

STATE OF MICHIGAN
COURT OF APPEALS

LAURA LEE FRISKE, a/k/a LAURA LEE
GARRELTS,

UNPUBLISHED
July 29, 2004

Plaintiff/Counterdefendant-
Appellee,

v

ALAN LEE GARRELTS,

No. 247092
Cass Circuit Court
LC No. 01-000042-DM

Defendant/Counterplaintiff-
Appellant.

Before: Fort Hood, P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

In this divorce action, defendant/counterplaintiff appeals as of right from a judgment of divorce. We affirm.¹

In the judgment of divorce, the trial court awarded plaintiff sixty percent of the marital property and further ordered defendant to pay \$8,000 toward plaintiff's attorney fees.

Defendant first asserts that the trial court's sixty-forty property division in favor of plaintiff was based solely on defendant's fault for the breakdown of the marriage, and therefore, inequitable. We disagree. In reviewing a trial court's property division in a divorce action, this Court first reviews the trial court's findings of fact for clear error. *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id* If the findings of fact are upheld, this Court then decides whether, in light of those facts, the disposition was fair and equitable. *Id.* at 670. "A

¹ Defendant's appellate brief is so cursory that we could appropriately dispose of this appeal on the basis of abandonment of the issues. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003). Nonetheless, we choose to address defendant's contentions because the record is sufficient, and the case law applicable to the issues is sufficiently clear that we can address the issues even without proper argument by defendant.

dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable.” *Id.* The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). To reach an equitable division, the trial 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. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992).

Defendant alleges that, because the trial court found that the status of the parties was relatively equal in all the factors except fault, the trial court awarded plaintiff sixty percent of the marital estate based on fault alone. The lower court record belies defendant's assertion. The trial court's articulation of its reasoning clearly indicates that it properly considered each of the relevant factors identified in *McDougal, supra*. While the trial court noted that defendant was at fault for the breakdown of the marriage and that it considered this factor to be significant in its decision, the trial court expressly recognized that fault cannot be the sole factor considered and weighed all factors in determining that a sixty/forty split in favor of plaintiff was appropriate given the circumstances of this case.

Defendant next asserts that the trial court abused its discretion by awarding plaintiff \$8,000 in attorney fees. We disagree. This Court reviews an award of attorney fees for abuse of discretion. *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 231 (2003). An abuse of discretion occurs only if the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.* at 438.

A circuit court may require a party “to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency.” MCL 552.13. Furthermore, the court rules provide for the award of attorney fees based on the request of a party or where a party is unable to bear the expense of the action and the other party is able to pay. See MCR 3.206(C)(1), (2). An award of attorney fees will be upheld by this Court when “the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation.” *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992).

Defendant contends that, because the trial court determined that the income of the parties was relatively equal, the award of attorney fees was based solely on defendant fault. Again, however, the record contradicts defendant's assertion. The trial court specifically identified plaintiff's need for financial assistance and defendant's role in unnecessarily prolonging the litigation. Those factors were well supported by the record. Under these circumstances, the trial court's award of \$8,000 toward the fees owed by plaintiff does not evidence a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Gates, supra*. Therefore, the trial court did not abuse its discretion by awarding attorney fees to plaintiff.

We further note that plaintiff has requested that attorney fees be awarded for defense of this appeal, and we remand the case to the trial court for determination of such an award. *Wiley v Wiley*, 214 Mich App 614, 616; 543 NW2d 64 (1995).

Affirmed and remanded. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello