

STATE OF MICHIGAN  
COURT OF APPEALS

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KIMBERLY MARIE HUPY,

Plaintiff-Appellee,

v

WILLIAM HUPY,

Defendant-Appellant.

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UNPUBLISHED  
November 2, 1999

No. 210990  
Menominee Circuit Court  
LC No. 97-007970 DO

Before: Griffin, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, claiming that plaintiff was not entitled to half the marital estate and that the trial court should have granted his equitable claims for funding plaintiff's college education and for raising her son. Defendant also challenges the award of temporary alimony pending the outcome of this appeal, as well as the court's application of numerous valuation dates with respect to various properties. We affirm.

I

The parties were married in 1986; plaintiff had a son from her previous marriage and defendant had two children from his previous marriage. Plaintiff's son lived primarily with the parties during their marriage. When they first wed, plaintiff was a high school graduate with nominal assets, and defendant was a practicing attorney who later took office as probate judge. After four or five years of marriage, they mutually decided that plaintiff would attend college. Plaintiff earned her baccalaureate degree in May 1996. She admitted that she had an extramarital affair with one of her university professors in 1995.

Throughout the marriage, defendant's salary was, by far, the larger portion of the parties' income. Plaintiff was entitled to child support for her son Aaron's benefit, but this was paid only sporadically throughout the marriage and the parties agreed that any child support received would be placed in an account for Aaron's benefit under the Uniform Gifts to Minors Act, MCL 554.451 *et seq.*; MSA 27.3178(241.21) *et seq.*,<sup>1</sup> with plaintiff as the account custodian. At the time of the parties' divorce, Aaron's father owed more than \$12,000 in child support arrearages, and the court concluded

that no one could accurately predict whether or when that money would be paid. Throughout the marriage, particularly while plaintiff attended college, defendant took primary responsibility for parenting plaintiff's son. Pursuant to the divorce, defendant made equitable claims for his contributions to plaintiff's education and her son's upbringing. The court denied these claims, attempted to divide the marital assets in half, and denied plaintiff's claim for alimony. This appeal followed.

## II

Defendant first claims that the trial court erred in dividing the marital estate in half. We review the trial court's findings of fact under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). Dispositive rulings are reviewed to determine whether we are left with a firm conviction that the marital property division is inequitable in light of the circumstances. *Id.* at 151-152. In determining an equitable distribution of marital property, the following factors are to be considered where relevant:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*Sparks*, *supra* at 159-160.]

The well-established goal in distributing marital assets in Michigan 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).

The parties' eleven-year marriage does not weigh more heavily in favor of one party than the other. With respect to their contributions to the marriage, we reject defendant's argument that the court failed to accurately evaluate this factor. The trial court acknowledged that defendant provided the bulk of the family's financial support, that defendant also provided considerably more in non-financial contributions while plaintiff attended college and that defendant brought considerably more assets into the marriage. Thus, the court properly evaluated this factor. Although the court did not use this factor to skew the property division, defendant's contributions to the marriage were a significant factor in the court's decision to deny alimony. Thus, the dispositive rulings, considered as a whole, gave appropriate consideration to this factor.

Defendant next notes that plaintiff is able to support herself and that her actions leading to the divorce destroyed his plans to retire early. Defendant provided no authority to support his contention that plaintiff should receive a smaller share of the marital assets because he can no longer retire at age fifty-six. Likewise, there is no support for defendant's contention that he should receive more than half the marital estate merely because plaintiff has marketable skills. Both parties have marketable skills and this factor supports congruency.

With respect to the parties' life status, present situation, necessities, and circumstances, defendant claims that the parties lived frugally and that plaintiff should be required to continue to do so.

The court noted that plaintiff's needs were far greater than defendant's, but that conclusion was based only on the parties' earning abilities, not on plaintiff's spending habits. Even presuming that defendant chooses to live more frugally than plaintiff, the goal of dividing marital assets is to achieve equity, not to punish one of the parties. *Sands v Sands*, 442 Mich 30, 36; 497 NW2d 493 (1993). There is simply no support for the contention that the more frugal partner is entitled to a greater share of the marital assets. Therefore, there is no error with respect to these factors.

