

STATE OF MICHIGAN
COURT OF APPEALS

ANDRA RICHARDSON,

Plaintiff-Appellee,

v

WILLIE LEE RICHARDSON,

Defendant-Appellant.

UNPUBLISHED

August 26, 2003

No. 237783

Oakland Circuit Court

LC No. 1999-622241-DM

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

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm.

I. Appointment of Valuation Expert

Defendant first argues that the trial court abused its discretion by appointing an expert to determine the value of his business and then requiring him to pay seventy-two percent of the expert's fees. We disagree.

Plaintiff attempted to obtain necessary financial information concerning defendant's business through discovery, but was unsuccessful. Requests for pertinent income information could not be satisfied, apparently because tax returns for the years in question did not exist. The requested financial information was necessary not only to allow plaintiff to properly prepare for trial, but also to enable the court to properly determine the value of the business asset. Plaintiff requested the appointment of an expert. The friend of the court similarly recommended that the trial court consider appointing an expert. The court was authorized to appoint an expert under MRE 706, and, considering the circumstances, it did not abuse its discretion in doing so. *People v Bush*, 187 Mich App 316, 332; 466 NW2d 736 (1991), rev'd in part on other grounds 443 Mich 693 (1993).

We also disagree with defendant's argument that the court abused its discretion by requiring him to pay seventy-two percent of the expert's fees. *Stoudemire v Stoudemire*, 248 Mich App 325, 343-344; 639 NW2d 274 (2001). Initially, defendant complains that the court refused to hold an evidentiary hearing to determine the reasonableness of the expert's fees. In support of this claim, defendant relies on *Grand Blanc Landfill, Inc v Swanson Environmental, Inc*, 186 Mich App 307, 311-312; 463 NW2d 234 (1990), wherein this Court held that a trial court has the authority to order a refund of sums paid to an expert appointed by the court if the

expert fails to adequately perform his contract with the appointing court. There is no indication in this case, however, that the court felt that the appointed expert failed to adequately perform his contract. Although the expert acknowledged making a mistake in his valuation of defendant's business, the record does not disclose that the court felt that he was so remiss in his duties that a refund was required. Further, apart from his valuation of the business, the expert's evaluation assisted in the court's determination of defendant's personal income, a portion of which was based on amounts received by defendant from the business. The court did not abuse its discretion in this regard.

Defendant's argument that the trial court erred by requiring him to pay seventy-two percent of the expert's fees is principally based on defendant's assertions that there was no need to appoint the expert in the first instance, and that the appointment was done at plaintiff's request. As discussed previously, however, the appointment was necessary because of defendant's failure to disclose relevant income information. MRE 706(b) provides that the expert's compensation "shall be paid by the parties in such proportion ... as the court directs" Here, the court directed the parties to pay the expert's fees in a proportion that approximated the parties' annual incomes as determined by the court. Under these circumstances, the court did not abuse its discretion.

II. Imputation of Income

Defendant next argues that the trial court erred by failing to impute additional income to plaintiff and by imputing additional income to him. The court's decision whether to impute income is reviewed for an abuse of discretion. *Rohloff v Rohloff*, 161 Mich App 766, 776; 411 NW2d 484 (1987). The trial court's findings of fact are reviewed for clear error. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

In *Rohloff*, this Court held that the trial court did not abuse its discretion by entering a child support award based upon a parent's unexercised ability to earn where the parent voluntarily reduced his or her income. See also *Healy v Healy*, 175 Mich App 187; 437 NW2d 355 (1989). We conclude that *Rohloff* and *Healy* are distinguishable from this case, however, because those cases are based on the premise that the paying party should not be rewarded for purposely lowering his or her income in order to avoid paying child support or alimony. Further, both *Rohloff* and *Healy* involved situations where the payor of alimony or child support voluntarily made a job change that decreased income. In this case, plaintiff made no job change, thereby lowering her income. Also, she is the recipient of support, not the paying party. Given the factors to be considered in deciding whether to impute income, *Rohloff*, *supra* at 771, 775, and the circumstances of this case, the court did not abuse its discretion in failing to impute additional income to plaintiff.

