

STATE OF MICHIGAN  
COURT OF APPEALS

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MARY BEATRICE BRUSSTAR, f/k/a MARY  
BEATRICE HAENCHEN,

Plaintiff-Appellant,

v

DIETMAR KONRAD HAENCHEN,

Defendant-Appellee.

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UNPUBLISHED  
December 11, 2003

No. 242315  
Oakland Circuit Court  
LC No. 00-636506-DO

Before: Cavanagh, P.J., and Jansen and O’Connell, JJ.

PER CURIAM.

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

Plaintiff first argues that the trial court erred when it failed to award her spousal support and require defendant pay her COBRA premiums. A trial court’s findings of fact regarding spousal support are reviewed for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). “The findings are presumptively correct, and the burden is on the appellant to demonstrate clear error.” *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). “A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made.” *Id.* at 432-433.

If we find no clear error, we then evaluate the overall award or denial to determine if it is fair and equitable under the case’s circumstances. *Moore, supra* at 655. Whether to award spousal support is in the trial court’s discretion and on appeal, the trial court’s denial of a request for support award is reviewed for an abuse of that discretion. *Korth v Korth*, 256 Mich App 286, 288; 662 NW2d 111 (2003); MCL 552.23. Future health care expenses, such as plaintiff’s COBRA premiums, are considered in the context of an award of spousal support. *Cloyd v Cloyd*, 165 Mich App 755, 761; 419 NW2d 455 (1988).

The purpose of spousal support is to balance the parties’ earnings and financial needs to avoid impoverishing either party. *Moore, supra* at 654. Factors considered in the determination of an award of spousal support include:

(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, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. [*Olson v Olson*, 256 Mich App 619, 631; \_\_\_ NW2d \_\_\_ (2003).]

The trial court acknowledged these factors in its denial of spousal support. The court specifically found an absence of fault in the breakdown of the marriage and then recited the factors it deemed predominant. Plaintiff argues that the court failed to make specific findings on each of the factors pertaining to award of spousal support. Plaintiff further asserts that the trial court should have considered the testimony regarding plaintiff's medical condition and defendant's contribution to her bipolar disorder as a factor in an award of spousal support despite the dismissal of plaintiff's tort claim alleging the same facts. Contrary to plaintiff's assertion, the court specifically discussed the parties' ages, health, respective employment histories and earnings, their contributions to the marital estate, and the length of the marriage. In denying plaintiff an award of spousal support the court ruled:

This is an extremely short-term marriage, absent any fault by either party, during which time, Defendant was the primary wage earner in the family, and Plaintiff studied and received her Master's Degree at Michigan State University. Defendant is in good health, employed with Volkswagen of America, Inc. as a vehicle safety engineer, and nearing retirement and, as previously indicated, Plaintiff is a well-educated woman in her mid-thirties and doing well health wise under her current medication. Significantly, the Court notes the fact that Defendant has provided substantial support to Plaintiff since the parties separated on September 9, 1999, continuing through the duration of this matter.

Further, the court addressed plaintiff's bipolar condition as a health factor and considered her assertion that defendant caused her illness. The court specifically found:

With regard to the past relations and conduct of the parties, the Court finds that there has been no significant misbehavior on the part of either party to this marriage. While Plaintiff suggests that Defendant's conduct during the marriage caused the bipolar disorder, there is absolutely no credible evidence to support same. Plaintiff's reaction to her marital situation may have 'triggered a manic episode.' In other words, her own reaction to her marital circumstances may have caused the development of a symptom of manic-depressive disorder (i.e. episodes of manic behavior); however, it did not cause the disease itself.

In discussing a trial court's application of the relevant factors, we have indicated,

It is not desirable or feasible, for us to establish a rigid framework for applying the relevant factors. The trial court is given broad discretion in fashioning its ruling and there can be no strict mathematical formulations. . . . Just as the final division may not be equal, the factors to be considered will not always be equal. Indeed, there will be many cases where some, or even most, of the factors will be irrelevant. But where any of the factors delineated . . . are relevant to the value of

the property or to the needs of the parties, the trial court shall make specific findings of fact regarding those factors. [*Sparks v Sparks*, 440 Mich 141, 158-159; 495 NW2d 893 (1992).]

Contrary to plaintiff's assertions, the trial court made numerous specific factual findings in this matter, especially pertaining to plaintiff's health and medical diagnosis. The trial court clearly articulated its findings regarding the factors it deemed relevant in its denial of spousal support. These findings are supported by the record. Under these circumstances, the trial court's factual findings were not clearly erroneous.

Finding no clear error, we now turn to whether the trial court's denial of spousal support was fair and equitable in this case. *Olson, supra* at 629-630. Plaintiff asserts defendant "caused" her bipolar disorder, so equity demands that he provide for her financial security for the rest of her life. But the trial court found, without any clear error, that defendant was not responsible for the disease. Even encumbered by her mental condition, plaintiff has a demonstrated ability to earn as high an income as she earned before the marriage. Plaintiff also obtained her master's degree during the marriage. Defendant has contributed more than \$40,000 to plaintiff's support during this action's thirty-months of pendency. The thirty month pendency period exceeds the duration of the marriage by five months, and during the very short marriage, plaintiff did not contribute financially to the marital estate. In light of these facts, the trial court's denial of plaintiff's request for spousal support and COBRA premiums was neither erroneous nor inequitable. *Moore, supra* at 654.

Plaintiff next argues that trial court erred in its division of the marital estate. Plaintiff alleges that the distribution of marital property was inequitable. Plaintiff again relies upon her diagnosis of bipolar disorder and her claim that defendant contributed to the onset of this condition. Plaintiff also contends that the court failed to consider her greater need in its award.

The goal of property distribution is to achieve a fair and equitable disbursement under the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). Factors a trial court should considered in the distribution of marital assets mirror those considered in determining support and include the following: "(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." *Sparks, supra* at 159-160.

In making any distribution, the court must first distinguish between marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1998). Typically, the marital assets are divided, but each party retains their own separate estate. *Id.* Marital assets are generally those accumulated during the marriage. *Id.* at 493.

The parties acknowledge that plaintiff did not contribute financially to the marital estate and effectively brought no personal assets of value into the marriage. Defendant purchased the marital home just before the marriage, using his personal funds for the down payment. The trial court acknowledged that the parties accumulated a marital home, personal property and appreciation of defendant's retirement, stock, and bank accounts during the term of the marriage. Following an analysis of the appropriate factors to be considered in the division of property, and

upon determining the lack of fault attributable to either party in the breakdown of the marriage, the court awarded defendant the marital home and his time-share in Florida. The Florida time-share was indisputably defendant's for several years prior to the marriage. With reference to the marital home, the court stated,

Taking into account both parties' appraisals, the Court values the marital residence at Two Hundred Fifty-four Thousand (\$254,000.00) Dollars thereby evidencing an increase in value during the term of the parties' marriage of Sixteen Thousand (\$16,000.00) Dollars. The increase in value shall be divided equally between the parties and, thus, Plaintiff is awarded Eight Thousand (\$8,000.00) Dollar [sic] as her share of the marital residence.

The court further determined that each party would retain all personal property brought into the marriage "and such other personal property that they have acquired for their own benefit during the marriage." The court also awarded plaintiff fifty percent of the increase in value of defendant's employment pension plan from the date of the marriage to the date of separation, but denied plaintiff survivor benefits. Plaintiff also received fifty percent of the increase in value of defendant's stock and bank accounts from the date of the marriage to the date of separation.

Division of property is not required to be mathematically equal but should be fair under the circumstances of the case. *Welling v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999). A review of the court's distribution of the marital assets does not support plaintiff's allegation of inequity. Again, the divorce action has lasted longer than the marriage and in that time period, defendant has solely maintained the expenses associated with the marital estate and has paid in excess of \$40,000 towards plaintiff's support and maintenance. Given the factual findings of the court, the distribution of property between the parties is not inequitable.

Finally, plaintiff argues that the trial court insufficiently granted her only \$3,000 in attorney fees. The trial court's decision to award attorney fees is reviewed for abuse of discretion. We will only find abuse of discretion when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Spalding v Spaulding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

Plaintiff alleges that the trial court erred in failing to order defendant to pay all of plaintiff's attorney fees and costs incurred in this action, including the fees incurred to initiate her voluntarily dismissed tort claim. Plaintiff asserts that she demonstrated both her need for defendant's payment of her attorney fees as well as his ability to pay. Plaintiff further contends that she will be improperly forced to invade the marital assets she was awarded in order to pay her attorney fees unless we require defendant to pay them. See *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). We disagree.

The award of attorney fees in a divorce action is governed by MCL 552.13(1), which states, in relevant part:

In every action brought, either for a divorce or for a separation, the court may require either party to pay alimony for the suitable maintenance of the adverse party, to pay such sums as shall be deemed proper and necessary to conserve any

real or personal property owned by the parties or either of them, and to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency. It may award costs against either party and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Additionally, MCR 3.206(C) states that:

- (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action.
- (2) A party who requests attorney fees and expenses must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay.

As such, attorney fees are not recoverable in a divorce proceeding as a matter of right, but may be awarded when necessary to preserve a party's ability to pursue or defend the action. *Maake, supra*.

Plaintiff has not specifically detailed the amount of attorney fees and costs incurred. However, plaintiff has received from defendant attorney fees in the amount of \$5,000 prior to initiation of trial and an additional \$3,000 in attorney fees by interim order on February 14, 2001. Further, in its opinion and order of May 16, 2002, the court stated:

The Court awards Plaintiff attorney fees in the amount of three Thousand (\$3,000.00) Dollars. Said fees shall be paid directly to Plaintiff's attorney . . . . In making this determination, the Court has given way to the short term of the marriage, the relatively uncontroverted evidence presented, and the fact that much of the effort made in this case by Plaintiff related to a count in the amended complaint for intentional and/or unintentional infliction of mental distress, which count Plaintiff eventually, voluntarily dismissed.

Plaintiff cites no statute, court rule, or other law authorizing an award of attorney fees for pursuing her tort claim, and contrary to her assertion, attorney fees may not be awarded based solely on equitable principles. *In re Adams Estate*, 257 Mich App 230, 236-237; 667 NW2d 904 (2003). Plaintiff was awarded a total of \$11,000 in attorney fees for the divorce action. Without information regarding any failure of this reward to cover plaintiff's divorce-related services, it does not appear that the trial court abused its discretion in denying her request.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Peter D. O'Connell