

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARILYN J. KARAMANIAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
January 30, 2001

v

EDWARD KARAMANIAN,  
  
Defendant-Appellant.

No. 211876  
Oakland Circuit Court  
Family Division  
LC No. 96-523829-DO

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Before: Kelly, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right the parties' judgment of divorce, challenging the inclusion of his interest in one parcel of commercial property as a marital asset and the award of attorney fees to plaintiff. We affirm in part, vacate in part, and remand.

The parties married in April 1968 and had two sons, both of whom are now adults. Plaintiff worked throughout most of the thirty-year marriage and contributed all of her earnings to the marriage. She took several years off work for the births and care of the sons. She filed a divorce action in 1996.

The judgment of divorce included in the marital estate defendant's interest in a parcel of commercial property acquired by defendant's parents and defendant in 1972, during the marriage. The Lathrup Village Post Office leased the property continually, from 1972<sup>1</sup> through the instant proceedings. Defendant argues that the trial court erroneously included his interest in the property in the marital estate. We disagree.

The deed to the property lists as vendees defendant and his parents "as joint tenants with full rights of survivorship and not as tenants in common." Of the four checks for the \$50,431.95 purchase price, one check, for \$21,311, was drawn on an account in the name of defendant and his parents, and made payable to defendant, who then contributed it to the purchase. Defendant testified it was his father's money, and the court accepted that the property was purchased with

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<sup>1</sup> The Lathrup Village Post Office had also leased the property before defendant and his parents acquired it.

funds belonging to defendant's parents. The deed indicated that all tax bills were to be sent to defendant.

After defendant's father entered a nursing home around the mid-1980s, defendant assumed responsibility for receiving the rent. The rental income and expenses on the post-office property were reported on Schedule E of the parties' joint tax returns beginning in 1983, and the rent went into a bank account bearing the names of defendant and his mother, until approximately 1987. Defendant's father died around late 1986. In 1987, the account was in defendant's name only, and in 1996, defendant added his sister's name to the account. Defendant testified that he used the rental income to pay his parents' bills, taxes and supplies, to give his mother approximately one or two hundred dollars a month, and for his own family's expenses, including the parties' children's education and a sunroom addition. Defendant denied involvement by plaintiff in the management of the property, other than preparing tax bills once a year and, in more recent years, drafting some correspondence.

Plaintiff testified that defendant played a part in the purchase of the post-office property and that plaintiff typed all correspondence regarding the property from the time it was purchased in 1972. She estimated that she prepared correspondence six or seven times a year. Plaintiff testified that she and defendant used the post-office rental income for their two children's education,<sup>2</sup> a trip to Europe, an addition of a sunroom to one of their homes and the purchase of a boat, and that defendant gave his mother money from the rental income.

Plaintiff's expert opined that the property was worth \$370,000. In the 1970s and 1980s, with the exception of a few years, the annual rental income on the property was \$4,800. However, during the 1991-1996 five-year lease period the annual rental income was in the low \$30,000s. The post-office signed another five-year lease in 1996, and during that year the rent increased to approximately \$42,000 per year.

The trial court found that defendant owned the property jointly with his mother and included his one-half interest in the property (\$185,000) in the marital estate based on the property's appreciation during the marriage, the use of rental proceeds for marital expenses, defendant's management of the property with plaintiff's assistance, and the inclusion of the rental proceeds in the parties' taxable income.

This Court reviews the trial court's factual findings in a divorce action for clear error. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). A factual finding is clearly erroneous if, after reviewing the entire record, this Court is left with the definite and firm conviction that the trial court made a mistake. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999). The trial court's dispositional ruling should not be disturbed unless the reviewing court has a firm conviction that it was inequitable. *McDougal, supra*.

In making a property disposition in a divorce case, the trial court may divide between the parties all property that came "to either party by reason of the marriage." MCL 552.19; MSA 25.99. The property that may be apportioned between the parties is the property that makes up

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<sup>2</sup> The parties' two adult sons are an engineer and a lawyer.

the marital estate, and it is referred to as “marital property.” *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). Included in the marital estate are assets earned by a spouse during the marriage. *Id.* The trial court’s goal in apportioning a marital estate is to divide the marital assets equitably in light of all the circumstances. *Id.* at 114. “When apportioning marital property, the court must strive for an equitable division of increases in marital assets ‘that may have occurred between the beginning and the end of the marriage.’” *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997).

