

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT ALEXANDER MICHAUX,

Plaintiff-Appellee,

v

ROBIN LESLIE MICHAUX,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 183638

Wayne Circuit Court

LC No. 93-316826-DM

Before: Wahls, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right from a February 13, 1995, judgment of divorce entered by the Wayne Circuit Court. We affirm in part, reverse in part, and remand for further proceedings.

On appeal, defendant argues that the trial court erred in evenly dividing the marital property, that she was entitled to more spousal support, that she should have been awarded attorney fees, and that the trial court erred in imposing a lien on the marital home, which was held in joint tenancy with full rights of survivorship with defendant's mother, Dolores Frudune.

First, defendant argues that the equal division of the marital property was inequitable. We disagree. The trial court's findings of fact were not clearly erroneous and we conclude that, with the exception of the lien granted to plaintiff against the marital residence, discussed *infra*, the distribution of the marital property was fair and equitable in light of the facts of this case. *Sparks v Sparks* 440 Mich 141, 151-152; 485 NW2d 893 (1992). The trial court considered relevant factors, which included the duration of the marriage, the contribution of each party to the marital estate, each party's earning ability, and each party's needs. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). Accordingly, we are not left with a definite and firm conviction that the distribution of the marital estate was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks, supra*, p 152.

Next, defendant asserts that the trial court erred in its award of alimony. We disagree. The trial court's factual findings were not clearly erroneous and the award of alimony was fair and equitable in light of the facts of this case. *Id.* The trial court considered appropriate factors in rendering its decision, including the past relations and conduct of the parties, the length of the parties' marriage, defendant's

ability to work, the amount of the property awarded to defendant, plaintiff's ability to pay alimony, the present needs and situations of the parties, the parties' prior standard of living, and general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993); *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). Accordingly, the trial court's decision in awarding defendant alimony in the amount of \$100 per week for one year is not inequitable.

Defendant next argues that the trial court abused its discretion in declining to award her attorney fees. We agree. A party should not be required to invade her assets to satisfy attorney fees when the party is relying on the same assets for support. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). The trial court determined that plaintiff's income exceeded \$50,000 per year and that defendant's income was between \$4,000 and \$5,000 per year. Defendant asserted that her attorney fees totaled \$6,187.50. Clearly, defendant would have to invade her assets in order to satisfy her attorney fees, which would be inappropriate, especially in considering the large disparity in income between the parties and defendant's considerable earnings. *Id.*, pp 298-299. Accordingly, the trial court abused its discretion in refusing to award defendant attorney fees, and we remand the case to the trial court for a determination of the amount of attorney fees to which defendant is entitled.

Finally, defendant contends that the trial court erred in granting defendant a lien in the amount of \$6,800 against the marital home, which was held in joint tenancy with full rights of survivorship with defendant's mother. We agree. Although plaintiff's lien will protect his heirs' share of his equity in the marital home if he passes away before the home is sold, he will reap a windfall if he is still alive when the home is sold. Specifically, plaintiff's lien against the home will entitle him to collect \$6,800 from the profits of the sale of the home before a division of the profits amongst the joint tenants. Thus, plaintiff will receive \$6,800 as well as an additional one-third or one-half or all of the profits, depending on whether Dolores and defendant are still alive at the time that the home is sold. Considering the facts of the case, specifically the disparity in the parties' incomes, we conclude that the trial court's grant to plaintiff of a \$6,800 lien against the marital home, while allowing plaintiff to retain his share in the home as a joint tenant with full rights of survivorship, is unfair and inequitable.

Accordingly, on remand we direct the trial court to eliminate the lien against the marital home in plaintiff's favor. Plaintiff is not entitled to any lien against the marital home in this case.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Myron H. Wahls

/s/ Harold Hood

/s/ Kathleen Jansen