STATE OF MICHIGAN

COURT OF APPEALS

BRAD A. TIDIK,

Plaintiff-Appellant,

v

LISA A. TIDIK,

Defendant-Appellee.

UNPUBLISHED
March 24, 1998

No. 189891, 203301 & 203302
Wayne Circuit Court
LC No. 95-502349-DM

Before: Markman, P.J., and McDonald and Cavanagh, JJ.

PER CURIAM.

In Docket No. 189891, plaintiff, Brad A. Tidik, appeals as of right from the amended judgment of divorce dated September 28, 1995. In Docket No. 203301, plaintiff appeals as of right from an order modifying visitation dated April 28, 1997. In Docket No. 203302, plaintiff appeals as of right from a bench warrant for defendant, Lisa A. Tidik, dated April 25, 1997. These matters have been consolidated for appellate review. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

At the outset, we note that it would be difficult to exaggerate the contentiousness of this matter. During the pendency of these proceedings, plaintiff repeatedly sabotaged the marital home and defendant's car, refused to pay child support, refused to make court-ordered mortgage payments on the marital home, refused to disclose the whereabouts of marital assets, filed numerous motions in the trial court, filed numerous motions with this Court, filed a lawsuit against a witness who testified at the divorce trial, instructed his parents to sue defendant to evict her from the marital home, threatened to or did file a lawsuit against defendant's attorney and the Grosse Ile Chief of Police, refused to submit to a court-ordered psychological evaluation, and refused to comply with circuit court orders resulting in plaintiff repeatedly being jailed for contempt.

On appeal, plaintiff first claims that the trial court erred when it awarded custody of the children to defendant without considering and evaluating each of the child custody factors contained in MCL 722.23; MSA 25.312(3). We agree.

It is well-settled that custody disputes are to be resolved in the children's best interest, as measured by the factors set forth in MCL 722.23; MSA 25.312(3). *Deel v Deel,* 113 Mich App 556, 559; 317 NW2d 685 (1982). In determining the best interests of the children, a trial court must consider each of the best interest factors and state a conclusion on each. *Schubring v Schubring,* 190 Mich App 468, 470; 476 NW2d 434 (1991); *Wilkins v Wilkins,* 149 Mich App 779, 785; 386 NW2d 677 (1986). The failure to make such specific findings is error requiring reversal. *Schubring, supra* at 470; *Daniels v Daniels,* 165 Mich App 726, 730; 418 NW2d 924 (1988); *Currey v Currey,* 109 Mich App 111, 118; 310 NW2d 913 (1981).

A review of the trial judge's findings of fact and conclusions of law in this case reveals that he apparently failed to analyze the child custody issue in accordance with MCL 722.23; MSA 25.312(3). In fact, there is no discussion of any of the factors which the trial judge was required to consider under MCL 722.23; MSA 25.312(3)[1]. Such an error requires reversal. *Schubring, supra* at 470; *Daniels, supra* at 730; *Currey, supra* at 118.

We cannot simply remand this matter to the trial court to supplement the record with its specific findings on each of the child custody factors contained in MCL 722.23; MSA 25.312(3), see *Arndt v Kasem,* 135 Mich App 252, 255; 353 NW2d 497 (1984); *Speers v Speers,* 108 Mich App 543, 545; 310 NW2d 455 (1981), because the circuit judge who heard this matter was a visiting judge. Unfortunately, a new custody hearing will be required. *Arndt, supra* at 709.

Our conclusion that this matter must be remanded for a new custody hearing renders moot plaintiff's visitation and child support claims. Issues of visitation and child support will have to be decided anew depending on the outcome of the new custody hearing.