There was ample evidence that defendant was an owner of the property and sound reasons to treat his one-half interest as marital property. The record supports that after defendant’s father’s death, substantial portions of the rental income were used for marital expenses. The parties’ joint tax returns included the rental proceeds as taxable income through 1995. The investment was not simply passive, as defendant managed the property during the marriage with plaintiff’s assistance. Further, the property appreciated greatly during the marriage. We find no error in the court’s factual findings or division of the property. *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995).

## II

Defendant also challenges the trial court’s award of attorney fees to plaintiff. We hold that the trial court did not abuse its discretion in awarding plaintiff attorney fees, but that its findings of fact regarding the amount of fees awarded are inadequate.

An objection to the reasonableness of an attorney fee award may not be raised for the first time on appeal. *Jansen v Jansen*, 205 Mich App 169, 172; 517 NW2d 275 (1994). The court’s decision to award attorney fees in a divorce action is reviewed for an abuse of discretion. *Id.* at 173. In the absence of an objection in the trial court to the reasonableness of an attorney fee award, this Court need not consider such a challenge, unless the refusal to do so would lead to manifest injustice. *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992).

There are two bases for an award of attorney fees in a divorce case. The court may award attorney fees if they are necessary to enable a party to prosecute or defend the action. MCL 552.13; MSA 25.93; *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997). Attorney fees may also be awarded when the party requesting those fees has been forced by the other party’s conduct in the course of litigation to incur expenses. *Hanaway, supra* at 298. The trial court in this case found:

Defendant’s transfer of large sums of money out of marital accounts without adequate explanation, his refusal to provide information during discovery and his reluctant production of documents during the course of this trial demonstrates obstruction of and interference with Plaintiff’s ability to pursue this action, if not clear violation of court rules and court orders. Plaintiff should not be required to bear the legal expense caused by Defendant’s actions.

Additionally, Plaintiff points to the motion she had to file in order to use the cottage as Defendant denied her access during the pendency of this proceeding. In

view of Defendant's baseless assertions of sole ownership of the property, the court agrees that legal expenses related to this issue were unnecessarily caused by the Defendant.

Plaintiff also asserts that Defendant's assaultive conduct and the taping of her telephone conversations with others justifies attorney fees. Although the court agrees that such conduct is reprehensible and may be illegal, Plaintiff has failed to show how such actions resulted in additional attorney fees in this action.

It is apparent that the trial court did not consider plaintiff's need in awarding her attorney fees, but instead made the award based on a finding that plaintiff incurred fees as a result of defendant's unreasonable conduct.

Defendant argues that the trial court abused its discretion in awarding attorney fees to plaintiff. We find that the court's award of fees based on defendant's transfer of large sums of money out of the marital accounts without adequate explanation to be an abuse of discretion. Earlier in its opinion, the trial court noted that the dissipation of a GMAC Demand Note and use of funds from the parties' joint accounts were used to pay marital expenses. However, the court did not explain how this caused plaintiff to incur legal expenses. We therefore find the court's award of attorney fees on this basis to be an abuse of discretion.

The trial court also awarded plaintiff fees based on defendant's refusal to provide discovery and reluctant production of documents. The record demonstrates that the court repeatedly ordered defendant to provide certain documents to plaintiff. Similarly, the record demonstrates that plaintiff had to seek a court order to obtain the use of the parties' cottage. We find that the trial court did not abuse its discretion in awarding plaintiff attorney fees for these reasons.

Defendant challenges the amount of attorney fees awarded. During closing arguments, plaintiff's counsel presented a billing statement reflecting that \$19,000 was due to plaintiff's counsel. The trial court awarded plaintiff \$25,000. Although plaintiff's counsel claimed that there existed another outstanding bill of \$15,000 that was due to plaintiff's former counsel, no statement was provided to the court. The trial court's award of \$25,000 was an abuse of discretion because it is not supported by the evidence.

Moreover, the trial court failed to make any findings regarding the amount of attorney fees that plaintiff was forced to incur as a result of defendant's conduct. Plaintiff argues that, by failing to file a postjudgment motion raising a challenge to the trial court's findings of act, defendant has waived this issue. We disagree. MCR 2.517(A)(7) provides that "[n]o exception need be taken to a finding or decision." *Morris v Clawson Tank Co*, 459 Mich 256, 275 n 13; 587 NW2d 253 (1998).

In so far as the court awarded fees to plaintiff on the basis that she was forced by defendant's conduct to incur them, the award should be limited to those fees. We find that the failure to address defendant's challenge to the reasonableness of the fee award would result in manifest injustice. Accordingly, the trial court's award of attorney fees is vacated, and the matter

is remanded for the trial court to make appropriate factual findings regarding the amount of fees incurred by plaintiff as a result defendant's conduct.

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

/s/ Kurtis T. Wilder