

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HOUSSAM HAMMOUD,

Plaintiff-Appellant,

v

ABIR HAMMOUD,

Defendant-Appellee.

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UNPUBLISHED

May 17, 2011

No. 295098; 296480

Wayne Circuit Court Family  
Division

LC No. 08-119292-DZ

Before: CAVANAGH, P.J., and TALBOT and STEPHENS, JJ.

PER CURIAM.

Houssam Hammoud challenges provisions within his divorce judgment regarding restrictions on his residence, the award of spousal support and attorney fees to Abir Hammoud, and the distribution of marital property. Hammoud also asserts bias by the trial court judge and seeks reassignment to an alternative judge on remand. We affirm in part and reverse in part.

Houssam and Abir Hammoud are first cousins. Originally from Lebanon, they are Canadian citizens, but reside in Dearborn, Michigan. Theirs is an arranged marriage. Abir was affianced to Houssam when she was approximately 13 years old. They were married in an Islamic ceremony when Abir was 14 years of age. Their civil marriage ceremony occurred on June 21, 1994, when Houssam was 21 years old and Abir was not quite 15 years of age. They are the parents of two minor children. When the parties separated in March 2008, Abir returned to Lebanon, but the children remained in Michigan with their father. After Houssam filed for divorce, Abir returned to Dearborn and established a separate residence.

Houssam Hammoud contends the trial court erred in restricting his residence with the minor children to the limited area of Dearborn, Michigan, particularly given the fact that he was awarded sole legal and physical custody. This Court reviews a question of law for clear legal error.<sup>1</sup> A trial court's interpretation and application of a statute is reviewed de novo on appeal.<sup>2</sup>

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<sup>1</sup> *Schoensee v Bennett*, 228 Mich App 305, 312; 577 NW2d 915 (1998).

The judgment of divorce prohibits Houssam “from moving the children’s residence from Dearborn, Michigan without an order of the Court.” In its analysis, the trial court noted that the relationship between the minor children and Abir was particularly strained and that the children were resistant to having contact with Abir. The trial court determined that it was in the children’s best interest to heal their relationship with Abir, but characterized Abir’s “commitment to her children” as being “inconsistent.”

To evaluate the trial court’s ruling it is necessary to review the statutory provision governing change of a child’s legal residence and the relevant court rule. Specifically:

[A] parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child’s legal residence at the time of the commencement of the action in which the order is issued.<sup>3</sup>

In addition:

A parent’s change of a child’s legal residence is not restricted by subsection (1) if the other parent consents to, or if the court, after complying with subsection (4), permits the residence change. *This section does not apply if the order governing the child’s custody grants sole legal custody to 1 of the child’s parents.*<sup>4</sup> [Emphasis added.]

As explained by this Court:

[T]he plain unambiguous language of the statute provides that a parent with sole legal custody is not restricted in the same manner as a parent with joint legal custody. Parents with joint legal custody must obtain consent from the other parent, or permission from the trial court after a review of certain factors, before moving a child more than 100 miles. Neither consent nor consideration of the factors is necessary when a parent has sole legal custody.<sup>5</sup>

This Court has indicated that the statutory provision and the court rule are not inconsistent or in conflict, by explaining:

Simply stated, when a parent with sole legal custody desires to relocate, he or she must first obtain the trial court’s approval, but the factors set forth in *D’Onofrio v*

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<sup>2</sup> *Muci v State Farm Mut Auto Ins Co*, 478 Mich 178, 187; 732 NW2d 88 (2007).

<sup>3</sup> MCL 722.31(1).

<sup>4</sup> MCL 722.31(2). This statutory provision delineates criteria to be reviewed when a change of domicile of over 100 miles is being considered by a trial court.

<sup>5</sup> *Brausch v Brausch*, 283 Mich App 339, 349; 770 NW2d 77 (2009).

*D'Onofrio*, 144 NJ Super, 200, 206-207; 365 A2d 27 (1976), and codified in MCL 722.31(4) do not apply to the request.<sup>6</sup>

There is no legal, factual or rational basis for the trial court's excessively restrictive ruling precluding Houssam from removing the domicile of the children outside of Dearborn. Testimony indicated that Houssam and Abir each have a vehicle and a valid driver's license. Abir's parenting time with the children is supervised in Canton, Michigan and her only other physical contact with the children is during counseling. This is not a situation where Abir can freely enjoy contact with the children but has no means of or accessibility to transportation to effectuate her parenting time. The trial court's order of supervised parenting time and counseling can be enforced without the necessity of restricting the domicile of Houssam and the children within the confines of Dearborn. As this ruling is not consistent with the law and there is no rational basis for the imposition of this restriction, we vacate this portion of the judgment and remand the matter to the trial court for inclusion of appropriate language pertaining to the removal of the children's domicile consistent with the grant of sole legal and physical custody to Houssam.

Houssam next challenges the award of spousal support. This Court reviews an award of spousal support for an abuse of discretion.<sup>7</sup> An abuse of discretion is deemed to have occurred when the trial court's decision falls outside the range of principled and reasonable outcomes.<sup>8</sup> The trial court's factual findings pertaining to an award of spousal support are reviewed for clear error.<sup>9</sup> "A finding is clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made."<sup>10</sup>

The judgment of divorce awarded Abir spousal support of \$1,500 a month for an unspecified duration, commencing September 1, 2008.<sup>11</sup> In addition, the judgment mandated that Houssam pay Abir's educational expenses of tuition and books for a period of five years or until attainment of her associate's degree, whichever occurred first. The trial court required Houssam to reimburse \$5,200 in educational expenses already incurred by Abir by crediting this amount against Abir's obligation to repay Houssam "from The Group investment."

In its findings of fact and conclusions of law, the trial court cited the factors to be considered in an award of spousal support and made a finding under each.<sup>12</sup> Explaining its

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<sup>6</sup> *Id.* at 349-350.

<sup>7</sup> *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

<sup>8</sup> *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

<sup>9</sup> *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

<sup>10</sup> *Id.* at 654-655.

<sup>11</sup> The judgment of divorce was entered October 21, 2009.

<sup>12</sup> *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992).

award, the trial court referenced Abir's youth at the time of the arranged marriage, her limited education, lack of employment history, changes of residence during her 14-year marriage and discrepancies in the parties' respective ages. The trial court specifically compared Houssam's history of employment and earning ability to Abir's student status<sup>13</sup> and minimal education. After delineating Abir's monthly expenses, the trial court determined Houssam's ability to pay alimony referencing his history of employment during the marriage. The trial court acknowledged that his ability to pay spousal support was impacted by Houssam having full financial responsibility for the two minor children and that he "will not be receiving child support from his wife," along with his responsibility for other debts.

In considering the marital assets to be awarded to either party as a factor in evaluating spousal support, the trial court stated:

There were no assets of value awarded to either party. The marital home does not have any equity. The investment account with The Group is no longer in either party's name. The Court determined that the account was a marital asset and should be divided equally. Since Mrs. Hammoud is responsible for the transfer of the money, she is indebted to her husband in the amount of \$116,438. She has no funds available to pay her husband his share of the account. The Court cannot compel her father to return the funds since he and the money are outside the jurisdiction of the Court. Mrs. Hammoud is being sued by her husband in Lebanon for the return of the funds.

Evaluating the "general principles of equity" the trial court determined that Abir was entitled to spousal support and also referenced Houssam's refusal to grant Abir a religious divorce as a consideration in the award of spousal support. While the trial court recognized that it "has no authority to compel a religious divorce" it found that the "impact" of Houssam's refusal was "the inability of Mrs. Hammoud to remarry." Abir's inability to remarry, coupled with "her lack of employability" was impliedly found by the trial court to negatively "impact her ability to support herself."

This Court has routinely recognized that the primary objective of spousal support is to balance the needs and income of the parties to assure that neither will be impoverished.<sup>14</sup> The

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<sup>13</sup> At trial it was asserted that Abir has a student visa, which allegedly does not permit her to seek employment. Attorneys for both parties were deficient in their presentation and failure to support by documentary evidence issues such as Abir's student visa status and its implications for employment eligibility.

