

STATE OF MICHIGAN
COURT OF APPEALS

NANCY JOANN SELLAR,

Plaintiff/Appellee/
Cross-Appellant,

v

GEORGE SELLAR,

Defendant/Appellant/
Cross-Appellee.

UNPUBLISHED
February 21, 1997

No. 179212
Wayne Circuit Court
LC No. 93-230220-DO

Before: Marilyn Kelly, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Defendant appeals as of right and plaintiff cross-appeals from an August 12, 1994, judgment of divorce. We affirm.

Defendant first argues that this litigation was protracted, not by the action or inaction of defendant, but as a result of plaintiff's demand that defendant provide her with unreasonably excessive alimony payments under the circumstances and, therefore, this Court should reverse the trial court's award of attorney fees to plaintiff. This Court will not reverse the trial court's decision regarding the award of attorney fees in a divorce action absent an abuse of discretion. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995).

An award of attorney fees in a divorce action is appropriate where necessary to enable a party to prosecute or defend the lawsuit. MCL 552.13; MSA 25.93; *Heike v Heike*, 198 Mich App 289, 294; 497 NW2d 220 (1993). The evidence adduced at trial showed that defendant earns a substantially higher salary than does plaintiff. Upon review of the evidence, we find that an award of attorney fees was necessary to enable plaintiff to prosecute the divorce and this disparity in income presents sufficient justification for the trial court to award attorneys fees to plaintiff to permit plaintiff to sustain the action. MCL 552.13; MSA 25.93; *Heike, supra*, p 198.

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

Additionally, a sanction may be appropriate where one party to a divorce proceeding attempts to conceal assets from the other party. *Sands v Sands*, 442 Mich 30, 36-37; 497 NW2d 493 (1993). Moreover, attorney fees may be authorized where one party has been otherwise forced to incur expense as a result of the other party's unreasonable conduct in the course of this litigation. *Hanaway*, *supra*, p 298. Here, the trial court found that defendant's dilatory tactics in the process of completing discovery, as well as defendant's retention of four different attorneys through the course of this lawsuit, protracted this litigation. The trial court further indicated that the evidence adduced at trial suggested that defendant may have concealed assets from both creditors and plaintiff. Upon consideration of the facts presented at trial and relied upon by the trial court, we conclude that the trial court did not abuse its discretion in awarding attorney fees to plaintiff.

Defendant next argues that an award of attorney fees was not supportable pursuant to MCR 3.206(C)(2). Upon review of the record as a whole, it is clear that the trial court did not base its award of attorney fees upon MCR 3.206(C). Rather, the award was predicated upon disparity in income, defendant's attempt to conceal assets and defendant's protraction of the litigation. Therefore, we need not review whether the award was supportable pursuant to MCR 3.206(C)(2).

Defendant next argues that the trial court's award of permanent alimony in the amount of \$250 per week in favor of plaintiff was inequitable because it was based upon the clearly erroneous finding that plaintiff earned an annual salary of \$8,000.

We review a trial court's factual findings in a domestic relations case for clear error. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous where, upon consideration of all the evidence, we are left with a definite and firm conviction that a mistake has been made. *Id.* If the trial court's findings are not clearly erroneous, we must then decide whether the dispositional ruling was fair and equitable in light of the facts. The trial court's decision regarding alimony must be affirmed unless we are firmly convinced that it was inequitable. *Sands*, *supra*, p 34.

The main objective of alimony is to balance the incomes and needs of the parties in a way which will not impoverish either party, *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992), and is to be based on what is just and reasonable under the circumstances of the case, *Maake*, *supra*, p 187. 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 v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993).

Upon review of the evidence presented at trial and in light of the disparity in income between plaintiff and defendant, plaintiff's health problems, the length of time plaintiff has been absent from the

practice of her profession, the age of the parties, and the reasons for the dissolution of the marriage, the trial court's award of \$250 per week in permanent alimony was not inequitable. *Sands, supra*, p 34.

Defendant finally argues that the trial court erred in ordering that defendant recompense plaintiff in the amount of \$4,150, representing one-half that amount of money defendant transferred from the marital bank accounts without notice to or the consent of plaintiff.

Absent a binding agreement, the goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all facts and circumstances. *Ackerman, supra*, p 807. The division need not be mathematically equal. *Impullitti v Impullitti*, 163 Mich App 507, 513; 415 NW2d 261 (1987). To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992). A party's attempt to conceal assets is a relevant consideration in determining an equitable division of property, but does not result in automatic forfeiture. *Sands, supra*, p 36.

The trial court ordered that all funds removed from joint accounts by either party be reimbursed, in the amount of one-half the amounts withdrawn, to the other party. Moreover, the trial court ordered that all moneys removed from the home equity line of credit by plaintiff be repaid in full. Accordingly, we find that the trial court ordered an equal division of monies by both parties and that the distribution was equitable in light of the circumstances. *Id.*, p 34.

Plaintiff argues on cross-appeal that the trial court's award of \$10,000 in total attorney fees was inequitable and that in light of defendant's income, attempts to conceal assets and other actions which led to the protraction of this proceeding, defendant should be ordered to pay seventy percent of plaintiff's total attorney fees, as well as fees incurred in conjunction with this appeal. Plaintiff failed to object to the reasonableness of the amount of attorney fees awarded at trial. Absent manifest injustice, failure to raise the issue of the reasonableness of the amount of attorney fees awarded before the trial court leaves the issue unpreserved for appeal. *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992). Because we find that manifest injustice will not result from our refusal to review this issue, we so decline.

Affirmed.

/s/ Marilyn Kelly
/s/ Kathleen Jansen
/s/ Meyer Warshawsky