STATE OF MICHIGAN

COURT OF APPEALS

JULIE A. MYERS,

Plaintiff/Counterdefendant-Appellee/Cross-Appellant,

v

DANIEL E. MYERS,

Defendant/Counterplaintiff-Appellant/Cross-Appellee.

UNPUBLISHED
January 20, 1998

No. 199099
Jackson Circuit Court
LC No. 95-073069-DZ

Before: Hoekstra, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

Defendant appeals and plaintiff cross-appeals as of right from the August 5, 1996 judgment of divorce granted in this case. Both parties challenge the property distribution and valuation of assets, the amount of child support, and the amount and duration of alimony. In addition, plaintiff challenges the admission of testimony by defendant's expert regarding valuation of the parties' business and challenges the trial court's failure to award her any attorney fees. We affirm the judgment in all respects.

Plaintiff was awarded physical custody of the minor children. Defendant has visitation with the children as specified by the court and was ordered to pay child support ranging from $926 for five children to $396 for one child. Plaintiff was awarded permanent alimony of $377.32 per week, which will terminate in the event of plaintiff's remarriage or cohabitation with a male. As to the property division, the trial court awarded each party approximately $47,000 of personal property, awarded each party $13,000 as one-half the value of a tractor, and awarded each party an undetermined amount of one-half of defendant's vested pension. The court also awarded plaintiff $262,000 as her share of the parties' business, awarded her the martial home and surrounding property valued at a total of $120,000, and awarded her $23,000 as her equitable share of notes payable to defendant from the parties' business. The court awarded defendant the $212,853 notes payable less the $23,000 payment due plaintiff from the notes, leaving defendant a net of $189,853 of the notes payable, and defendant was left with $263,000 as his share of the parties' business. We believe that plaintiff's award should also reflect her share [$47,636] of the parties' 1994 joint income tax liability [total $95,273], which

plaintiff concedes was paid on her behalf by defendant out of the notes payable. Thus, each party was awarded almost $513,000 worth of property. We note that the division need only be equitable, not equal. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992).

When reviewing the award of property in a divorce case, we review the trial court's findings of fact for clear error and then determine whether the ultimate dispositional ruling was fair and equitable in light of the facts, reversing only if we are left with the firm conviction that the distribution was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks, supra*, 151-152. We conclude that the property division was fair and equitable in this case and that the trial court did not ascribe disproportionate weight to the factor of fault. Cf. *Sparks, supra*.

Defendant asserts that the trial court erred in awarding plaintiff the entire marital home and the 9.25 acres of land it sits on, and that the court gave defendant no credit for the contributions he made to the marital home during the marriage. As to defendant's latter assertion, we note that the $120,000 value set for the house is the amount at which the house was appraised by defendant's expert and the appraisal would have included any improvements that defendant had made to the house during the marriage. Defendant's argument in this regard is therefore without merit. Defendant's claim that he should have been awarded a portion of the value of the marital home is likewise without merit because the trial court awarded defendant cash, in the form of the notes payable, in lieu of the house and other asserts awarded to plaintiff.

Plaintiff argues that the total of defendant's $212,853 notes payable was not taken into consideration by the trial court in its award to plaintiff of only $23,000 as her equitable share of the notes and she contends that it is not discernible how the court arrived at the $23,000 figure. However, we conclude that the court did take the entire amount of the notes payable into consideration and that, although not expressly stated by the trial court, the court's mechanism by which it arrived at the $23,000 figure is easily discernible. To arrive at plaintiff's equitable share of the notes payable, one begins with the total amount of the notes payable paid to defendant ($212,853) and deducts from that the value of the marital home awarded to plaintiff ($120,000) and plaintiff's share of the income taxes paid out of the notes payable ($47,636), leaving $45,217 as the net of the notes payable less offsets to plaintiff. Thus, the net of the notes payable not offset by express or imputed distributions to plaintiff and which should be equitably divided by the parties is $45,217. We believe that the trial court divided this figure by approximately two, expressly awarding $23,000 to plaintiff as her equitable share of the notes. The court did not clearly err in valuing plaintiff's equitable share of the notes payable at $23,000.

As to plaintiff's claim that the court should have ordered that 5% interest be paid on the $23,000 in the event that defendant defaulted in payment of this amount to plaintiff, we find plaintiff's claim to be moot, as the parties agree that the $23,000 was paid to plaintiff on January 29, 1997. An issue is moot if an event has occurred that renders it impossible for this Court, if it should decide in favor of the party, to grant relief. *Michigan Nat'l Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997). Even if this claim was not moot, we conclude the court acted within its discretion in not ordering defendant to pay interest on the $23,000. *Reigle v Reigle*, 189 Mich App 386, 393-395; 474 NW2d 297 (1991).

We find no clear error in the trial court's valuation of the parties' business at $525,000, where the valuation was within the range established by the proofs. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). A trial court has great latitude in determining the value of a closely held corporation. *Id.* We disagree with plaintiff's assertion that the trial court failed to make adequate findings of fact with respect to its valuation of the parties' business. Our review of the court's findings reveals that the trial court was aware of the factual issues surrounding the business evaluation and the court appropriately stated its findings resolving those issues. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). The trial court complied with MCR 2.517(A)(1) and (2). Plaintiff's claim that the trial court should have granted her a security interest in the $262,000 that was awarded to plaintiff as her share of the business is moot, *Michigan Nat'l, supra*, because the record reflects that defendant paid plaintiff the $262,000 on January 29, 1997.

We disagree with plaintiff's assertion that the trial court abused its discretion in denying plaintiff's motion to strike Nancy Uppal's testimony regarding valuation of the business. To the extent that exhibits prepared by Uppal were based on underlying facts or data not previously disclosed to plaintiff upon which Uppal based her ultimate opinion regarding valuation, the exhibits and Uppal's testimony were properly admitted by the trial court. MRE 705; *Koenig v South Haven*, 221 Mich App 711, 724; 562 NW2d 509 (1997). Although plaintiff assets that Uppal's testimony came as a "complete surprise," we are unable to evaluate the merits of plaintiff's claim because she has not provided us with a transcript of her deposition of Uppal, which was held about ten days prior to trial. Therefore, plaintiff has waived this portion of her claim. MCR 7.210(B)(1)(a). However, we note that plaintiff did not challenge defense counsel's assertion during trial that Uppal's testimony and the exhibits prepared by her were consistent with the testimony she gave at her deposition. Further, when Uppal attempted to testify regarding excess earnings calculations, to which plaintiff objected because Uppal had not previously informed plaintiff that she would perform this type of calculations, the trial court appropriately exercised its discretion and precluded that testimony upon plaintiff's objection. We conclude the trial court appropriately exercised its discretion regarding admission of Nancy Uppal's testimony regarding valuation of the business. MRE 705; *Koenig, supra.*

We disagree with plaintiff's assertion that her award of health insurance benefits was "illusory." We note that plaintiff cites no case law or other authority for her argument that she is entitled to the same health insurance coverage at the same premium she would have paid through the parties' business. Therefore, this issue is abandoned. *Magee v Magee,* 218 Mich App 158, 161; 553 NW2d 363 (1996).

We affirm the trial court's award of child support. Neither party has born his or her burden of showing that a mistake has been made as to the trial court's determination of defendant's income or the amount of child support ordered, which was based on the friend of the court child support formula. *Beason v Beason,* 435 Mich 791, 804-805; 460 NW2d 207 (1990). The trial court's finding that the level of support as set forth in the guidelines was not unjust or inappropriate is not clearly erroneous. *Id.*

We also conclude that the amount and duration of alimony awarded by the trial court was fair and equitable in light of the facts of this case. *Id.*

We disagree with plaintiff's assertion that the trial court abused its discretion in denying her request for attorney fees. The trial court's decision whether to award attorney fees is reviewed for an abuse of discretion. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). We conclude that the trial court acted within its discretion in denying attorney fees to plaintiff where the court awarded plaintiff substantial cash assets from which the attorney fees could be paid and also awarded significant amounts of child support and spousal support to plaintiff. Unlike *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993), and *Kurz v Kurz*, 178 Mich App 284, 289; 443 NW2d 782 (1989), plaintiff was not required to pay her attorney fees from the same assets she was relying on for support, i.e., the alimony and child support.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard Allen Griffin
/s/ Richard A. Bandstra