

STATE OF MICHIGAN
COURT OF APPEALS

LINDA MARIAN LECLAIR,

Plaintiff-Appellant,

v

GHOLAMREZA SHAREGHI,

Defendant-Appellee.

UNPUBLISHED

August 16, 2002

No. 229728

Berrien Circuit Court

LC No. 94-003848-DM

Before: Neff, P.J., and White and Owens, JJ.

PER CURIAM.

After lengthy divorce proceedings, a judgment of divorce was entered. With the exception of the marital home, which was lost to foreclosure during the pendency of the divorce, the major marital assets were divided equally between the parties. The judgment awarded each party the personal property in their possession. The parties were awarded joint legal custody of their four minor children.¹ Plaintiff received sole physical custody of the children. Plaintiff now appeals as of right. We affirm.

I

Plaintiff contends that the trial court's evaluation and division of the marital estate requires reversal. "In reviewing a dispositional ruling in a divorce case, we first review the trial court's findings of fact for clear error and then decide whether the dispositional ruling was fair and equitable in light of the facts." *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). 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 made." *Moore v Moore*, 242 Mich App 652, 654-655; 619 NW2d 723 (2000). While this standard gives the appellate judge more latitude than when reviewing a trial by jury, it does not authorize a reviewing court to substitute its judgment for that of the trial court; if the trial court's view of the evidence is plausible, the reviewing court may not reverse. *Id.*

¹ The parties' oldest child was born on February 2, 1983, and is no longer a minor.

In determining whether the property distribution was fair and equitable, we may consider any of the following:

[The] source of the property; the parties' contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity . . . [as well as] the interruption of the personal career or education of either party. [*Hanaway, supra* at 292-293.]

The goal of the court when apportioning a marital estate is to reach an equitable division in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court. *Id.* at 114-115. Again, a property distribution will be affirmed unless we are "left with the firm conviction that the distribution was inequitable." *Hanaway, supra* at 292.

Plaintiff also argues that the trial court failed to consider all of the factors necessary to a proper division of the marital estate and that its findings of fact and conclusions were insufficient under MCR 2.517(A). We disagree. MCR 2.517(A)(1) provides that a trial court, sitting as the finder of fact, must find the facts specially, state its conclusions of law separately, and direct entry of the appropriate judgment. "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2). The trial court is not required to comment on every matter in evidence or declare acceptance or rejection of every proposition argued. *Fletcher v Fletcher*, 447 Mich 871, 883-884; 526 NW2d 889 (1994), quoting *Baker v Baker*, 411 Mich 567, 583; 309 NW2d 532 (1981).

Our review of the trial court's findings of fact and conclusions of law reveals no deficiency. In fact, we find plaintiff's arguments in this respect to be disingenuous. The trial court made certain findings of fact at the outset of its opinion. It later made additional findings of fact when ruling on the spousal support issue. Some of those findings were also relevant to the division of the marital estate. While the trial court did not reiterate those findings when later dividing the marital assets, there was no requirement that it independently do so. It was clearly aware of the relevant factors and considered them in rendering its judgment.

For example, the trial court considered the duration of the marriage, noting when the parties were married and noting that the marriage was lengthy. The trial court also considered the contribution of each party to the marital estate. It made findings of fact about the parties' relationship shortly after marrying, about their respective financial contributions from the time of the marriage through 1998, and about when the children were born.

The trial court also considered each party's age, ability to earn a living, station in life and needs. It noted that plaintiff was forty-six years old at the time of trial and that defendant was fifty years of age. Further, it found that both had advanced degrees and that plaintiff had extensive experience in her field. Because plaintiff was not in the work force at the time of trial, the trial court determined that she would need some assistance to get back into the work force. Moreover, the trial court considered that she was living with the four children and needed to

maintain the home. The trial court further looked at the standard of living of the parties and candidly expressed that they would not be able to maintain their prior standard of living.

Additionally, the trial court considered plaintiff's health and rejected that she had any health problems of significance. It noted that, other than plaintiff's own testimony, she failed to present evidence to support that she had health problems. It then specifically found that her alleged work restrictions did not appear to be much of an issue because of her expertise in the field of nursing. Plaintiff's own testimony indicated that she was able to work and earn a living. Thus, the trial court's findings with respect to plaintiff's health were not clearly erroneous.

Contrary to plaintiff's misleading argument on appeal, the trial court also considered the issue of fault, noting that it was "not going to find either party is at fault." The trial court did not refuse to sort out the issue of fault. Rather, it refused to sort out all of the individual allegations of fault raised by the parties. Instead, it determined that, on the whole, the breakdown of the marriage was equally attributable to both parties. This finding was not clearly erroneous. Plaintiff engaged in an extramarital affair in the early 1980s and was engaged in another extramarital affair at the time the parties separated. She also expressed that the marriage was doomed from the time defendant decided to go to medical school. On the other hand, there was testimony that defendant was inconsiderate of plaintiff's feelings, that he did not assist her, and that he did what he wanted to do without regard to plaintiff's desires. The competing testimony supported that both parties contributed equally to the demise of the long-term marriage.

The trial court further considered other equitable circumstances. It found that defendant improperly removed money from a retirement account and failed to make mortgage payments on the marital home. It also found, however, that plaintiff's removal of \$58,000 from the parties' joint checking accounts shortly before filing for divorce caused a significant tax problem. Further, her failure to take any steps to save the marital home from foreclosure when she had the ability to do so contributed to the loss of the asset. These findings were not clearly erroneous.

Finally, the trial court's findings of fact with respect to defendant's Ph.D. and M.D. degrees were also not clearly erroneous. An advanced degree can be a marital asset subject to distribution as property. *Beckett v Beckett*, 186 Mich App 151, 154; 463 NW2d 211 (1990). "Fairness dictates that the spouse who did not earn an advanced degree can be compensated whenever the advanced degree is the end product of a concerted family error involving mutual sacrifice and effort by both spouses. *Id.* at 155. In *Postema v Postema*, 189 Mich App 89, 105-107; 471 NW2d 912 (1991), we set out a framework for the determination of a fair amount of compensation for the nonstudent spouse:

In our view, any valuation of a nonstudent spouse's equitable claim involving an advanced degree involves a two-step analysis. First, an examination of the sacrifices, efforts, and contributions of the nonstudent spouse toward attainment of the degree. Second, given such sacrifices, efforts, and contributions, a determination of what remedy or means of compensation would most equitably compensate the nonstudent spouse under the facts of the case. . . . In this regard, we agree . . . that the length of the marriage after the degree was obtained, the sources and extent of the financial support given to the degree holder during the years in school, and the overall division of the parties' marital property are all

relevant considerations in valuing a nonstudent spouse's equitable claim involving an advanced degree upon divorce.

Where, for instance, the parties remain married for a substantial period of time after an advanced degree is obtained, fairness suggests that the value of an equitable claim would not be as great, inasmuch as the nonstudent spouse will already have been rewarded, in part, for efforts contributed by virtue of having already shared, in part, in the fruits of the degree. . . . Similarly, where the extent of support or assistance provided by the nonstudent spouse, financial or otherwise, is not significant, or where such assistance comes primarily from outside sources for which the nonstudent spouse was not responsible or is not liable, fairness and equity would also suggest that the value of an equitable claim would not be as great.

* * *

Ultimately, however, the goal is to arrive at a remedy which, consistent with fairness and equity, will compensate the nonstudent spouse for unrewarded sacrifices, efforts, and contributions toward the degree. Thus, in reviewing such a claim on appeal, the ultimate inquiry is whether the remedy or decision of the trial court was a fair and equitable one under the facts of the case, given the sacrifices, efforts, and contributions of the nonstudent spouse toward the degree. [Emphasis added.]

In this case, defendant was in the process of obtaining his Ph.D. when the parties married in December 1975. There was testimony that plaintiff's contributions to the attainment of that degree were minimal at best. She was in Pennsylvania and did not live with defendant from June 1976 to January 1978, when he completed his Ph.D. in pharmacology. She also did not contribute substantially to his finances during most of the time he pursued that degree. Further, defendant was not utilizing his Ph.D. and there was no testimony that he would do so in the future. It had no value to be divided.

With respect to defendant's medical degree, there was testimony that defendant paid for his education with student loans and money from his parents. There was also testimony that plaintiff was not supportive of his decision to go to medical school. With the exception of his internship and first two years of residency, he contributed income to the marital partnership the entire time he pursued his education. While plaintiff was the primary caregiver for the children, three of whom were born during the period of defendant's medical training, the marriage remained intact for a significant period of time after that. Many of those years were lucrative for the parties, especially the five years between the time defendant finished his residency and the time the parties separated. Plaintiff's spousal support in the 5-1/2 years that the divorce was pending was based on defendant's high income. Thus, plaintiff continued to benefit from the medical degree. In other words, plaintiff enjoyed the fruits of the medical degree for several years. Further, during the time defendant was in medical school, plaintiff received her master's degree and thus, she too received an advanced degree. Therefore, we do not believe that it was inequitable under the circumstances for the trial court to decline to compensate plaintiff separately for her sacrifices and contributions to defendant's advanced degrees. See *Postema, supra* at 105-107.

In sum, the trial court's findings of fact addressed all of the considerations necessary for making a property division. *Hanaway, supra* at 292. And, as discussed, none of the findings were clearly erroneous.

We also find that the trial court's division of the marital estate was fair and equitable in light of the facts. The trial court ruled that it was going to divide the estate equally. In doing so, it valued the property, with the exception of the marital home, at the time the divorce was filed. The trial court's division of property was roughly one-half to each party. As noted by the trial court, the judgment left defendant with debt and no assets because he used his share during the pendency of the case. Plaintiff received one-half of the value of the retirement account before it was raided by defendant, and one-half of the cash value of an insurance policy. In order to receive her share, however, she took the cash value of the funds remaining in the retirement account and the entire cash value of the insurance policy. Defendant was ordered to pay the remaining deficit in monthly installments with interest. The trial court treated the marital home as a lost asset and refused to divide it where both parties contributed to its loss. This was fair under the circumstances. Similarly, given the trial court's conclusions with respect to defendant's advanced degrees, the trial court's failure to compensate plaintiff for her sacrifices and contributions toward the attainment of those degrees was not inequitable. Accordingly, the ultimate dispositional ruling was fair and equitable, and reversal is not required. *Hanaway, supra* at 292.

II

Plaintiff contends that the trial court's findings of fact with respect to spousal support were against the great weight of the evidence. Specifically, she challenges the trial court's findings on the following factors: (1) the parties' abilities to work; (2) the parties' needs; and (3) the health of the parties. She additionally argues that the trial court improperly refused to determine the issue of fault. We review the trial court's factual findings with respect to the award or modification of alimony or spousal support for clear error. *Moore, supra* at 654.

First, contrary to plaintiff's argument, the trial court clearly determined that fault lay equally with both parties. This finding was not clearly erroneous.

Second, the trial court's findings about the parties' abilities to work and the parties' needs were also not clearly erroneous. The trial court found that plaintiff had an advanced degree. The evidence supported this finding. Moreover, plaintiff admitted at trial that she had the ability to work and could earn between \$32,000 and \$35,000 per year. The trial court further found, however, that plaintiff needed assistance until she got back into the workforce. The trial court considered and credited the fact that plaintiff had to maintain a home for herself and the children. The trial court also specifically found that the spousal support factor relating to the needs of the parties favored plaintiff. In fact, it is inconceivable that plaintiff argues on appeal that this finding was against the great weight of the evidence where the trial court found that it favored her.

Finally, the trial court did not credit plaintiff's claim that she had health problems affecting her ability to work. This finding was not clearly erroneous. Plaintiff admitted that her

rectocele problem could be corrected by surgery and that she had made no effort to have it corrected. Further, she offered no evidence that her gastroesophageal reflux condition would prevent her from working. She admitted that she could work.

The trial court ultimately ruled, after discussing and making findings of fact on all of the spousal support factors, as follows:

The Court finds that the plaintiff should receive spousal support for an additional period of time so that she can, in fact, integrate herself into the workforce. The Court's going to order that alimony be paid in the amount of \$750 a month for an additional two years. That will result in an alimony award of seven and a half years. I think that is sufficient given the parties' ages, education and so forth.

Plaintiff does not assert that the ultimate award of spousal support necessitates reversal. She does not argue that the amount awarded was inadequate or that the two-year time limit was inequitable. Because the trial court's findings of fact were not clearly erroneous and because plaintiff does not challenge the ultimate award, we find no error requiring reversal. *Moore, supra* at 654.