<sup>14</sup> *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008); *Gates v Gates*, 256 Mich App 420, 436; 664 NW2d 231 (2003).

amount or award of spousal support is to be what is deemed just and reasonable under the particular circumstances of the case.<sup>15</sup> An award of spousal support is governed by statute:

Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage who are committed to the care and custody of either party, the court may also award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.<sup>16</sup>

The factors typically identified for consideration by a trial court in making 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.<sup>17</sup>

The trial court addressed the relevant factors in explaining its award of spousal support.<sup>18</sup> There is adequate support in the trial court record for the majority of the factual findings made in conjunction with each factor. Contrary to Houssam's contention, the fact that Abir was awarded substantial assets in the form of her share of The Group account, thereby precluding her demonstration of need for an award of spousal support, is an incorrect characterization of the current status of the law. Rather, "Where both parties are awarded substantial assets, the court, in evaluating a claim for [spousal support], should focus on the income-earning potential of these assets and should not evaluate a party's ability to provide self-support by including in the amount available for support the value of the assets themselves."<sup>19</sup> The mere award of this asset, by

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<sup>15</sup> *Berger*, 277 Mich App at 726; *Gates*, 256 Mich App at 436.

<sup>16</sup> MCL 552.23(1).

<sup>17</sup> *Berger*, 277 Mich App at 726-727.

<sup>18</sup> While the trial court did not specifically address the issue of fault, we assume that the trial court's silence indicates an equal attribution of fault to both parties.

<sup>19</sup> *Gates*, 256 Mich App at 436, quoting *Hanaway v Hanaway*, 208 Mich App 278, 296; 527 NW2d 792 (1995).

itself, does not mandate a different finding regarding the propriety of an award of spousal support to Abir.

This is not to suggest that the award is without problems. Of primary concern is the failure of the trial court to designate the duration of the award of spousal support and an implication of it being permanent in nature. At a subsequent hearing, the trial court addressed the open-ended nature of the spousal support award and deemed it inappropriate “to put a term on it.” This is troublesome on two levels. First, the trial court noted that Abir was an intelligent woman, working on obtaining an education and with a future earning potential. Although the trial court found Abir to be “capable of working” and indicated that she “should attempt to find part time employment to supplement her [living expenses], in its factual findings the trial court determined that Abir’s student visa status precluded her ability to seek employment and refused to impute income. These findings serve to contraindicate an award of permanent spousal support. In addition, the trial court failed to address the modifiability of this award. While modification of spousal support is statutorily provided<sup>20</sup>, for purposes of clarity the trial court should have indicated that the award is not static. Second, there is an implication, despite the trial court’s acknowledgement that it had no authority over the parties obtaining a religious divorce, that the open-ended award of spousal support was structured to pressure Houssam to agree to an Islamic divorce. This implication is reinforced by the trial court’s reference to the inability of Abir to remarry unless a religious divorce was granted.

While there is clearly an argument for an award of rehabilitative spousal support based on the trial court’s factual findings, an award of permanent spousal support could result in Houssam’s responsibility to support Abir for 50 or more years for a 14 year marriage. This is not consistent with the trial court’s findings that Abir is an intelligent and capable woman who should be able to sufficiently support herself in the future. As structured by the trial court, Abir has no motivation to achieve self-sufficiency as she is assured an ongoing income ad infinitum.

An additional problem also exists. While the trial court evaluated Abir’s monthly expenses and based its award of spousal support on her demonstrated need, it failed to balance this against Houssam’s actual ability to pay. While evidence supported the trial court’s determination that Houssam was educated and had a consistent earning history or potential, in awarding support to Abir it did not sufficiently evaluate Houssam’s expenses and debts and his demonstrated ability to pay.<sup>21</sup> At trial, it was acknowledged that the marital home had no equity and was actually valued below the amount of the outstanding mortgage balance. Houssam was awarded this “asset” with all the associated debt and monthly expenses. He is also solely financially responsible for both minor children, without any contribution from Abir and is primarily responsible to pay the fees associated with procuring therapy for Abir and the minor children. While Houssam did not adequately support with documentary evidence his asserted monthly expenses and debts, these are factors that should have been considered in evaluating his

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<sup>20</sup> MCL 552.28; see also *Staple v Staple*, 241 Mich App 562, 568-569; 616 NW2d 219 (2000).

<sup>21</sup> MCL 552.23(1).

ability to pay. The absence of this information precludes an ability to reasonably ascertain Houssam's ability to pay the amount of spousal support awarded, particularly given its unspecified duration. As a result, the trial court violated the underlying purpose of spousal support, which is to make certain that the divorcing parties maintain a lifestyle approximating their previous standard of living but *without impoverishing either party*.<sup>22</sup>

As part of its award of spousal support, the trial court also required Houssam to pay Abir's educational expenses, consisting of tuition and books, for a period of five years or until attainment of her associate's degree, whichever occurred first. As with the monthly monetary support awarded, there is no indication that the trial court properly considered Houssam's ability to pay against Abir's need for this support, particularly given the property award pertaining to The Group investment account. As a result, the spousal support award is deceptive as it is comprised not only of a monthly award of unspecified duration to offset Abir's living expenses but also an obligation to pay her educational costs. While the propriety of either award may have support within the record there is no indication that the trial court properly balanced Abir's need against Houssam's ability to pay in structuring the award.

Houssam also asserts that the property distribution by the trial court was inequitable. "This Court reviews a property distribution in a divorce case by first reviewing the trial court's factual findings for clear error, and then determining whether the dispositional ruling was fair and equitable in light of the facts."<sup>23</sup>

The property distribution in this case was comprised primarily of the marital home and The Group investment account valued at approximately 873,527 Riyals or \$239,322 in U.S. dollars. Although characterized as an "asset" the marital home has no equity and evidence indicated that the value of the home was less than the outstanding mortgage balance. The marital home and all debt associated with it was awarded to Houssam as his sole property.

Houssam asserted various debts for distribution, including unpaid student loans incurred in the 1990s. He also claimed \$45,000 in credit card debt was incurred and that Abir had removed \$18,000 in cash from the marital home when she left to return to Lebanon. The trial court indicated that there was insufficient evidence to support Houssam's claims. Similarly, Abir claimed that \$75,000 was owed to her father, but the trial court assigned this debt solely to her based on the lack of supporting evidence for her claim.

The primary asset of the parties comprised The Group investment account. The trial court spent considerable time and energy trying to make sense of the vastly differing explanations regarding the origin of the funds in this account and their ownership. Abir did not deny that, using a power of attorney, she removed all the monies from this account, which was in Houssam's name, and ultimately placed the funds in a separate account in Lebanon solely in her

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<sup>22</sup> *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996) (emphasis added).

<sup>23</sup> *Olson*, 256 Mich App at 622.

father's name. Questioning the veracity of both parties, the trial court deemed the account to be a marital asset and divided the account balance equally between the parties with each entitled to "\$119,661 US dollars." In seeking clarification of this ruling and noting the failure of the judgment to contain any language mandating Abir to pay or cooperate in securing payment of these funds to Houssam, the trial court indicated this omission was intentional.<sup>24</sup>

Houssam premises his contention of error in the distribution of property on the failure of the trial court to specifically address each of the relevant factors<sup>25</sup> to be considered in making the award and asserts that the ultimate award is inequitable. The factors that are typically deemed relevant to achieve an equitable property distribution include, but are not limited to:

(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.<sup>26</sup>

When distributing marital property, a "trial court is given broad discretion in fashioning its rulings and there can be no strict mathematical formulations."<sup>27</sup> It has been consistently recognized, "while the division need not be equal, it must be equitable."<sup>28</sup> Typically, a fairly equivalent division of marital assets is deemed to be an equitable distribution. "An equitable distribution of marital assets means that they will be roughly congruent. Any significant departure from that goal should be supported by a clear exposition of the trial court's rationale."<sup>29</sup> In general, a trial court's property award "will be affirmed unless we are left with the firm conviction that the distribution was inequitable."<sup>30</sup> This Court will also defer to a trial court's findings based on the credibility of witnesses.<sup>31</sup>

Houssam's contention that the trial court erred in the distribution of marital assets based on its failure to specifically elucidate its findings under all of the relevant factors is disingenuous. The trial court provided a detailed discussion under each of the relevant factors in explaining its

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<sup>24</sup> Houssam sued Abir in Lebanon to obtain the monies from this account. Abir also initiated a lawsuit in Lebanon against Houssam asserting his failure to support her. At the time of the entry of the judgment, these actions remained pending.

<sup>25</sup> Houssam specifically refers to the factors delineated in *Sparks*.

<sup>26</sup> *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (citations omitted).

<sup>27</sup> *Id.* at 88.

<sup>28</sup> *Id.*

<sup>29</sup> *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

<sup>30</sup> *Hanaway*, 208 Mich App at 292.

<sup>31</sup> *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).



award of spousal support. The failure of the trial court to provide a separate recitation of these same factors for the award of real and personal property is irrelevant as it is extremely unlikely that its factual findings would have varied to any significant degree based solely on their repetition. Based on the trial court's detailed findings of fact and conclusions of law addressing the relevant factors there is no support for Houssam's contention of error on this basis.

In asserting that the distribution is inequitable, Houssam notes that he is the sole legal and physical custodian of the children and that Abir make no financial contribution to their support, but again, this is not a deciding factor in the distribution of marital assets. Houssam primarily asserts that Abir wrongfully removed monies from The Group account and turned those funds over to a family member. He contends that it is reasonable to assume, based on the support Abir receives from her family that she has access to these funds while he is completely precluded from any availability to this asset. While this may be a logical assumption, it does not undermine the actual distribution of the assets.

While the marital home is questionably characterized as an "asset" given the discrepancy between the negative market value of the home when compared to the debt owed, there was no other reasonable distribution. Abir is unemployed and cannot afford payments or maintenance of the property. Houssam has sufficient income to meet the payments and the home is the residence of the minor children, which are solely in his custody. As noted by the trial court, the remaining debts asserted by both parties were not sufficiently demonstrated or supported by evidence. Based on this deficiency, it was reasonable to award to each party the debts they claimed but could not verify.

The actual crux of this matter is The Group investment account monies. It is difficult to contend that distribution of the asset is inequitable as it was equally divided.<sup>32</sup> The mere fact that the monies allegedly earned to create this investment account were earned by Houssam is irrelevant as marital assets are defined as those assets that have been acquired or accumulated from the beginning to the end of the marriage.<sup>33</sup> Further, this Court should defer to a trial court's findings of fact premised on credibility of the parties.<sup>34</sup> Beyond determining that the monies were a marital asset subject to an equivalent distribution, the trial court lacked the authority to compel their payment as they are currently in the name of a third person, Abir's father, who was not a party to this litigation.<sup>35</sup>

The only aspect of the award to be construed as questionable is the trial court's refusal to offset ongoing support owed by Houssam against this account as a means to pressure or influence Abir's cooperation in obtaining the release or accessibility of these funds. A similar

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<sup>32</sup> *Jansen*, 205 Mich App at 171.

<sup>33</sup> *Bone v Bone*, 148 Mich App 834, 837-838; 385 NW2d 706 (1986).

<sup>34</sup> *Draggoo*, 223 Mich App at 429.

<sup>35</sup> *Capitol S & L Co v Std S & L Ass'n of Detroit*, 264 Mich 550, 553; 250 NW 309 (1933).

tactic was used by the trial court in leaving spousal support for an unspecified duration to implicitly pressure Houssam to grant Abir an Islamic divorce to facilitate her ability to remarry, creating a change of circumstance permitting modification of the support award. Yet, while this is relevant to the enforcement of the award it is not determinative regarding whether the award itself is equitable.

