

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT R. DRAKE,

Plaintiff-Appellee,

v

SHEILA DRAKE,

Defendant-Appellant.

UNPUBLISHED
October 26, 1999

No. 208509
Washtenaw Circuit Court
LC No. 97-007545 DO

Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Defendant appeals by right from a judgment of divorce. We affirm.

Initially, defendant argues the trial court erred when it found that there had been a breakdown of the parties' marriage, because plaintiff presented no evidence of a breakdown. We disagree. MCL 552.6(3); MSA 25.86(3) provides:

The court shall enter a judgment dissolving the bonds of matrimony if evidence is presented in open court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

This Court has stated that the objects of matrimony are destroyed if either party to a marriage relationship is unwilling to live together. *Grotelueschen v Grotelueschen*, 113 Mich App 395, 398-399; 318 NW2d 227 (1982), citing *Kretzschmar v Kretzschmar*, 48 Mich App 279, 284-285; 210 NW2d 352 (1973). Plaintiff and defendant testified to their separate living arrangements, and testimony established that plaintiff was engaged to another woman within three months after moving out of the marital home. In light of this testimony, we can find no clear error in the trial court's ruling that there was a breakdown in the marital relationship. MCR 2.613(C).

Next, defendant argues that the trial court erred when it used plaintiff's 1996 federal tax return to determine his approximate income. According to defendant, the trial court ignored evidence that plaintiff hid marital income in separate bank accounts. We disagree. While defendant provided the

court copies of its bank statements showing deposits, defendant presented no evidence concerning the nature or origin of these deposits to support her suggestion that plaintiff hid marital income. The record shows that the trial court considered the competing evidence regarding plaintiff's income and assets and reached a common sense conclusion that plaintiff presented more credible evidence that the deposits reflected only his gross income, not his net income. After reviewing the entire record, we are not left with the firm and definite conviction that the trial court erred in using the 1996 income tax return to estimate plaintiff's income. MCR 2.613(C). *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988).

Defendant also argues the trial court erred when it failed to determine whether plaintiff attempted to conceal marital assets. We disagree. Here, too, the record shows that the trial court considered defendant's allegations and found them to be improbable in light of the evidence presented. Defendant presents nothing that creates among the members of this panel a firm and definite conviction that the trial court erred in its finding of fact. MCR 2.613 (C).

Defendant also contends that the trial court erred when it failed to consider money plaintiff deposited into three bank accounts when it divided the marital estate and decided not to grant defendant's request for alimony. Because we have already concluded that the trial court did not err when it found that the marital estate did not include these funds, we also conclude that the trial court did not err in refusing to consider these funds when dividing the marital estate and declining to award alimony.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage