STATE OF MICHIGAN

COURT OF APPEALS

VIRGINIA SUSAN KRACKO,

Plaintiff/Counter-Defendant-Appellee,

v

NICHOLAS JOHN KRACKO,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
February 18, 2010

No. 287316
Saginaw Circuit Court
LC No. 06-061621-DO

Before: Bandstra, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce, challenging the trial court's award of alimony and its disposition of property, as well as the denial of his motion for a new trial. We affirm in part, reverse in part, and remand to the circuit court for further proceedings.

Plaintiff and defendant were married in November 1982. This was the second marriage for both parties and each brought various assets into the marriage, including real property, personal property, and financial holdings. Specifically, defendant had land contract rights on a 40-acre parcel of land, on which what was to become the marital home stood. Shortly after the marriage, the parties obtained a joint mortgage loan to pay off the land contract and title to the land was placed in both of their names as a condition of the mortgage. Through the years, the parties divided the parcel into smaller lots, selling some for income. Although both parties, as owners, signed off on the subdivision and sale of the lots, it appears that defendant controlled the transactions.

After nearly 25 years of marriage, the parties separated, and plaintiff filed for divorce. The divorce itself was uncontested and the parties had no minor children. The only disputed issues were the disposition of property and the question of spousal support. Following a bench trial, the trial court advised the parties that, by its distribution, it had attempted to divide the marital property equally. The court included in the marital estate, among other property, defendant's pension, the marital home, three subdivided parcels of land that had not been sold, three annuities, two CDs, and an IRA. The court awarded plaintiff the three subdivided lots, five of the six financial assets, and half of the marital fraction of defendant's pension. Defendant received the marital home, one of the CDs, and the remainder of his pension. The court also awarded plaintiff $500 per month in permanent alimony.

Defendant moved for a new trial. By this time the judge who presided over the trial had retired, and a visiting circuit judge presided over the motion. Following a hearing, the court amended the judgment of divorce to make the permanent alimony award modifiable, but denied defendant's motion for new trial.

On appeal, defendant argues that the awards of permanent alimony and a portion of his pension were inequitable, that the circuit court erred in including separate property in the marital estate, and that the court abused its discretion in denying his motion for new trial.

We review the trial court's findings of fact in a divorce case for clear error. *Berger v Berger*, 277 Mich App 700, 727; 747 NW2d 336 (2008). The trial court's findings are presumptively correct, and the burden is on appellant to show clear error. *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990); *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). If we uphold the trial court's findings of fact, we will affirm the trial court's decision unless "firmly convinced that it was inequitable." Berger, 277 Mich App at 727; see also, *Gates*, 256 Mich App at 433 ("If the trial court's findings are not clearly erroneous [we] must then decide whether the dispositional ruling was fair and equitable in light of the facts."). We review a denial of a motion for new trial for abuse of discretion. *Grace v Grace*, 253 Mich App 357, 365; 655 NW2d 595 (2002).

Defendant first argues that the trial court erred by basing its award of spousal support to plaintiff solely on the disparity in the parties' income, without consideration of other relevant factors. We disagree. Whether to award spousal support is within the trial court's discretion. The plain language of MCL 552.13 permits a trial court to award spousal support that it determines to be "just and reasonable." *Id.* at 435. In *Gates*, this Court explained that

> [f]actors to be considered by the trial court in determining whether an award of spousal support is just and reasonable include:
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> > (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 health of the parties, (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. [*Id*. at 435-436, quoting *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1001).]

Additional factors may also be relevant. See, *Berger*, 277 Mich App at 726-727 (the source and amount of property awarded to the parties, fault and the effect of cohabitation on a party's financial situation). A trial court should make specific findings regarding each of the factors that are relevant to the particular case before it. *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003). However, not every factor will be relevant in every case. See, *Gates*, Mich App 436-437; see also, *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992).

Although defendant asserts that the court only considered two factors – the age of the parties and the length of the marriage – in making its decision, it is clear from the record that the court considered at least eight factors: (1) the duration of the marriage, (2) contributions of the parties to the marital estate, (3) earning abilities of the parties, (4) abilities of the parties to pay alimony, (5) abilities of the parties to work, (6) age of the parties, (7) past relations and conduct of the parties, and (8) general principles of equity. Defendant asserts that the trial court did not make any specific findings as to plaintiff's needs, the parties' relative health or their prior standard of living. However, defendant does not explain why the court should have considered those factors, or how they were relevant to a determination of an appropriate award of spousal support in this case. We note that a statement of plaintiff's financial needs, detailing her necessary monthly expenditures, was part of the record below and thus, was before the trial court when it considered the question of spousal support. And, a trial court does not necessarily err by failing to consider every possible factor in determining alimony; it must consider those factors relevant to reaching a just and equitable result. See, *Gates*, 256 Mich App at 436-437. Further, it is not enough for a party to merely announce an error and leave it to this Court to develop an argument in support of it. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998). We hold that, contrary to defendant's assertion, the trial court's ruling reflects that it considered all relevant factors when making its spousal support award, and further, the trial court's findings of fact pertinent to that award are supported by the record.

Defendant next argues that it was error for the court to consider his entire pension and Social Security income as part of his income in determining alimony. Rather, defendant asserts, the trial court was only permitted to consider as income that portion of his pension and Social Security payments attributable to his employment during the marriage. Although defendant abandons the issue by citing no authority in support of it, *Mudge*, 458 Mich at 105, we note that pensions may be distributed through either the division of property or the award of alimony, depending on the equities and circumstances of the specific case, *Magee v Magee*, 218 Mich App 158, 164-165; 553 NW2d 363 (1996); *Beaty v Beaty*, 167 Mich App 553, 557; 423 NW2d 262 (1988), that pension benefits and Social Security payments constitute income for purposes of determining spousal support, MCL 552.602; *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000); *Hatcher v Hatcher*, 129 Mich App 753, 761 n 1; 343 NW2d 498 (1983), and that a court may include that portion of pension benefits and Social Security payments attributable to employment before the marriage as part of the income of a party, see, *Booth v Booth*, 194 Mich App 284, 291; 486 NW2d 116 (1992); see also, *Ackerman v Ackerman*, 197 Mich App 300, 302-303; 495 NW2d 173 (1992). We find no error.

Defendant also argues that it was error for the trial court to include his pension as a marital asset subject to distribution without making a finding as to the value of the pension. We find no error. As a general rule, if no evidence of the value of a pension is provided, the pension should not be treated as marital property, although if alimony is awarded, remand may be appropriate to allow the trial court to determine the value. *Magee*, 218 Mich App at 164-165. In the instant case, however, it was clear from the record that, while the trial court may not have explicitly stated a finding as to the value of the pension, it was presented with evidence of the value of the pension, which was not disputed, and that it properly considered the value of the pension in determining the alimony amount.

Defendant argues further that it was error for the trial court to assign a portion of his pension to plaintiff, and then to consider his entire pension as part of his income for the purposes of determining alimony. We agree. The court first granted plaintiff half of the marital fraction of defendant's pension, and then, when finding the parties' income for the purpose of alimony, considered the entire pension to be part of defendant's income. This double counting of the marital portion of the pension was inequitable, and we remand to the circuit court, with instructions to modify either the distribution of the pension, the award of permanent alimony, or both, taking care not to distribute the same income twice.

Turning to the trial court's property distribution, defendant asserts that the trial court erred by including several pieces of his separate property in the marital estate. We disagree. The parties shared the marital home for nearly 25 years, paying on the land contract and then on joint mortgages on the property from marital income for the first 16 years of their marriage. Although the home belonged to defendant before the marriage, "the sharing and maintenance of a marital home affords both spouses an interest in any increase of its value (whether by equity payments or appreciation) over the term of a marriage." *Reeves v Reeves*, 226 Mich App 490, 495-496; 575 NW2d 1 (1997). The trial court properly deducted $12,000 of equity that defendant had in the home before the marriage, and found that the remainder of the value of the home was part of the marital estate. The finding was supported by the evidence, and was not clearly erroneous.

Defendant also argues that the trial court erred by accepting the testimony of plaintiff's appraisers, rather than that offered by defendant's appraisers as to the value of the marital home. We disagree. Considering the conflicting testimony offered by appraisers on the subject, and the varying approaches employed by them to value the property, the determination of the value of the marital home was a question of the credibility of the witnesses for resolution by the trial court. *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006). This Court gives special deference to a trial court's findings when they are based on the credibility of the witnesses. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997); *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991).

The three separate parcels of land awarded to plaintiff were subdivided from the main piece of land on which the marital home stood during the marriage. Plaintiff was joint owner of the main parcel of land, as well as of each of the subdivided parcels. She signed off on each subdivision and each sale. When parcels were sold, the proceeds of the sales were either treated as marital property or, in at least one case, divided evenly between the parties. Although defendant brought this property into the marriage, there was sufficient evidence on the record to support the trial court's finding that the parcels had become marital property, and the finding was not clearly erroneous.

The only evidence on the record supporting a finding that any portion of any of the contested investment assets was separate property was plaintiff's testimony that approximately half of one of the annuities was funded from the sale of her separate property. Based on this uncontested testimony, the trial court found that that portion of that annuity was her separate property, and that the rest of the contested assets were part of the marital estate. In this, the trial court did not err. Defendant testified that the Allianz account was marital property. No evidence supported defendant's assertion that either New York Life annuity was funded with money defendant had before the marriage. The evidence showed that the American Equity annuity was funded by sale of one of the subdivided lots. Because the lots were marital property, the

proceeds were as well. No evidence showed the source of the funds for the $10,000 Security Federal CD. On this record, the circuit court did not clearly err in including all of these assets in the marital estate.

Finally, defendant claims that the trial court abused its discretion by denying his motion for new trial. Defendant has abandoned this issue on appeal by citing no supporting authority. *Mudge*, 458 Mich at 105. Further, considering that we find no error in the award of spousal support or the division of the marital estate, save for the apparent double counting of the marital portion of defendant's pension, the trial court did not abuse its discretion by denying this motion. *Grace*, 253 Mich App at 365.

We affirm in part, reverse in part, and remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ Donald S. Owens