Next, plaintiff argues that the trial judge abused his discretion by requiring plaintiff to post a $1,000 bond every time he filed a motion.[2] We disagree. In light of plaintiff's propensity to file groundless motions and to pursue unwarranted claims, we believe the trial court did not abuse its discretion is requiring a security bond each time plaintiff filed a motion. *Attorney General v Oakland Disposal, Inc (In re Surety Bond for Costs)*, 226 Mich App 321, 331; ___ NW2d ___ (1997); *Farleigh v Amalgamated Transit Union, Local 1251,* 199 Mich App 631, 633; 502 NW2d 371 (1993); *Hall v Harmony Hills, Inc,* 186 Mich App 265, 270; 463 NW2d 254 (1990). Further, the exception contained in MCR 2.109 for indigent plaintiffs does not apply in this case. The record reveals plaintiff had substantial assets at his disposal although he would not reveal their location to the trial court. Moreover, there was evidence in the record to indicate plaintiff continued to work for his employer even though plaintiff claimed he was unemployed.[3] Additionally, although plaintiff claimed in his motions to strike the bond order that he was indigent, he failed to file an affidavit of indigency as called for under the court rule. See MCR 2.109(C)(1).

Plaintiff next claims that certain provisions of the judgment of divorce do not comply with the requirements of Michigan law. First, he alleges that the child support order contained in the judgment of divorce does not meet the requirements of MCL 552.603(6); MSA 25.164(3)(6). Further, plaintiff claims the health insurance provision contained in the judgment of divorce does not meet the requirements of MCL 552.15(5); 25.95(5). Finally, plaintiff asserts that because there was no finding

by the trial court that plaintiff was employed, the "income withholding order" should be stricken from the judgment of divorce. Plaintiff did not raise these issues below, and this Court does not generally review issues raised for the first time on appeal and not addressed by the trial court. *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995). Moreover, a new support order may issue following the custody hearing. In any event, we find no merit in the last two claims.[4] However, we do note that the divorce judgment does not contain a provision which indicates that a support order is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification as required by MCL 552.603(6)(a); MSA 25.164(3)(6)(a). Further, although the judgment of divorce does provide that if either party changes his or her address, he or she must notify the friend of the court of the change, it does not provide that notification must take place within 21 days or that notification must be in writing as required by MCL 552.603(6)(b); MSA 25.164(3)(6)(b). Although plaintiff claims no prejudice resulting from the absence of these provisions in the judgment of divorce, on remand we direct that the judgment of divorce be amended to reflect the requirements of MCL 552.603(6)(a) and (b); MSA 25.164(3)(6)(a) and (b).

Next, plaintiff claims that "the Appellee and her Attorney used the known location of the plaintiff to fraudulently have the Judgment [of Divorce] served under the 7-Day rule." This claim must fail as there is absolutely no evidence in the record to suggest that the judgment of divorce was entered fraudulently.

Plaintiff also argues that although the trial court properly required defendant to pay the first $312 of yearly uninsured health care expenses, it was improper for the trial court to require that plaintiff be responsible for ninety percent of any additional yearly uninsured health care expenses. Plaintiff argues that his responsibility for ninety percent of the yearly uninsured medical expenses in excess of $312 is inequitable because he is currently unemployed. Specifically, plaintiff alleges that he "was involuntarily terminated [from] his employment due to the issue of the setup of false charges by [defendant] and her mother" and because he "has been put through a multitude of legal proceedings that continue to this day that effect employment." We disagree.

First, the record does not support plaintiff's claim that his termination from employment was due to any false charges brought by defendant. In fact, if plaintiff is claiming that he was fired because of the incident which occurred on January 18, 1995, the record reflects that at least some of the allegations made by defendant and her mother in connection with this incident were not false. The jury convicted plaintiff of assaulting his mother-in-law. In addition, the record reflects that it is plaintiff, not defendant, who is responsible for the "multitude of legal proceedings" stemming from this matter. It was plaintiff who initiated the divorce action, it was plaintiff's conduct that resulted in his criminal convictions, and it was plaintiff's parents who instituted the eviction proceeding against defendant. In fact, the lower court record reflects that plaintiff also commenced a legal action against a witness who testified at the divorce trial and threatened to or did sue defendant's lawyer and the Grosse Ile police chief for allegedly impeding his visitation with his children. There is nothing in the record to suggest that plaintiff could not return to work at any time. Additionally, plaintiff concealed substantial assets from defendant. Under

these circumstances, we find nothing inequitable in the uninsured health care expenses provision contained in the judgment of divorce.

Plaintiff also argues that the trial judge erred in failing to cancel any child support arrearage outstanding at the time of the judgment of divorce due to the fact that defendant almost totally denied him visitation with his children during the pendency of this matter. We disagree.

The general rule in Michigan is that support payments may be suspended when a noncustodial parent is wrongfully denied visitation rights, unless the suspension of those payments would adversely affect the children for whose benefit the payments are made. *McLauchlin v McLauchlin*, 372 Mich 275, 277; 125 NW2d 867 (1964); *Richardson v Richardson*, 122 Mich App 531, 533; 332 NW2d 524 (1983); *Chazen v Chazen*, 107 Mich App 485, 486; 309 NW2d 612 (1981). Here, however, the record does not support plaintiff's claim that he was almost totally denied his visitation rights prior to the entry of the divorce judgment. Instead, the record reflects that plaintiff was allowed to visit his children on a fairly regular basis despite his failure to pay child support and his inappropriate behavior during at least some of the visitation sessions. Under these circumstances, the trial judge did not err in failing to totally discharge any child support arrearage outstanding against plaintiff at the time of the divorce trial. However, plaintiff correctly indicates that the "arrearages under temporary [child support] orders" provision of the judgment of divorce does not reflect the trial judge's ruling that he was entitled to "four weeks abatement [of child support for] the time [plaintiff] was in jail" for assaulting his mother-in-law. On remand, the judgment of divorce should be amended to reflect the trial judge's ruling that support should be abated for the four weeks plaintiff was in jail in June of 1995 for assaulting his mother-in-law.

Plaintiff next claims that the trial court did not establish on the record or in the judgment of divorce "the amounts or reasons for attorney fees and as such this issue should be reversed or remanded for findings." We disagree.

The "attorney fees" provision contained in the judgment of divorce provides as follows:

> IT IS HEREBY ORDERED that the court shall reserve the issue of attorney fees and that Defendant's counsel shall file a motion with the court and affidavit to have the issue of attorney fees ruled upon by the court.

As the above provision reveals, contrary to plaintiff's claim, the trial court did not award attorney fees to defendant. The judgment merely reserved the question of attorney fees for a potential later determination. Plaintiff has provided no authority to indicate that reservation of attorney fees in a divorce judgment is somehow improper. Furthermore, a review of the lower court record reveals that following the entry of the judgment of divorce, defense counsel never moved for an award of attorney fees and no order was ever entered granting attorney fees to defendant. No award being rendered in defendant's favor, it cannot be said that the trial court abused its discretion in granting attorney fees to defendant. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997); *Jansen v Jansen*, 205 Mich App 169, 173; 517 NW2d 275 (1994).

Next, plaintiff claims that the trial court failed to evaluate or state on the record the factors relating to an award of alimony. Further, plaintiff alleges that defendant should have been denied alimony due to her age and employability. We affirm the award of alimony.

Alimony is provided for in divorce judgments pursuant to statute. MCL 552.23; MSA 25.103. The factors that a trial court should consider when determining whether to award alimony include: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the ability of the parties to work; (4) the source and amount of property awarded to the parties; (5) the age of the parties; (6) the ability of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the health of the parties; (10) the prior standard of living of the parties and whether either is responsible for the support of others; and (11) general principles of equity. *Demman v Demman,* 195 Mich App 109, 110-111; 489 NW2d 161 (1992); *Ianitelli v Ianitelli,* 199 Mich App 641, 642-643; 502 NW2d 691 (1993). In addition, a party's fault in causing the divorce is a valid consideration in awarding alimony. *Demman, supra* at 111. However, the concept of fault cannot be given disproportionate weight. *Sparks v Sparks,* 440 Mich 141, 162-163; 485 NW2d 893 (1992). Ability to pay alimony includes the unexercised ability to earn if income is voluntarily reduced to avoid paying alimony. *Healy v Healy,* 175 Mich App 187, 191-192; 437 NW2d 355 (1989). The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Hanaway v Hanaway,* 208 Mich App 278, 295; 527 NW2d 792 (1995).

Here, although there was evidence on the record and in the lower court file to do so, the trial judge made no findings regarding the duration of the marriage, contributions of the parties to the marital estate, the age of the parties, the health of the parties, status in life, necessities and circumstances of the parties, or other general principles of equity. The findings of fact related only to plaintiff's ability to earn income, the fault of the breakdown of the marital relationship and the fact that plaintiff had hidden assets from defendant and the court's detection.[5] However, from the information available from the record, it does not appear that the trial court erred when it awarded alimony to defendant in the amount of $100 per week for a period of three years.

The record reveals (1) that the parties had been married for seven years, (2) that plaintiff (32 years old at the time of the divorce) worked full-time throughout the marriage while defendant (31 years old at the time of the divorce) worked on a part-time basis and was primarily responsible for raising the couple's two children, (3) that plaintiff earned approximately $21,000 per year while defendant earned approximately $4,000 per year, (4) that plaintiff was debt-free and living with his parents while defendant owed approximately $4,000 in credit card debt and was responsible for the mortgage on the marital home, (5) that plaintiff had substantial assets, including the proceeds from the sale of the Colonial Court residence (some portion of $114,000) and the proceeds of a land contract payoff in the amount of approximately $45,000, which he concealed from defendant and the trial court, while defendant's only significant asset was the equity in the marital home (approximately $17,500), (6) that defendant, having been awarded sole physical custody of the children, was responsible for caring for the children, and (7) that plaintiff was primarily responsible for the breakdown of the marital relationship.

Under these circumstances, the record supports the trial court's award of alimony to defendant in the amount of $100 per week for three years. *Demman, supra* at 112. Additionally, although

clearly the issue of who was at fault in the breakdown of the marital relationship was a factor in the alimony award, it does not appear from the trial court's remarks that alimony was based solely on this factor. The trial court also referred to plaintiff's earning ability and the fact that plaintiff had hidden substantial assets from defendant and the court.

As to plaintiff's somewhat spurious claim that he should be awarded alimony, such a claim was not raised below or addressed by the trial court. We decline to review this unpreserved issue. *Garavaglia, supra* at 628.

Plaintiff also argues that the property settlement was inequitable. We disagree.

A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3), *Yeo v Yeo,* 214 Mich App 598, 601; 543 NW2d 62 (1995). 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 the circumstances. *Byington v Byington,* 224 Mich App 103, 114; 568 NW2d 141 (1997); *Ackerman v Ackerman,* 163 Mich App 796, 807; 414 NW2d 919 (1987). Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court. *Knowles v Knowles,* 185 Mich App 497, 501; 462 NW2d 777 (1990). When dividing the estate, the 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, supra* at 158-160; *Byington, supra* at 115. "The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise." *Id.* The trial court must make specific findings regarding the factors it determines to be relevant. *Sparks, supra* at 159. The ultimate dispositional ruling must be fair and equitable in light of the facts. *Byington, supra* at 109. This Court will reverse only if left with the firm conviction that the distribution was inequitable. *Id.*

As above indicated, although there was evidence on the record and in the lower court file, the trial judge made no findings regarding the duration of the marriage, contributions of the parties to the marital estate, the age of the parties, the health of the parties, status in life, necessities and circumstances of the parties, or other general principles of equity. The findings of fact related only to plaintiff's ability to earn income, the fault of the breakdown of the marital relationship, and the fact that plaintiff had hidden assets from defendant. However, from the information available from the record, it does not appear that the trial judge erred in awarding the property as he did. As we indicated above, the record reveals (1) that the parties had been married for seven years, (2) that plaintiff worked full-time throughout the marriage while defendant (31 years old at the time of the divorce) worked on a part-time basis and was primarily responsible for raising the couple's two children, (3) that plaintiff earned approximately $21,000 per year while defendant earned approximately $4,000 per year, (4) that plaintiff was debt-free and living with his parents while defendant owed approximately $4,000 in credit card debt and was responsible for the mortgage on the marital home, (5) that plaintiff had substantial assets, including the proceeds from the sale of the Colonial Court residence (some portion of $114,000) and the proceeds of a land contract payoff in the amount of approximately $45,000, which he concealed from defendant and the trial court, while defendant's only significant asset was the equity in

the marital home, (6) that defendant, having been awarded sole physical custody of the children, was responsible for caring for the children, and (7) that plaintiff was primarily responsible for the breakdown of the marital relationship. Division of property can be justified by the disparate earning abilities of the parties, a party's responsibility in causing the marital breakdown, a party's concealment of marital assets, and the fact that sole custody of the children is awarded to one of the parties. See *Thames v Thames,* 191 Mich App 299, 309; 477 NW2d 496 (1991). Further, an award of the marital home to defendant seems appropriate where she was awarded sole custody of the children of the parties and the evidence indicated that plaintiff had sufficient assets to acquire another residence. See *Navarre v Navarre,* 191 Mich App 395, 400; 479 NW2d 357 (1991).

Although plaintiff claims that the trial court erred in awarding him less property than was awarded to defendant, in actuality, plaintiff received a much larger share of the parties' assets. He just concealed them from defendant and the court. Under these circumstances, we believe that the trial court's property division should not be disturbed.

As to plaintiff's claim that the trial judge improperly determined the rights of third parties, plaintiff's parents, when he awarded the marital home to defendant, this claim is without merit. It is true that generally a court has no authority to adjudicate the rights of third parties in divorce actions, *Thames, supra* at 302. However, in this case, the trial judge did not attempt to adjudicate the rights of plaintiff's parents with regard to the Rucker property. Plaintiff's parents' interest, if any, in the Rucker property was not even mentioned by the trial judge on the record or in the judgment of divorce. The trial judge merely found that any interest plaintiff had in the Rucker property was awarded to defendant.

Next, plaintiff argues that the trial judge abused his discretion by issuing the September 1, 1995, commitment order. We disagree.

A parent may be jailed for civil contempt of court for failure to pay support, MCL 552.631 *et seq;* MSA 25.164(31) *et seq,* and see *Cullimore v Laureto,* 66 Mich App 463; 239 NW2d 409 (1976), but only if other remedies appear unlikely to correct the payer's failure or refusal to pay support. MCL 552.637; MSA 25.164(37); *Mead v Batchlor,* 435 Mich 480, 505; 460 NW2d 493 (1990); *Deal v Deal,* 197 Mich App 739, 743; 496 NW2d 403 (1993).

Assuming plaintiff lost his job at the end of May or the beginning of June of 1995, he still had the ability to pay child support between February of 1995 and June of 1995. However, except for the payment of $200 in child support in February of 1995, plaintiff completely refused to pay child support. Plaintiff was ordered to pay support, had the ability to do so and completely refused to support his children. Further, plaintiff had notice that contempt proceedings were being brought against him and he was provided an attorney. As to the question of whether other remedies would have been likely to correct plaintiff's refusal to pay child support, this seems unlikely because even repeated incarcerations failed to compel plaintiff to pay support. Under these circumstances, we find that the trial judge did not abuse his discretion in entering the contempt order. *Deal, supra* at 743; *Wells v Wells*, 144 Mich App 722, 732; 375 NW2d 800 (1985).

Lastly, we reject plaintiff's claims that two of the lower court judges assigned to this case were biased or prejudiced against him. Plaintiff has failed to establish actual bias or prejudice on the part of these judges. MCR 2.003(B)(1); *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996); *Mourad v Automobile Club Ins Ass'n*, 186 Mich App 715, 731; 465 NW2d 395 (1991).

Affirmed in part, reversed in part, and remanded to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen J. Markman
/s/ Gary R. McDonald
/s/ Mark J. Cavanagh

[1] It should be noted that many of the trial judge's comments indirectly related to the best interests factors. For example, the trial judge found that plaintiff loved his children. This comment obviously would have been relevant under the category of the love, affection, and other emotional ties existing between the parties involved and the children. Moreover, the trial judge found that plaintiff was jobless and homeless. These findings might be included under the factor relating to the capacity and disposition of the parties involved to provide the children with food, clothing, medical care and other material needs. However, basically, the trial court awarded legal and physical custody of the children to defendant without specifically considering on the record the factors contained in MCL 722.23; MSA 25.312(3) or stating a conclusion as to those factors.

[2] In his statement of the issues presented, plaintiff also argues that the trial judge's order requiring him to post a $1,000 bond with every motion he filed is unconstitutional and outside the trial judge's jurisdiction. However, plaintiff does not argue the merits of these positions in the body of his brief. Under these circumstances, plaintiff has effectively abandoned these claims. *People v Kent*, 194 Mich App 206, 209-210; 486 NW2d 110 (1992).

[3] Plaintiff's motion to waive appellate fees on the grounds of indigency was also denied by this Court for similar reasons.

[4] Comparing the divorce judgment and the requirements of MCL 552.15; MSA 25.95(5), we can discern no impropriety. Further, plaintiff provides no authority in support of his position that because there was no finding by the trial court that plaintiff was employed, the "income withholding order" should be stricken from the judgment of divorce. Therefore, he has abandoned this issue on appeal. *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 14; 527 NW2d 13 (1994). Plaintiff also appears to argue that the order of income withholding provision should be struck from the judgment of divorce because it changes his address from the marital residence on Rucker Road to his parents' house on Shurley Drive. However, the income withholding order provision does not even refer to plaintiff's home address. Even if it did, the remedy would not be to strike the entire provision, but, rather, to simply amend the provision to reflect the correct address. We note that the "change of address" provision contained in the judgment of divorce does indicate that plaintiff's home is address is the Shurley Drive residence. We can discern no prejudice to defendant from this provision. Plaintiff, himself, repeatedly used this address on documents filed with the trial court. Furthermore, plaintiff's

right to list the Rucker Road property as his home address was extinguished upon the entry of the judgment of divorce because the Rucker Road property was awarded to defendant.

[5] Although plaintiff argues that it is reversible error for the trial court to fail to make findings of fact on each of the alimony factors, he has provided this Court with no case law or other authority to support his claim. This issue, therefore, is deemed abandoned on appeal. *In re Powers,* 208 Mich App 582, 588; 528 NW2d 799 (1995). It should be noted that some of the cases indicate that the alimony factors "must" be considered when relevant (see *Sparks v Sparks,* 440 Mich 141, 159; 485 NW2d 893 (1992), while other cases indicate that the trial court "should" make specific findings of fact regarding the relevant factors (see *Demman v Demman,* 195 Mich App 109, 110-111; 489 NW2d 161 (1992) and *Ianitelli v Ianitelli,* 199 Mich App 641, 642-643; 502 NW2d 691 (1993). However, in *Lee v Lee,* 191 Mich App 73, 80; 477 NW2d 429 (1991), this Court indicated that it did not believe that "the court's failure to specifically state its findings regarding each consideration requires reversal where our review of the record indicates that we would not have reached a different result."