Defendant's claim that the court erred in imputing additional income to him fails as well. The court noted the difficulty in determining defendant's income, due to his business' poor bookkeeping methods and poor financial records. In determining defendant's annual income to be \$185,805, the court relied on evidence that defendant earned approximately \$106,000, and received an additional amount of \$79,805 from the company in 2000 to pay for personal expenses.

Although defendant complains that the imputation of this latter amount was improper because none of the underlying checks written to him were admitted into evidence, he does not appear to contest that he actually received the funds in question. Instead, he suggests that the money was a loan or was not used for personal items. It was not necessary that the court have the actual checks to make its determination. The court's determination is supported by the testimony of the appointed expert, who, based on his review of company financial records and documents, testified about the amount in question. Defendant does not cite to any evidence suggesting that the amounts properly should be considered a loan. Accordingly, we conclude that the court did not clearly err in determining that the additional amount of \$79,805 constituted income to defendant.

III. Alimony

Defendant next argues that the trial court erred in awarding plaintiff alimony.¹ We disagree.

This Court reviews de novo an award of alimony, but must accept the trial court's factual findings unless they are clearly erroneous. *Thames, supra* at 308. The appellant has the burden of persuading this Court that a mistake was made. *Id.* at 308. A finding is clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made. *Mitchell v Mitchell*, 198 Mich App 393, 396; 499 NW 2d 386 (1993).

The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300, 302, 495 NW2d 173 (1992). Alimony must generally be based on what is just and reasonable under the circumstances of the case. *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993).

Factors to be considered in awarding alimony are (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. In addition, the court may consider a party's fault in causing a divorce. *Thames, supra* at 308.

Here, the trial court considered the relevant factors and its findings are supported by the record and are not clearly erroneous. Moreover, we are not persuaded that the court abused its discretion in the amount of alimony awarded. The amount was justified in light of the significant disparity in the parties' income, the amount of the monthly mortgage payment on the marital home, the court's determination that defendant was principally at fault for the breakdown of the marriage, and the other factors cited by the court.

¹ Defendant has failed to argue the merits of his claim concerning child support. This issue is abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

IV. Property Division

Defendant lastly argues that the trial court's division of assets was inequitable. We disagree.

In reviewing a trial court's property division in a divorce, this Court must first consider the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The court's findings will not be reversed unless they are clearly erroneous, i.e., this Court is left with the definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Stoudemire*, *supra* at 336-337. If this Court upholds the trial court's findings of fact, it must then decide whether the dispositional ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Draggoo*, *supra* at 429-430.

A court's goal 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. "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 115. The significance of each factor will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. *Id.*

Here, the record reflects that the court considered the following factors in dividing the marital property: (1) that this was a long-term marriage; (2) that both parties were capable of working and bringing in a substantial income; (3) that plaintiff had health problems, while defendant was in good health; (4) that, over the years, plaintiff had primary responsibility for raising the children; (5) defendant's greater fault for the breakdown of the marriage; (6) plaintiff's greater future needs due to her health problem and because she would have physical custody of the children; (7) that the parties had lived beyond their means during the marriage and (8) the large federal income tax liabilities.

After considering the above factors, the court awarded plaintiff possession of the marital home until the youngest child graduated from high school or turned 19-1/2 years of age, whichever occurred first, at which time the home was to be sold. At that time, plaintiff would receive sixty percent of the proceeds and defendant forty percent. Plaintiff was required to pay the mortgage and taxes on the house while residing there, but she would receive a credit for all mortgage principal payments she made. Further, defendant was held responsible for all unpaid tax liabilities.

We are not persuaded that the court's property division is inequitable. The court's decision to hold defendant solely responsible for the tax liens was not inequitable, considering that plaintiff was not involved in creating these liens, which were attributable to assessments on defendant's business. Further, the court's sixty/forty split of the marital home, which was the principal marital asset, was not inequitable, considering that plaintiff suffered from a chronic

medical condition while defendant was in good health, and the court's determination that defendant was principally at fault for the breakdown of the marriage.

Affirmed.

/s/ Kathleen Jansen

/s/ Janet T. Neff

/s/ Kirsten Frank Kelly