STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM HATHERHILL

Plaintiff/Appellant/Cross-Appellee,

v

MAUREEN ELIZABETH HATHERHILL,

Defendant/Appellee/Cross-Appellant.

UNPUBLISHED
January 21, 1997

No. 184996
Macomb Circuit Court
LC No. 93-003448 DO

Before: Jansen, P. J., and Reilly and E. Sosnick,* JJ

PER CURIAM.

Plaintiff appeals as of right from the judgment of divorce and defendant cross-appeals. We affirm.

Plaintiff first contends that the form entitled "Stipulation to Refer Domestic Relations Issues to Friend of the Court for Referee Evidentiary Hearing" that his attorney signed violates MCL 552.507(F); MSA 25.176(7)(5) and case law affording parties the right to a de novo hearing on matters submitted to a referee. This assertion is without merit. This Court has previously enforced such agreements, holding that the parties are bound by their agreement, absent fraud or duress. *Marvin v Marvin*, 203 Mich App 154, 157; 511 NW2d 708 (1993); *Balabuch v Balabuch*, 199 Mich App 661, 662; 502 NW2d 381 (1993). Plaintiff waived his right to a de novo hearing before the circuit court, and in accordance with the parties' stipulation, the court was not required to consider evidence that was not submitted to the Friend of the Court.

Plaintiff on appeal and defendant on cross-appeal challenge the court's award of alimony. Plaintiff contends that the trial court did not consider his ability to pay in light of the property settlement when the court awarded $700 per week for ten years in alimony to defendant. Defendant asserts that she should have been awarded spousal support of $60,000 per year, e.g., approximately $1,153 per week. We review the findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151-152; 485

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

NW2d 893 (1992). We review dispositive rulings to decide if they are fair and equitable in light of the facts, and affirm unless we are left with a firm conviction that the decision was inequitable. *Id.* In this case, neither party asserts that the court's findings were clearly erroneous.

The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). Among the factors which should 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. *Ianitelli vIanitelli*, 199 Mich App 641 644; 502 NW2d 691 (1993).

Having considered the parties' arguments, we are not left with a firm conviction that the court's decision was inequitable. Although plaintiff argues that he will be operating at a cash deficiency if the alimony award and property division are not modified, the deficiency is attributable to the fact that plaintiff wanted to retain a valuable income-producing asset, Motor City Harley Davidson, and is essentially purchasing defendant's interest in the business. If plaintiff chooses the option of paying defendant for her interest over a seven-year period as allowed by the divorce judgment, at the end of the period, plaintiff will be the sole owner of the business, which was estimated to be worth $1,000,000 at the time of entry of the divorce judgment.

On the other hand, defendant argues that plaintiff should pay $1,153 each week in alimony and that it should be permanent. We disagree. When setting forth her income in support of her argument, defendant failed to take into account the significant amount of interest income she will have as a result of the property settlement and the income she will generate when she begins working. Accordingly, we are not left with a firm conviction that the award of alimony in the amount of $700 each week for ten years was inequitable.

On cross-appeal, defendant also claims that the trial court improperly determined that the value of plaintiff's 401K plan was $63,500. Specifically, defendant contends that the original valuation was taken as of October 31, 1993, and that the $24,367 that plaintiff testified he would likely contribute to the 401K plan for 1994 should be included. We disagree. The proper time for valuation of an asset is within the sound discretion of the trial court. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). "The termination date of the marriage for asset valuation purposes need not be irreducibly identical with the calendar date on which the judgment of divorce was entered." *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991). In this case, the trial court acted within its discretion by accepting the valuation of the 401K as of October 31, 1993. The complaint of divorce was filed on August 17, 1993, and therefore, the valuation was taken during the pendency of the divorce.

Next, defendant claims that the trial court improperly determined that the value of Motor City Harley Davidson was $1,000,000. Where the trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). In this case, plaintiff testified that the business was worth approximately $550,000. However, in his trial brief, plaintiff modified this valuation to between $700,000 and $800,000. Defendant's expert testified that the business was worth $1,060,000. Therefore, a valuation of $1,000,000 was within the range established by the proofs, and defendant has not demonstrated clear error.

Finally, defendant argues that she was entitled to attorney fees for the trial and appeal. We disagree. The award of attorney fees in a divorce action is within the trial court's discretion. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). Fees are awarded only when it is necessary to enable the party to carry on or defend the suit. *Id.* A party may not be required to invade her assets to satisfy attorney fees when she is relying on the same assets for her support. *Id.*

We are not persuaded that the trial court abused its discretion by refusing defendant's request for attorney fees. There was testimony that defendant took $10,000 out of a joint bank account and $6,000 of it went to pay her attorney. From the record it appears that this amount was not included in the property division, of which defendant received fifty percent. In addition, plaintiff was awarded a substantial property settlement, including a rental property, and alimony. The court also found that defendant was able to work. Defendant has not demonstrated that to pay her attorney fees she will be required to invade assets on which she is relying for her support. Accordingly, the court's decision was not an abuse of discretion.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick