

STATE OF MICHIGAN
COURT OF APPEALS

KIRK DOUGLAS CHURCHILL,

Plaintiff/Counter-Defendant-
Appellee,

v

ANNETTE SANDRA CHURCHILL,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
March 15, 2012

No. 303735
St. Clair Circuit Court
LC No. 10-000257-DO

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Defendant appeals by right from a judgment of divorce. On appeal, defendant argues that the trial court abused its discretion by awarding defendant less spousal support than she sought, and awarding defendant only a portion of her attorney fees. We affirm.

I. BACKGROUND

Plaintiff and defendant were married almost 28 years prior to plaintiff's filing a complaint for divorce. During the marriage, plaintiff worked to support the family, while defendant maintained the marital home and raised the parties' two children. Defendant requested spousal support in the amount of \$2,914 per month and that plaintiff pay the majority of defendant's attorney fees. After a bench trial, the trial court awarded defendant \$1,400 per month in spousal support and ordered plaintiff to pay \$2,464 towards defendant's attorney fees. From these rulings, defendant now appeals as of right.

II. SPOUSAL SUPPORT

Defendant first argues that the trial court abused its discretion in awarding defendant less spousal support than she sought. In reviewing a marital property division, we "review the trial court's findings of fact under the clearly erroneous standard." *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "The appellant has the burden to persuade the reviewing court that a mistake has been committed, failing which the trial court's findings may not be overturned." *Ewald v Ewald*, 292 Mich App 706, 723; ___ NW2d ___ (2011). In the absence of clear error,

this Court must determine whether the dispositional ruling was fair and equitable in light of the facts. *Id.*; *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000).

“The award of spousal support is . . . within the trial court’s discretion. 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.” *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008) (citations omitted); see also *Hanaway v Hanaway*, 208 Mich App 278, 295; 527 NW2d 792 (1995). Factors to be considered are:

(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*, 277 Mich App at 726-727, quoting *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

The trial court explained its findings as to these factors on the record and defendant does not argue that the trial court made any factual errors. Thus, we must only determine whether the dispositive ruling was fair and equitable in light of the facts in the record. We will only reverse if we have a firm conviction that defendant’s share of the marital property was inequitable. *Ewald*, 292 Mich App at 723. Defendant bears the burden of showing that the trial court’s ruling was unfair and inequitable, *id.*, but she has failed to advance such a convincing argument on appeal.

Defendant makes much of the fact that her daughter was to purchase the marital home, and that defendant could have kept it had she been awarded more spousal support. However, she and her daughter came to the arrangement in order to prevent the sale of the home to give plaintiff his equity in the home, it was not forced upon defendant. Instead of living elsewhere, she will continue to live in the home. More importantly, it also appears that the trial court took into consideration defendant’s actual future living expenses, with her daughter, when deciding upon the amount necessary for defendant’s upkeep. And although defendant argues that her spousal support award was inadequate given the percentage of plaintiff’s income it represents, the trial court’s goal was not to mathematically divide plaintiff’s income equally, but instead to balance the incomes and needs of the parties so that neither would be impoverished. Because the trial court’s award of spousal support was not inequitable, the trial court did not abuse its discretion in its allocation of spousal support.

III. ATTORNEY FEES

Defendant next challenges the trial court’s award of attorney fees to her. This Court reviews “for an abuse of discretion a trial court’s award of attorney fees and costs.” *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). “The trial court abuses its discretion when

its decision results in an outcome that falls outside the range of reasonable and principled outcomes.” *Ewald*, 292 Mich App at 725. The trial court’s findings of fact on which it based its decision are reviewed for clear error. *Id.* at 724-725.

“Attorney fees in a divorce action are awarded only as necessary to enable a party to prosecute or defend a suit[.]” *Hanaway*, 208 Mich App at 298, citing *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993); MCR 3.206(C)(2). “A party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support.” *Id.* “The party requesting the attorney fees has the burden of showing facts sufficient to justify the award.” *Woodington v Shokoohi*, 288 Mich App 352, 370; 792 NW2d 63 (2010). “This would include proving both financial need and the ability of the other party to pay, as well as the amount of the claimed fees and their reasonableness.” *Ewald*, 292 Mich App at 725 (citations omitted).

Defendant does not allege that the trial court made any factual errors. Thus, we must determine whether the trial court’s award of \$2,464 in attorney fees, instead of a significant amount of defendant’s \$20,897.40 attorney fees, constituted an abuse of discretion. While it seems that the trial court’s ultimate award was low considering the extensive discovery that took place, along with a number of trial dates that were adjourned, we cannot say that the trial court abused its discretion in its determination of attorney fees. In ruling, the trial court stated, “I do not believe that [defendant] can bear the cost of prosecuting or defending this action. I also believe . . . that [plaintiff] is capable of contributing some sum to insure that [defendant] is able to be represented by an attorney of her choosing.” The trial court determined that although defendant could not pay her own attorney fees, it was not reasonable to have plaintiff pay all of the fees accrued by defendant given the type of issues raised in the proceeding, the amount in question, the difficulty of the case, and the expenses incurred throughout the proceedings. This conclusion did not constitute an abuse of discretion, so we affirm the trial court’s determination of attorney fees.

Affirmed.

No costs to either party. MCR 7.219(A).

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray