

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN L. REANO,

Plaintiff/Counter Defendant-
Appellee,

v

NANETTE M. REANO,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED

May 27, 2008

No. 276509

Livingston Circuit Court

LC No. 06-037562-DM

Before: Servitto, P.J., and Cavanagh and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce following a bench trial. The bench trial was limited to certain issues that the parties could not resolve. We affirm.

Defendant first argues that the trial court abused its discretion as to the amount, \$1,200 a month, and duration, three years, of spousal support awarded. We disagree. A spousal support award is reviewed for an abuse of discretion. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). Additionally, a trial court's findings of fact in relation to spousal support are reviewed for clear error. *Gates, supra*. Those factual findings are presumptively correct and the burden is on the appellant to show clear error. *Id.* A trial court's decision as to alimony must be affirmed unless the reviewing court is firmly convinced that it was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

"The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is just and reasonable under the circumstances of the case." *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

Among the factors that should be considered 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, (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. [*Id.*]

We first consider the amount of the spousal support awarded. In its opinion, the trial court acknowledged the 21-year marriage, the disparity in income, and the concerns over defendant's health. However, the court also weighed that the parties had been living well beyond their means and apparently placed some weight on defendant's seeming refusal to take advantage of the four-year period in which the parties were contemplating divorce to better herself through furthering her education. Plaintiff's projected expenses are not patently unreasonable, and while defendant faults plaintiff for continuing to live in the expensive marital home, the record evidences that plaintiff wanted to list the home for sale but that it was defendant who was uncooperative and believed the home to be worth much more than it was. Moreover, defendant indicated that she wanted plaintiff to wait out the housing down cycle to obtain a share in any potential equity once it was sold. If the home is eventually sold and plaintiff's monthly expenses were substantially decreased, there is nothing that would prevent defendant from moving to modify the spousal support award. See, e.g., *Gates, supra* at 435.

As for the duration, the length of the award also does not appear outside the range of reasonable and principled outcomes because during that time defendant should be able to rehabilitate herself to become more marketable. See *Zecchin v Zecchin*, 149 Mich App 723, 734-735; 386 NW2d 652 (1986). Therefore, no abuse of discretion occurred with regard to the spousal support award.

Defendant next argues that the trial court abused its discretion in only awarding \$3,600 of the \$15,000 in attorney fees then owed. We disagree. A trial court's decision on an award of attorney fees in a divorce action is reviewed for an abuse of discretion. *Olson, supra* at 634.

Attorney fees in divorce actions may be awarded if the record supports a finding that the party to whom they are awarded is unable to bear the expense of the litigation. *Id.* at 635. More specifically, "[i]t is well settled that a party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support." *Gates, supra* at 438. The party requesting attorney fees bears the burden of showing that an award is appropriate. *Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007).

The evidence here generally established that defendant was not in a position to make substantial payments toward her attorney fees and would therefore be required to invade her assets to bear the expense of litigation. However, the record also evidences that plaintiff would be required to invade his assets as well to bear, not only his attorney fees, but the amount awarded against him. As a factor in awarding the fee that it did, the trial court found that defendant unnecessarily delayed resolving this litigation, apparently with regard to valuing and listing the marital home, which was relevant toward one of the tried issues. It was appropriate for the trial court to consider that factor in lessening the amount of fees it awarded. Cf. *Borowsky, supra* (providing that attorney fees are available where the party requesting the fees has incurred them as a result of the other party's unreasonable, protracted litigation).

As for the amount awarded, roughly 25% of the amount then owed, this is not a situation where the opposing party was in a comfortable position to pay without invading his support assets and the trial court only awarded a small fraction of the attorney fees requested. See, e.g., *Gates, supra* at 436-438 (concluding that the trial court abused its discretion by awarding only \$5,500 of the \$70,900 attorney fees requested in an action where the opposing party was awarded over \$500,000 in marital property and apparently had significant earning capacity). Accordingly, because the trial court considered appropriate factors in awarding an amount of attorney fees that was not unreasonable or unprincipled, no abuse of discretion occurred.

Affirmed.

/s/ Deborah A. Servitto

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly