defendant argues that the trial court erred relative to the valuation of the NEAP. Again, the court took the defined contribution plan's value at the time the complaint was filed and its value approximately one month before the divorce trial and averaged the dollar amounts, before subtracting the premarital portion of the plan's value. The trial court utilized this approach on the basis of equity given the large fluctuations in the stock market.

In *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997), this Court discussed the issue of asset valuation dates in the context of dividing property in divorce cases:

The inquiry regarding which assets comprise the marital estate is distinct from the question of the valuation of those assets. For purposes of dividing property, *marital assets are typically valued at the time of trial or at the time judgment is entered*, *Kilbride v Kilbride*, 172 Mich App 421, 436; 432 NW2d 324

(1988), though the court may, in its discretion, use a different date. *Thompson v Thompson*, 189 Mich App 197, 199-200; 472 NW2d 51 (1991). . . . Where the court determines that a particular asset is, in fact, a marital asset, it must then value the asset as of either the date of trial, the date of judgment, or a more appropriate date. As a practical matter, this process creates conflicting motivations as between the parties to a divorce regarding its finalization. An early valuation date encourages parties to postpone potentially economically beneficial contractual relationships to avoid having to share such accessions of wealth with a spouse. A later valuation date encourages those who think the other spouse is in line for such a financial asset to delay the proceedings in hopes of securing for themselves a portion of such asset. A related public policy complication is that if a valuation date is regarded as fixed, a party with an expectancy of entering into a potentially economically beneficial contractual relationship would be provided with an incentive not to attempt to reconcile. Hence, in determining the valuation date, *the circuit court must and does retain considerable discretion to see that equity is done*, *Boonstra v Boonstra*, 209 Mich App 558, 563; 531 NW2d 777 (1995), thereby limiting to whatever extent feasible any artificial impetus to file for, delay, hasten, or finalize a divorce. Further, an important goal of the process by which marital assets are divided properly ought to be to limit the extent to which the process skews ordinary financial arrangements and incentives. [Emphasis added.]

Given that assets are typically valued at the time of trial or entry of a divorce judgment, defendant was indeed fortunate that the trial court exercised its discretion in averaging the values. Of course, we recognize that a court, exercising its discretion, could use a complaint filing date as the date of valuation, but we find no abuse of discretion here. The trial court did not wish to use the filing date because the stock market had reached a very low point at that time, yet the court did not want to give plaintiff the full benefit of the market's rebound and additional contributions made by defendant. We find that the trial court's approach was fair and equitable under the circumstances. Reversal is unwarranted.

Affirmed.

/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald  
/s/ Patrick M. Meter