

STATE OF MICHIGAN  
COURT OF APPEALS

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DOUGLAS WALTER WILKINSON,

Plaintiff-Appellant,

v

PAMELA JUNE WILKINSON,

Defendant-Appellee.

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UNPUBLISHED

March 16, 2001

No. 223127

Muskegon Circuit Court

LC No. 98-002733-DM

Before: Saad, P.J., and Fitzgerald and O’Connell, JJ.

PER CURIAM.

Plaintiff-husband appeals as of right from the October 19, 1999 judgment of divorce, challenging provisions relating to alimony, property division, and the award of attorney fees. We affirm.

On appeal, plaintiff raises several challenges to the trial court’s award of \$175 per week in alimony. We review a trial court’s factual findings with respect to an alimony award to determine whether they are clearly erroneous. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000); *Wiley v Wiley*, 214 Mich App 614, 615; 543 NW2d 64 (1995). A finding is clearly erroneous if, after a review of the record, we are left with a definite and firm conviction that the trial court made a mistake. *Dragoo v Dragoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). We afford great deference to the trial court with respect to credibility determinations. *Id.* If the trial court’s findings of fact regarding alimony are upheld, we review its ultimate disposition to determine whether it was equitable under the circumstances. *Wiley, supra* at 615.

MCL 552.23(1); MSA 25.103(1), authorizes a trial court, on entry of a judgment of divorce, to award “just and reasonable” alimony. When formulating an alimony award, the trial court considers the following relevant factors:

[T]he 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, and all other circumstances of the case. [*Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996). (citations omitted).]

The primary objective in awarding alimony is to balance the incomes and needs of the parties in a manner that will avoid the impoverishment of either party. *Id.*

Plaintiff first argues that the trial court clearly erred in concluding that plaintiff was at fault for the breakdown of the parties' marriage, and accorded disproportionate weight to this factor. We disagree.

After hearing the testimony of both parties, the trial court found plaintiff at fault for the breakdown of the marriage. The court rejected plaintiff's assertion that defendant's spending habits caused the breakdown of the marriage. After a review of the record, we are not persuaded that the trial court's findings were clearly erroneous. During testimony, plaintiff admitted to infidelity during the marriage. The record also demonstrates that plaintiff filed for divorce after informing defendant of the affair. Consequently, we are not left with a definite and firm conviction that the trial court mistakenly found defendant at fault for the breakdown of the marriage.

We are also not persuaded that the trial court afforded excessive weight to fault when fashioning the alimony award. The trial court properly balanced the parties' sixteen-year marriage, their ages, health, ability to pay, and respective living situations when determining the award.

Plaintiff next argues that the trial court's conclusion that defendant was in need of alimony was erroneous. At the time of trial, defendant was aged forty-eight and working part-time at a fast-food restaurant. According to defendant, she earned \$7,500 annually. Defendant finished high school, but admitted during trial that she did not have skills to obtain a better paying job. Moreover, though able to pay for basic necessities, defendant testified that she was having trouble making ends meet.

Contrary to plaintiff's assertion that defendant could support herself adequately, the record indicates that defendant's standard of living declined substantially after the parties separated. During the marriage, defendant cared for the parties' minor child and worked at a variety of part-time jobs. Defendant enjoyed a heightened standard of living during the marriage, including increased spending habits and vacations. After plaintiff filed for divorce, defendant shared an apartment with the parties' minor child, and did not have access to a vehicle for transportation. On this record, we are not convinced the trial court's findings were erroneous.

We are also not persuaded that defendant was awarded a substantial portion of the marital estate to the extent that alimony is unnecessary. Nor do we accept plaintiff's assertion that the trial court's order that he pay alimony until defendant attains the age of sixty-two is inequitable. Our review of the record persuades us that there is serious doubt whether defendant, in spite of her best efforts, will be able to fully support herself in the future. In our view, it would be inequitable to eliminate alimony as a source of support in this case. See *Sullivan v Sullivan*, 175 Mich App 508, 514; 438 NW2d 309 (1989). Further, the judgment of divorce provides for termination of alimony on defendant's remarriage or receipt of social security benefits.

Plaintiff next claims that the trial court did not consider plaintiff's ability to pay \$175 per week in alimony. Our review of the record reveals that the trial court considered plaintiff's \$54,700 in annual income, as well as plaintiff's child support obligations and monthly expenses in fashioning an alimony award. That the trial court considered plaintiff's ability to pay is further evidenced by its decision to lower the initial alimony award of \$200 a week to \$175 a week.

Evidence presented to the trial court by way of plaintiff's bi-weekly pay stubs indicated that plaintiff's weekly income was sufficient to pay the ordered amount. Consequently, we are satisfied that the trial court's award of \$175 a week in alimony was equitable.

Plaintiff also argues that the trial court's division of the marital estate was inequitable. We review the trial court's findings of fact with respect to property distribution for clear error, and then determine whether the ultimate dispositional ruling was fair and equitable under the circumstances. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997).

The goal of the court when apportioning a marital estate is to reach an equitable division in light of the circumstances. Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court. When dividing the estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstance. [*Id.* at 114-115 (citations omitted).]

As a preliminary matter, we reject plaintiff's assertions that the trial court did not make sufficient factual findings when dividing the marital estate, and that the court afforded excessive weight to fault. In the context of determining alimony and the division of property, the trial court made findings with respect to the duration of the parties' marriage, each party's respective station in life, as well as their earning ability, health, needs, age, and fault.

After a review of the record, we are satisfied that the division of the marital estate was equitable. The divorce judgment awarded defendant a thirty-seven and one-half percent share of plaintiff's monthly accrued interest in a combined pension plan, together with a fifty-percent share of plaintiff's salaried employee pension plan. The salaried pension plan was valued at approximately \$9,869.63 at the time of trial. Defendant was further awarded a fifty-percent share of plaintiff's employer-sponsored savings plan, valued at \$26,141.00. A party's interest in pension plans and retirement benefits are properly considered part of the marital estate. MCL 552.18; MSA 25.98; *McMichael v McMichael*, 217 Mich App 723, 731; 552 NW2d 688 (1996). The trial court further divided the parties' personal property, consisting primarily of household items, equally between the parties on an alternating basis.

The trial court also equitably divided the parties' marital debt. Noting that the majority of the marital debt was discharged in bankruptcy proceedings, the trial court ordered defendant to pay \$1,000 toward plaintiff's federal tax debt. The trial court declined to order defendant to pay an increased amount, given that the debt was attributable to moving expenses paid by plaintiff's employer included in plaintiff's gross employment income. The trial court also declined to order defendant to contribute to plaintiff's medical bills incurred when plaintiff was treated by a physician outside of his health maintenance organization (HMO) network. Further, the parties were held responsible for debts incurred in their own names.

Finally, plaintiff contends that the trial court abused its discretion when it awarded defendant \$1,200 in attorney fees. We disagree.

We review the award of attorney fees for an abuse of discretion. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999); *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997). A party to a divorce action may be ordered to pay the other's reasonable attorney fees "if the record supports a finding that such financial assistance is necessary to enable the other party to defend or prosecute the action." *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). Plaintiff argues that defendant was not entitled to attorney fees because she received substantial assets in the property settlement. We disagree and find no abuse of discretion.

In the present case, there was sufficient evidence that defendant was in need of financial assistance to defend the divorce action, including her income level and general financial condition. Plaintiff testified during trial that she earned \$5.50 an hour working at a fast-food restaurant, and that she had difficulty paying her monthly bills. Under these circumstances, we are satisfied that the award of attorney fees was necessary to enable plaintiff to defend the instant action, and that she should not be forced to "invade assets to satisfy attorney fees when [plaintiff] is relying on the same assets for support." *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995).

Affirmed.

/s/ Henry William Saad  
/s/ E. Thomas Fitzgerald  
/s/ Peter D. O'Connell