III

Plaintiff also contends that the trial court erred because it failed to make findings of fact and conclusions of law related to the issue of joint legal custody. We affirm rulings in child custody matters "unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; See *Fletcher, supra* at 876-877.

Plaintiff does not complain that the trial court's award of joint legal custody was an abuse of discretion or that an award of joint legal custody was not in the children's best interests. Rather, she complains that the trial court failed to properly consider and evaluate her request for sole legal custody. This issue has no merit. Plaintiff clearly abandoned her request for sole legal custody. In January, 1998, in a failed attempt to settle the case, the parties agreed to joint legal custody. Thereafter, during trial, plaintiff's counsel informed the trial court that there were no custody issues in the case. During closing argument, counsel reiterated that all custody issues were resolved. MCL 722.26a(2) provides that "[i]f the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child." Alternatively, "a party may not take a position in the trial court and subsequently seek redress in an appellate court on the basis of a position contrary to that taken in the trial court." *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997).

Moreover, because of plaintiff's position below, the trial court did not make findings of fact on the issue of legal custody. In fact, there was little testimony offered about the children during the trial. Plaintiff did not challenge defendant's assertion that he believed that he could agree and cooperate with plaintiff on important decisions in the children's lives, nor did she present evidence to support her position that joint legal custody was not in the best interests of

the children. Accordingly, we are not persuaded that the trial court's custody award was erroneous. MCL 722.28.

IV

Plaintiff contends that the trial court failed to verify defendant's income when calculating child and spousal support.² Again, we review the trial court's factual findings with respect to an award of child and spousal support for clear error. *Moore, supra* at 654; *Kosch v Kosch*, 233 Mich App 346, 351; 592 NW2d 434 (1999). Here, defendant testified about his income. In addition, defendant's employer confirmed his testimony. Thus, his income was substantiated on the record. Accordingly, we are not persuaded that the trial court's finding regarding defendant's income was clearly erroneous.

V

Finally, plaintiff argues that the trial court abused its discretion in awarding her only \$5,000 in attorney fees in the judgment of divorce. We disagree.

Initially, we note that, contrary to plaintiff's argument on appeal, there is no right to the recovery of attorney fees in a divorce action. *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001).

Attorney fees in a divorce action are awarded only as necessary to enable a party to prosecute or defend a suit, and this Court will not reverse the trial court's decision absent an abuse of discretion. Attorney fees also may be authorized when the requesting party has been forced to incur expenses as a result of the other party's unreasonable conduct in the course of litigation. A party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support. [*Hanaway, supra* at 298.]

A party seeking to obtain attorney fees must allege facts sufficient to demonstrate that she is unable to bear the expense of the action. *Kosch, supra* at 354.

² We note that, in her statement of questions presented, plaintiff raises the issue of whether the trial court erred in failing to justify a deviation from the support guidelines in determining spousal and child support. However, plaintiff does not address this argument in her brief on appeal. We need not address an issue that is raised in the statement of questions presented, but not analyzed or briefed. *Citizens for Logical Alternatives and Responsible Environment v Clare Co Bd of Comm'rs*, 211 Mich App 494, 500; 536 NW2d 286 (1995). Consequently, we could have deemed this issue abandoned.

Here, plaintiff fails to allege facts to demonstrate that she is unable to pay her attorney fees. She generally argues, without setting forth any particulars, that due to the disproportionate division of property, the earning abilities of the parties, and the arrearages, it was an abuse of discretion for the trial court to award only \$5,000 in attorney fees. It is undisputed by plaintiff, however, that defendant paid \$11,500 to her attorneys during the litigation. Thus, she received \$16,500 for attorney fees. In addition, the judgment of divorce required defendant to pay plaintiff \$250 per month until the outstanding spousal support arrearage was paid in full. In addition, she was to receive \$750 per month in spousal support for two years. Further, plaintiff admitted that she could earn between \$32,000 and \$35,000 per year in income. The children's care was provided for by large child support payments, in the amount of \$600 per week. Without considering plaintiff's property settlement at all, she had resources to make payments to her attorneys to satisfy the attorney fee debt. Consequently, it was not an abuse of discretion for the trial court to award only an additional \$5,000 for attorney fees under the circumstances.

Affirmed.

/s/ Janet T. Neff

/s/ Donald S. Owens