

STATE OF MICHIGAN
COURT OF APPEALS

LUCYNA YOUNESSI,

Plaintiff-Appellee,

v

BRUCE YOUNESSI,

Defendant-Appellant.

UNPUBLISHED
October 22, 1999

No. 209552
Macomb Circuit Court
LC No. 96-005834 DM

Before: Gribbs, P.J., and O’Connell and R. B. Burns*, JJ.

PER CURIAM.

Defendant appeals from the trial court’s judgment of divorce. Specifically , he challenges the requirement that he pay \$295 a week child support for the parties’ three children, and \$150 a week alimony until plaintiff’s death, remarriage, or cohabitation with an unrelated male. We affirm in part, vacate in part, and remand.

We will not reverse a trial court’s findings of fact in a divorce case unless they are clearly erroneous. *Sparks v Sparks*, 440 Mich 141, 146, 149-150; 485 NW2d 893 (1992). “A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been committed.” *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). “If the findings of fact are upheld, the appellate court must decide whether the dispositi[onal] ruling was fair and equitable in light of those facts,” and may reverse only if it “left with the firm conviction that the [dispositional ruling] was inequitable.” *Sparks, supra*, 440 Mich at 151-152.

Defendant first argues that the alimony award was inequitable. We disagree. “The main objective of alimony is to balance the incomes and needs of the parties in a way that w[ill] not impoverish either party.” *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). “The court should consider the length of the marriage, the parties’ ability to pay, their past relations and conduct, their ages, needs, ability to work, health, and fault, if any.” *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993). The court should also consider “the source and amount of property awarded to the parties,” their “present situation,” “prior standard of living and whether either is

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

responsible for the support of others,” the “contributions of the parties to the joint estate,” and “general principles of equity.” *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

The evidence in this case showed that the parties were married about sixteen years and both were in their mid-forties. The marital assets, which included about \$125,000 in IRAs and the \$195,000 marital home, were divided almost equally. Plaintiff had a high school education and suffered from several physical ailments, including Graves’ Disease, depression, and frequent intractable migraine headaches that left her unable to work full time. Defendant had been an electrical engineer for fifteen years, and had earned an average of \$64,228.51 during the preceding twelve years. Plaintiff initially worked as an engraver but then stayed at home to raise the parties’ three children, ages thirteen, ten and eight, of whom she had physical custody. Plaintiff later worked part-time cleaning houses, monitoring the school’s lunchroom and, most recently, as a teaching assistant. There was considerable evidence that defendant’s tight control over the parties’ finances and his emotional abuse of plaintiff caused the breakdown in the marital relationship. Therefore, after carefully reviewing the record, we conclude that the trial court’s findings of fact were not clearly erroneous, that the appropriate factors were considered, and that the award of alimony was fair and equitable in light of all the facts.

Next, defendant argues that the trial court erred in ordering child support which deviated from the Michigan Child Support Formula Manual Guidelines. We agree. A trial court may deviate from the child support guidelines only if it makes findings on the records and concludes that application of the guidelines would be unjust or inappropriate. *Ghidotti v Barber*, 459 Mich 189, 196; 586 NW2d 883 (1998).

Here, the trial court found that defendant earned a net income of about \$800 a week, and imputed to plaintiff a minimum wage income of \$175 a week. However, contrary to the guidelines’ instructions, the trial court did not deduct defendant’s \$150 a week alimony obligation before calculating his net income. See 1997 Mich. Child Support Formula Manual, § II K, p 12. We note that the court is to deduct alimony before calculating and deducting defendant’s taxes and FICA payments, and calculating his weekly support obligation. *Id.* We note that the parties agreed that defendant would receive the children’s tax exemptions. We must therefore vacate the trial court’s child support award and remand for re-determination in accordance with the child support guidelines.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Peter D. O’Connell
/s/ Robert B. Burns