

STATE OF MICHIGAN
COURT OF APPEALS

KIMBERLEE LYNN MUSSELMAN,

Plaintiff-Appellee,

v

BRIAN DAVID MUSSELMAN,

Defendant-Appellant.

UNPUBLISHED
September 10, 2002

No. 232885
Midland Circuit Court
LC No. 97-006337-DM

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

PER CURIAM.

Defendant claims an appeal from a post-judgment order awarding plaintiff attorney and other fees totaling \$31,920.00. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant were married in 1989 and are the parents of a daughter born in 1990. In 1996, defendant sustained permanently disabling injuries in a snowmobile accident. A conservatorship was established and various assets, including the bulk of the marital assets, were liquidated and placed in the conservatorship. The major asset in the conservatorship consisted of defendant's shares of stock in International Engineering, Inc. (hereinafter "IEI"), a closely held family business. Plaintiff was appointed conservator for defendant.

Plaintiff filed for divorce; subsequently, conflicts arose between plaintiff and defendant's family, and plaintiff was removed as conservator. Plaintiff added defendant's parents and his sister, who acted as his guardian, to the divorce action as third parties. The trial court dismissed them from the suit. The parties reached a settlement in which plaintiff received various non-cash and cash assets, including a payment of \$306,000, which represented a fifty percent interest in the value of defendant's shares of stock in IEI. Defendant also received both liquid and non-liquid assets. The judgment of divorce resolved all issues except plaintiff's request for attorney and other fees.

Plaintiff requested attorney fees in the amount of \$16,000 and accounting and appraisal fees in the amount of \$16,754.21, for a total of \$32,754.21. The trial court approved the requests as reasonable and necessary to plaintiff's pursuit of her claim, and awarded plaintiff a total of \$31,920 in attorney and other fees. Defendant appealed, and in *Musselman v Musselman*, unpublished opinion per curiam of the Court of Appeals, issued December 26, 2000 (Docket No. 220015), another panel of this Court remanded for articulation of the trial court's reasoning.

In its decision on remand the trial court observed the case pended for two years, and the inability to reach a settlement at an earlier stage of the proceedings was caused by acrimony between plaintiff and numerous members of defendant's family. The court concluded that unreasonable conduct by defendant's family members forced plaintiff to incur additional expenses. In addition, the court noted that while defendant's assets from the family corporation were available to him to meet his needs, plaintiff's income potential was fairly limited, and her ability to support herself and the parties' child depended primarily on her prudence in managing the assets received in the property settlement.

Attorney fees in a divorce action are not recoverable as a matter of right, but may be awarded as necessary to allow a party to carry on or defend an action. MCL 552.13(1); *Kurz v Kurz*, 178 Mich App 284, 297; 443 NW2d 782 (1989). A party who requests fees must allege facts showing that he or she is unable to pay the fees, and that the other party is able to pay the fees. MCR 3.206(C)(2). An award of attorney fees is also authorized where the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct. *Stackhouse v Stackhouse*, 193 Mich App 437, 445-446; 484 NW2d 723 (1992). Under the circumstances of this case, the fact that the unreasonable conduct was on the part of defendant's family, rather than defendant himself, did not preclude the court from taking the conduct into consideration in awarding fees. We review a trial court's decision to award attorney fees for an abuse of discretion. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999). On the unique circumstances of this case as articulated in the trial court's opinion on remand, we find no abuse of discretion in the award of attorney fees and costs.

In its opinion on remand, the trial court outlined the lengthy and difficult process which finally brought this case to conclusion, noting,

It took an enormous amount of time and effort by plaintiff's counsel to get all the parties in interest . . . to deal with this case. They did not come willingly. One only has to review the docket entries . . . to see what the plaintiff had to do to get the parties . . . to either settle or try the case.

The court made it abundantly clear that this case was complicated by the unreasonable actions of defendant's family and by the fact that defendant owned a minority interest in the family corporation. The opinion on remand reflects the trial judge's close familiarity with the facts of the case and the various parties who made its resolution difficult, going so far as to note the number of docket entries (375) which accumulated during the pendency of the case.

The court went on to make a finding that plaintiff was not able to bear the expense of the action, although it did not use those precise terms. The court pointed out that defendant's ongoing needs will be met by reliance on the value of his shares in the successful family corporation while plaintiff has limited earning potential because of her lack of advance education and work experience. We agree with the trial court that on the record before it, its decision to award attorney fees and costs meets the requirements of *Stackhouse, supra*. The court's findings of fact and articulation of its reasons in granting plaintiff's request satisfied the requirements of the opinion of this court remanding. *Musselman, supra*. There has been no abuse of discretion.

Affirmed.

/s/ Helene N. White
/s/ Janet T. Neff