

STATE OF MICHIGAN
COURT OF APPEALS

RIMA TRAKHTENBERG,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 200835

Oakland Circuit Court

JACOB TRAKHTENBERG,

LC No. 94-482811 DM

Defendant-Appellee.

Before: Holbrook, Jr., P.J., and White and J.W. Fitzgerald*, JJ.

WHITE, J. (concurring in part and dissenting in part.)

I concur in the determinations to remand on the issues of property distribution, spousal support, and attorney fees. I write separately, however, on the issue of attorney fees.

Plaintiff's itemized statement of attorney fees and costs as of July 1, 1996, submitted post-trial pursuant to the trial court's request,¹ totaled \$33,016.88 (\$28,573.23 in fees and \$4,443.65 in costs). The trial court ordered that defendant pay \$5,000 of plaintiff's attorney fees and \$4,252.65 to plaintiff's counsel for costs.²

Plaintiff established that an award of attorney fees was necessary to enable her to prosecute the action, and that she was thus entitled to a necessary and reasonable award. *Thames v Thames*, 191 Mich App 299, 310; 477 NW2d 496 (1991); MCL 552.13(1); MSA 25.93[1]; MCR 3.206(C). Plaintiff did not speak the English language and was not able to obtain employment during the 2 ½ years of marriage to defendant, and only apparently became able to work in the United States around October 1996, given her immigration status.³ Plaintiff brought no assets with her from Israel, other than approximately \$500, which she spent soon after arriving. The record supports that defendant is able to pay plaintiff's attorney fees, and defendant does not argue otherwise in his appellate brief.

Plaintiff owes her attorney \$23,573.23 in fees, net of the \$5,000 the court ordered defendant to pay. I would remand with instructions that the trial court determine the reasonableness of the attorney fees requested⁴ and enter an appropriate award. Further, while the trial court should reevaluate the

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

attorney fee issue on remand in light of the asset determination on remand, the court should be mindful that a party may not be required to invade his or her assets to satisfy attorney fees when she is relying on the same assets for her support. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993).

/s/ Helene N. White

¹ At the conclusion of trial, the trial court requested that both counsel submit itemized statements of fees and costs.

² The \$191.00 discrepancy between the costs awarded and plaintiff's counsel's itemized statement of costs is not explained. However, plaintiff's counsel stated that the \$4,252.65 figure was correct when asked by the court at the reading of its opinion from the bench.

³ The trial court stated on October 1, 1996, when it read its opinion from the bench, that plaintiff was "now" able to work. It was clear that at trial in late May 1996, plaintiff was unable to work because of her immigration status.

⁴ The trial court commented that the case should not have involved the amount of attorney time it did. However, the court did not address the reasonableness of plaintiff's attorney fees in light of the attorney activity necessitated by defendant's actions.