Defendant next contends that he should have received more of the marital assets because of plaintiff's fault in the breakdown of the marriage. The trial court examined the issue of fault and found that both parties had contributed to the breakdown of the marriage. A trial court's findings of fact should not be disturbed unless they are clearly erroneous. *Sparks, supra* at 151. There is no question that plaintiff was unfaithful to defendant. However, there was also evidence on the record that defendant's behavior contributed to the breakdown of the marriage as well. The trial court is in the best position to judge the credibility of witnesses, and there was sufficient testimony on the record to support the court's conclusion that both parties contributed to the breakdown of the marriage. We find no error in the court's ultimate decision to divide the marital property equally.

With respect to the property division, defendant also contends that the court erred in allowing plaintiff to keep, as separate property, the account established with the child support payments she received for her son's benefit. This account was established pursuant to the Uniform Gifts to Minors Act, MCL 554.451 *et seq.*; MSA 27.3178(241.21) *et seq.* Both parties agreed to place the money in an account for plaintiff's son's benefit. Absent a showing of fraud, there is no support for defendant's theory that irrevocable gifts given during a marriage should be retrieved and included in the marital estate.

### III

Defendant raised equitable claims for his contributions to plaintiff's education and his contributions to plaintiff's son's upbringing, and he contends that the trial court erred in rejecting these claims. While this Court has recognized equitable claims for contributions to a spouse's advanced degree, undergraduate degrees have not been afforded the same consideration. *Sullivan v Sullivan*, 175 Mich App 508, 511-512; 438 NW2d 309 (1989). Thus, the trial court properly denied defendant's claim for reimbursement of his contributions to plaintiff's education.

With respect to defendant's equitable claim for contributions he made to plaintiff's son's upbringing, defendant again cites no controlling authority directly on point<sup>2</sup> but contends that we should analyze his claim under an unjust enrichment theory. Where one party receives a benefit from another party, and it would be inequitable to retain the benefit without compensation, the law operates to imply a contract to prevent unjust enrichment and the beneficiary may be required to make restitution to the other party. *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546; 473 NW2d 652 (1991); *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 185; 504 NW2d 635 (1993); *Martin v East Lansing School Dist*, 193 Mich App 166, 177; 483 NW2d 656 (1992). However, a special relationship between the parties, as here, raises the presumption that the services were provided gratuitously. *In re Estate of Morris*, 193 Mich App 579, 582; 484 NW2d 755 (1992); *Roznowski v*

*Bozyk*, 73 Mich App 405, 408; 251 NW2d 606 (1977). This presumption may be overcome through evidence that the party conferring the benefit expected to receive compensation and the beneficiary expected to provide that compensation. *Id.*; *Featherston v Steinhoff*, 226 Mich App 584, 589; 575 NW2d 6 (1997).

Defendant testified that he never expected to receive payment for helping to raise plaintiff's son. This alone precludes finding that an implied contract existed. *Roznowski, supra* at 408; *Featherston, supra* at 589. Children are best served when a stepparent enters a family relationship with the intent to nurture and provide for his or her spouse and stepchild as needed. Neither the marital relationship nor the stepparent/stepchild relationship benefits if the parties are keeping track of their parenting efforts in case restitution becomes an issue. Thus, it should be presumed that family members confer benefits on other family members gratuitously, particularly where a stepparent confers a benefit on a child, only indirectly benefiting the biological parent.

The court properly considered defendant's contributions to plaintiff's education and her son's upbringing as a factor in determining alimony. Therefore, although defendant was not awarded a cash reimbursement for his contributions, his efforts were significant in relieving him of any obligation to contribute to plaintiff's support after the divorce. We find no error in this regard.

#### IV

Defendant next claims that the trial court erred in awarding plaintiff one-half his pension when the present value of the pension was not placed into evidence. Defendant did not raise an appropriate objection in the lower court; therefore this issue has not been preserved for appeal. We need not address issues raised for the first time on appeal. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). We do note, however, that the court was provided with the pension's ascertainable value. Precluding distribution of the pension merely because plaintiff did not provide a calculation of future benefits reduced to present cash value is a hypertechnical interpretation of the law. There is a difference between (1) marital property that consists only of an expectation of receipt or that is subject to a contingency, and (2) property that is not subject to a contingency but is merely waiting for the owner to take possession. *Miller v Miller*, 83 Mich App 672, 675; 269 NW2d 264 (1978). The requirement that a reasonably ascertainable value be provided assures that the pension represents more than a mere expectancy.

Defendant has raised none of the contingency concerns present in *Miller, supra*. In the event he retires before serving eight years, he will be entitled to a refund of his contributions plus interest – defendant's interest in the pension is not merely an expectancy and its value, as of the date of the provided statement, was established. The only real relevance that future benefits reduced to present value may have had in the instant case is that, without that value, the court would have been unable to award a lump sum payment to plaintiff in lieu of later, periodic payments. Plaintiff did not request a lump sum payment. Rather, defendant, at the final hearing, requested to be allowed to make a lump sum payment. Under these circumstances, it was reasonable to require defendant to provide evidence of future benefits reduced to present value.

## V

Defendant next claims that the trial court erred in awarding spousal support during the pendency of this appeal, particularly in light of its decision to deny alimony. The main objective of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party. *Torakis v Torakis*, 194 Mich App 201, 205; 486 NW2d 107 (1992). In this case, the court noted that plaintiff's income-earning ability was significantly less than defendant's but that she would ultimately have liquid assets capable of providing her with additional income, referring to the division of marital property. It is reasonable to conclude that, until she received that property or its cash equivalent, her income would not reach the level anticipated by the court in denying post-divorce alimony.

The judgment of divorce provided for continued spousal support until defendant transferred plaintiff's portion of the marital assets to her, recognizing that plaintiff's post-judgment income would be affected if defendant did not distribute those assets in his control. Under these circumstances, it was proper to continue alimony until plaintiff had the benefit of the income-earning assets. In lieu of continuing the temporary alimony, defendant had the option of dividing the assets and either delivering their value to plaintiff or placing that money in an interest-bearing account. Because defendant had these options, his interests were completely protected and it was ultimately his choice whether to continue to pay \$150 per week.

## VI

Defendant finally claims that the trial court erred in failing to establish a single valuation date for the marital property. We disagree. The determination of the proper time for valuation of an asset is in the trial court's discretion and is therefore reviewed for an abuse of that discretion. *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 76; 471 NW3d 631 (1991). We will uphold a valuation date so long as the court had a plausible reason for its decision. *Sullivan v Sullivan*, 175 Mich App 508, 510; 438 NW2d 309 (1989).

We first reject defendant's claim that the court erred in concluding that the marriage was effectively over by the end of 1996. There was evidence that the parties intended their September 1996 separation to be temporary; although defendant now claims that the marriage was effectively over when plaintiff was unfaithful in 1995, he testified as late as November 1997 that the marriage was still not over and that the court should not grant the divorce. Thus, the court's conclusion that the marriage was over by the end of 1996, shortly before plaintiff filed this divorce action, was a reasonable one.

Defendant contends that the court improperly applied different valuation dates to different marital properties. Support for the trial court's multiple valuation dates is found in *Byington, supra* at 114, n 4:

When dividing assets incident to a divorce, the court must first consider whether an asset is properly considered a marital asset. Where the court determines that a particular asset is, in fact, a marital asset, it must then value the asset as of either the date of trial, the date of judgment, or a more appropriate date.

Thus, assets are to be considered on an individual basis with respect to (1) whether they are “marital assets”, and (2) the appropriate valuation date. This analysis is further supported by the goal of apportionment – to reach an equitable division in light of all the circumstances. *Id.* at 114. Thus, as long as the court set forth plausible reasons for the valuation dates imposed, those decisions will be upheld. *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991). We find the court’s reasons plausible. Those accounts that appreciated in value without any effort by the parties should be valued at the time of their distribution. On the other hand, it was reasonable for the court to allow defendant to recoup the contributions he made to the assets after the marriage was effectively over. Therefore, the court’s valuation dates are affirmed.

Affirmed.

/s/ Richard Allen Griffin

/s/ David H. Sawyer

/s/ Michael R. Smolenski

<sup>1</sup> Pursuant to 1998 PA 433, the act was renamed the Uniform Transfers to Minors Act. MCL 554.523; MSA 26.1238(3).

<sup>2</sup> Defendant provided an unpublished Wisconsin case in support of his theory; however, that case is neither controlling nor on point. In *Taylor v Nuzzo*, 208 Wis2d 372; 561 NW2d 351 (1997), the plaintiff and his wife divorced when he learned that he was not the biological father of the four-year-old child born during their marriage. He later filed suit against the biological father claiming unjust enrichment. The court upheld the summary disposition entered in the biological father’s favor, finding that he was unaware that a benefit was being conferred on him. This case is distinguishable because there was no familial relationship between the legal and biological fathers which would have created a presumption that the benefits were conferred gratuitously. Significantly, that court also noted, “[w]e assume for purposes of this opinion that supporting a nonbiological child confers a benefit on the biological parent. However, we do not decide this issue.” *Id.* at 561 NW2d 351, n 1.