

STATE OF MICHIGAN
COURT OF APPEALS

SHIRLEY KORTH,

Plaintiff-Appellee,

v

ALLEN KORTH,

Defendant-Appellant.

FOR PUBLICATION

April 15, 2003

9:00 a.m.

No. 238609

Genesee Circuit Court

LC No. 99-212959-DO

Updated Copy

May 23, 2003

Before: Saad, P.J., and Zahra and Schuette, JJ.

SCHUETTE, J. (*dissenting in part*).

I respectfully dissent in part. I am reluctant to disturb the decision of the trial court with respect to spousal support and I would uphold the trial court's determination of this issue.

The case *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992), established the framework for appellate review of property settlements and spousal support in a divorce matter. In *Sparks*, the Michigan Supreme Court held:

The appellate court must first review the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. But because we recognize that the dispositional ruling is an exercise of discretion and that appellate courts are often reluctant to reverse such rulings, we hold that the ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable. [*Id.* at 151-152 (citations omitted).]

See also *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

In this case, a review of the record indicates that the trial court's findings of fact are not clearly erroneous.

In addition, the *Sparks-Ianitelli* framework requires affirmance unless the appellate court is left with the firm conviction that the division is inequitable. Here, the trial court reviewed and balanced the facts and circumstances surrounding a twenty-three year relationship and a ten-year marriage in crafting a division of marital property and in concluding that there was a need for a

fifteen-year spousal support decree. The trial court applied the various factors outlined in *Sparks* in considering both the spousal support and the division of marital property. *Sparks, supra* at 159-160.

Often, although not universally, the design of a division of marital property and the award of spousal support is the result of an intricate and delicate equation that should not be altered without a firm conviction that it was inequitable. I am of the opinion that the trial court's determination of spousal support is not inequitable under the facts and circumstances of this case. I would affirm the trial court's decision with regard to spousal support.

/s/ Bill Schuette