STATE OF MICHIGAN

COURT OF APPEALS

BARBARA JEAN KENNEDY,

Plaintiff-Appellee,

v

JESSE KENNEDY,

Defendant-Appellant.

UNPUBLISHED
August 9, 1996

No. 179152
LC No. 92-223910-DM

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo*, JJ.

PER CURIAM.

Defendant appeals as of right from the parties' judgment of divorce. We affirm.

Plaintiff and defendant were married in 1982. Two children were born of the marriage: Jessica Day Kennedy (born 8/6/87) and Julie Dawn Kennedy (born 7/18/90). According to plaintiff, she fled the marital home on June 25, 1992 when defendant assaulted her with the handle end of a hammer. She filed for divorce the following August. Plaintiff was granted custody of the children during the pendency of the proceedings and, because of her stated fear of defendant, was allowed to reside out-of-state with the children.

At trial, plaintiff and several other witnesses testified concerning defendant's history of physically and psychologically abusing plaintiff. Defendant, appearing in pro per, denied assaulting plaintiff and suggested that she fabricated the June 25, 1992 incident so she could get his money. Following closing arguments, the court requested that the parties submit proposed findings of fact and conclusions of law. After reviewing their proposals, the court awarded plaintiff her personal belongings, fifty percent of the parties' money assets, the marital home, and sole custody of the children with supervised visitation by defendant. Defendant was ordered to pay plaintiff's attorney fees.

On appeal, defendant first contends that he successfully discredited plaintiff's proofs concerning the existence of both ongoing physical abuse and the June 25, 1992 hammer incident, so that there was

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* Circuit judge, sitting on the Court of Appeals by assignment.

insufficient evidence to deny him custody and restrict visitation, or to justify the property award. We disagree.

The factual findings of a trial court are to be reviewed for clear error. A factual finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. If the court's view of the evidence is plausible, this Court may not reverse. *Beason v Beason*, 435 Mich 791; 460 NW2d 207 (1990). The trial court, sitting as the trier of fact, was responsible for resolving questions regarding the credibility of the witnesses. MCR 2.613(C); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 174; 530 NW2d 772 (1995). Simply because the trial court's findings of fact accepted as credible the testimony of plaintiff's witnesses does not render those findings clearly erroneous. *Triple E, supra.* Because it was plausible from the evidence that defendant abused plaintiff both on June 25, 1992 and on previous occasions, *Beason, supra,* we find no clear error.

Defendant next claims that the trial court's division of the marital property was inequitable. After a de novo review, we disagree and conclude that the near fifty-fifty split was fair and equitable under the circumstances of the case. *Ianitelli v Ianitelli*, 199 Mich App 641, 642; 502 NW2d 691 (1993). There was evidence that plaintiff was subjected to physical and emotional abuse at the hands of defendant throughout most of the marriage, and that this abuse caused the divorce. Moreover, plaintiff's financial contribution to the marriage was significant. Although plaintiff was the only spouse who worked, defendant asserted absolute control over the money and deposited it into an account to which plaintiff had no access. The day after plaintiff left the marital home, defendant virtually depleted the parties' savings account. Defendant claims that he used the money to pay bills, but he failed to offer any evidence in support of the claim; the amount was therefore properly attributable to defendant as part of his share of the assets. Further, plaintiff fled the marital home with no clothes, belongings, or money while defendant remained in the home for over two years and refused to pay interim child support. Plaintiff had become disabled from her work as a result of being physically abused and, especially in the absence of child support, was in need of a fifty-fifty division of the marital property in order to care for herself and the children. Thus, in considering the requisite factors, the property division was fair and equitable.

Defendant also contends that he was denied his procedural due process rights to a trial on the issues of property division, alimony, custody, and visitation. Again, we disagree. Unlike *Watson v Watson*, 204 Mich App 318; 514 NW2d 533 (1994), defendant received a trial to resolve the disputed issues of custody, visitation, child support, and property division. Moreover, contrary to defendant's assertion, these issues were fully litigated. The court also heard opening statements and closing arguments from both sides, did not inappropriately curtail defendant's cross-examination of plaintiff, and gave consideration to defendant's proposed findings of fact. Defendant's due process rights were not violated.

Next, defendant contends that the trial court erred in granting him restricted visitation and in failing to consider an award of joint custody. We are satisfied that the custody and visitation provisions of the divorce judgment were supported by clear and convincing evidence. Plaintiff testified to many

instances of abuse that were witnessed by the children, including an incident in which the children were present in a car when defendant pulled a knife on plaintiff and threatened to kill her if she spoke to a janitor at her workplace. Furthermore, plaintiff was holding Julie when defendant attacked her with the hammer on June 25, 1992; Jessica was sitting nearby and was told by defendant not to interfere when she asked him to stop. A psychologist who assessed the parties and the children testified that defendant showed resentment and anger that might lead to violence, that defendant was delusional, and that defendant had a propensity for physical violence as well as a potential for explosive behavior. Under these circumstances, we find no error in the court's determination that it was in the best interests of the children to award plaintiff custody of the children.

Finally, defendant argues that the trial court abused its discretion in ordering him to pay plaintiff's attorney fees. A trial court's award of attorney fees in a divorce proceeding will not be reversed on appeal absent an abuse of discretion. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). Here, there was no abuse of discretion since there was sufficient evidence to show that plaintiff was unable to bear the expense of litigation. Defendant had control of all the marital assets, including the parties' money, during the entire marriage and during the divorce proceedings. Defendant failed to prove that plaintiff took cash from a secret hiding place, while there was evidence that he withdrew $43,500 from the marital savings account immediately after plaintiff left him. During the pendency of the proceedings, plaintiff was forced to support herself and the children on her disability check because defendant would not comply with a court order requiring him to pay interim child support. Under these circumstances, the trial court did not abuse its discretion in awarding plaintiff attorney fees.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo