

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA AGNES QUINN,

Plaintiff-Appellant,

v

PATRICK LLOYD QUINN,

Defendant-Appellee.

UNPUBLISHED
February 28, 2012

No. 302040
Washtenaw Circuit Court
LC No. 09-003038-DO

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of divorce and spousal support order entered by the trial court. We affirm.

Plaintiff and defendant married on April 18, 1980. The parties resided together as husband and wife until defendant vacated the marital home in December 2009. Plaintiff filed for divorce on December 21, 2009. In anticipation of the divorce, defendant liquidated the parties' Morgan Stanley IRA, which had a value of approximately \$120,000. After taxes and penalties, the total payout was around \$71,100. The IRA was paid out in installments of \$63,000, \$12,000, and \$2,100. The \$63,000 payout was deposited into the parties' joint account and the remaining money was deposited into defendant's father's account and then transferred to defendant.

Shortly after plaintiff filed for divorce, defendant filed a motion for the return of the IRA funds. In return, plaintiff filed a motion for temporary spousal support, requesting \$3,223 per month. Before either motion was heard, the trial court entered an order referring the case to mediation. Following mediation, the trial court entered a consent order regarding interim financial matters. The consent order provided that plaintiff would continue to have exclusive use of the marital residence. Further, plaintiff was given use of the liquidated IRA funds in the parties' joint account. The order provided that the money was to be used to pay various marital expenses as well as plaintiff's "regular and reasonable living expenses." Defendant was awarded the exclusive use of the money he received in his paycheck. Both parties were required to keep and provide each other with an accounting of where money was spent.

On the day of trial, the parties indicated that they had reached an agreement on several issues. The parties agreed that the marital portions of defendant's 401K and pension would be divided evenly and that plaintiff would keep her nominal pension valued at approximately \$100 per month. The parties also agreed that plaintiff would keep a 2002 Pontiac Aztec, and

defendant would keep a 2008 Chevy Aveo. Defendant was responsible for paying any liability associated with his vehicle. Defendant was also awarded a 2002 Pontiac Grand Am with nominal value.

Trial then proceeded on the following issues: (1) the parties' bank accounts; (2) a 1998 Honda Motorcycle; (3) spousal support; (4) COBRA and/or medical insurance for plaintiff; (5) plaintiff's possible Social Security Disability benefits; (6) attorney fees; (7) the parties' dog; (8) the parties' 2009 tax return; and (9) several items of personal property defendant was requesting from the marital home. Plaintiff and defendant were the only witnesses to testify and, after hearing their testimony, the trial court issued a ruling from the bench. The court awarded defendant the motorcycle, the dog, and the personal property from the marital home he requested. Plaintiff was awarded any Social Security benefits she may receive in the future. The court awarded plaintiff and defendant their respective bank accounts. Further, the 2009 tax return was to be filed together. The parties would split any refund, but defendant would be responsible for paying any deficiency. Finally, the trial court awarded plaintiff modifiable spousal support in the amount of \$2,200 per month. From that \$2,200, defendant was required to purchase COBRA benefits for plaintiff through his employer and maintain them for as long as they were available. After the COBRA benefits expired, plaintiff had to find her own medical insurance. Defendant was also ordered to pay \$6,000 in attorney fees.

On appeal, plaintiff argues that the trial court erred because it failed to treat the parties' Morgan Stanley IRA as marital property subject to equitable division. This issue, however, was neither presented to nor evaluated by the trial court. Prior to trial, plaintiff submitted a trial brief listing the parties' marital assets and addressing how the marital estate should be divided. Nowhere in her brief, and at no time during trial, did plaintiff ever identify the IRA funds as marital assets and request that they be equitably divided. In any event, we find plaintiff's argument without merit because the IRA funds were distributed by means of the parties' pretrial consent order. Under the terms of the consent order, both plaintiff and defendant agreed that plaintiff would retain the liquidated IRA funds to support herself during the divorce proceedings. In exchange, the parties forwent litigation on the issue of temporary spousal support. Plaintiff, having agreed to the distribution of IRA funds in the consent order, cannot argue on appeal that the resultant action was error. See *Holmes v Holmes*, 281 Mich App 575, 587, 588; 760 NW2d 300 (2008).

Next, plaintiff argues that the trial court erred when it awarded her only \$2,200 a month in spousal support. The award of spousal support is reviewed for an abuse of discretion. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). An abuse of discretion occurs when the result is outside the range of reasonable and principled outcomes. *Id.* "The trial court's factual findings are reviewed for clear error." *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). The findings are presumptively correct and the burden is on the appellant to show clear error. *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990). A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake was made. *Id.* "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. The trial court's decision as to alimony must be affirmed unless this Court is firmly convinced that it was inequitable." *Berger*, 277 Mich App at 727.

“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. When awarding spousal support, a 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 v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

A trial court need not address every factor; however, it “should make specific factual findings regarding the factors that are relevant to the particular case.” *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010) (citation omitted).

Upon review of the testimony presented to the trial court, we cannot conclude that the spousal support award was clearly inequitable. In coming to its conclusion, the trial court weighed a number of factors and found that spousal support was appropriate. The trial court noted that defendant was gainfully employed by General Motors and earned an annual salary of approximately \$100,000. After taxes, defendant’s take home pay was approximately \$5,800 per month. Plaintiff, on the other hand, had not been employed since 2007. However, she admitted that she had made no efforts to seek employment, ostensibly because of medical issues. Therefore, the trial court determined plaintiff chose not to work.

On appeal, plaintiff challenges this finding that she has chosen not to work. A review of the transcript shows that plaintiff presented very little evidence regarding the nature and extent of any medical conditions she suffered from.¹ Plaintiff presented no documentary evidence or expert medical testimony regarding her health issues. She did testify that she was being treated by several different doctors, was taking several prescription medications, and that she had been diagnosed with leukemia. Defendant did acknowledge that plaintiff had health issues, and stated that he did not believe she was lying about having leukemia. Further, the trial court correctly noted that plaintiff had not attempted to look for employment since 2007, and plaintiff had been denied Social Security Disability benefits, which supports its conclusion that plaintiff was capable of working. Under these circumstances, the trial court’s findings are not clearly

¹ Plaintiff attempted to testify regarding her diagnoses. However, defendant objected on the grounds that her testimony was hearsay and the trial court sustained the objection.

erroneous.²

Plaintiff also argues that the trial court erred because plaintiff's present situation is one of financial hardship while defendant's is one of financial surplus. Plaintiff argues that her financial needs are great, relying in large part on her medical expenses. This Court, however, is unable to properly assess plaintiff's current financial situation and needs because plaintiff presented little evidence regarding her needs. Plaintiff presented no medical bills to the trial court. Indeed, she acknowledged that she did not know how many thousands of dollars she had spent over the past year. Further, the consent order required plaintiff to keep an account of all her expenses during the divorce proceeding; however, it appears that plaintiff failed to comply with that order. Instead, plaintiff gave testimony in the form of estimates and speculation regarding what her monthly expenditures were. Plaintiff then testified that she needed \$3,300 in spousal support, but she was unable to explain how she arrived at this figure. Under these circumstances, we cannot conclude that the trial court's findings were clearly erroneous.

In sum, the trial court's findings on the relevant support factors were supported by the testimony and not clearly erroneous. The trial court addressed the relevant factors and awarded spousal support in the amount of \$2,200 per month. A review of all the factors does not convince us that the award was inequitable.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello

² We are not suggesting that plaintiff does not suffer from any serious medical conditions. Rather, we simply conclude that plaintiff failed to present evidence establishing her inability to work due to any medical conditions she may have.