Houssam further contends that the trial court's award of attorney fees to Abir's counsel was in error. A trial court's ruling on an award of attorney fees is reviewed for an abuse of discretion.<sup>36</sup>

Following entry of the judgment, both parties sought contribution to the payment of their attorney fees. The trial court denied Houssam's request for an award of attorney fees based on Abir's wrongdoing. In granting Abir's request for contribution to the payment of her attorney fees the trial court focused on her inability to pay. Referencing Houssam's employment history, earnings, its award of the marital home to Houssam "and an award of \$119,000 (reduced to \$95,000 in a December 17, 2009 order) against his wife," the trial court determined that Houssam "clearly has an ability to contribute to her attorney fees." The trial court then awarded attorney fees in the amount of \$10,000 "as being a reasonable contribution in light of all the facts in the present case."

As noted by the trial court, "[i]n domestic relations cases, attorney fees are authorized by both statute, MCL 552.13, and court rule, MCR 3.206(C)."<sup>37</sup> Assistance with the payment of attorney fees may be awarded "when a party needs financial assistance to prosecute or defend the suit."<sup>38</sup> "[A] party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support."<sup>39</sup> In seeking contribution to payment of their attorney fees a party must allege sufficient facts to demonstrate that he or she is "unable to bear the expense of the action, and that the other party is able to pay."<sup>40</sup>

There is a significant discrepancy in the trial court's reasoning and ruling. When evaluating Abir's need for contribution to her attorney fees, the trial court indicated that Abir "was awarded no property in the divorce action and owes a substantial debt to her husband from the division of the Group Account. She has no funds with which to pay attorney fees." Yet, when determining that Houssam had the ability to pay part of Abir's attorney fees the trial court referenced not only his salary and award of the marital home but also "an award of \$119,000 (reduced to \$95,000 in a December 17, 2009 order) against his wife." If the investment account

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<sup>36</sup> *Olson*, 256 Mich App at 634.

<sup>37</sup> *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005).

<sup>38</sup> *Id.*

<sup>39</sup> *Gates*, 256 Mich App at 438.

<sup>40</sup> MCR 3.206(C)(2)(a).

is to be treated as evidence of Houssam's ability to pay it should commensurately be used in evaluating Abir's need for contribution. To suggest, as the trial court did, that the award of this account to Abir merely obligated her with a debt to Houssam ignores the reality that she was awarded one-half of this account as her sole property. It is internally inconsistent to assert that the award to Abir from this account is equivalent to an award of "no property" and that she lacks "funds with which to pay attorney fees," yet indicate that an award of the same amount of funds from the identical account demonstrates Houssam's "ability to contribute to her attorney fees." In other words, the award of funds from this account cannot commensurately be construed to be an asset to Houssam but a liability to Abir. Further, while a party need not "invade assets to satisfy attorney fees when the party is relying on the same assets for support,"<sup>41</sup> Abir contended that she had no access to this account and impliedly was not using them for her support or to meet her routine expenses.

Based on the conclusory nature of the trial court's decision and its inconsistent treatment of the investment account, this Court is unable to determine whether the trial court abused its discretion in awarding attorney fees to Abir and the matter should be remanded for further proceedings. Although not raised by the parties on appeal, we note that there is no explanation provided by the trial court for the amount of the award or why such an award was deemed to be reasonable. There is nothing in the record to indicate that the trial court considered factors such as the professional standing and experience of Abir's attorney, skill and labor involved, etc., in determining the amount awarded.<sup>42</sup> While an evidentiary hearing was not requested by Houssam, the trial court should have at least briefly addressed its view of the relevant factors on the record.<sup>43</sup> This did not occur.

Finally, Houssam asserts the trial judge should be disqualified due to bias and this matter assigned to an alternative judge on remand. This issue is unpreserved as neither party filed a motion seeking to disqualify the trial judge with the commensurate affidavit.<sup>44</sup> Houssam also asserts, without explanation, a basis for disqualification of the trial judge premised on a violation of due process. Because Houssam did not assert a due process claim below, this contention is also unpreserved. Unpreserved issues are reviewed for plain error affecting substantial rights.<sup>45</sup> In accordance with the plain error rule, the burden is on the objecting party to demonstrate: (1) an error has occurred, (2) the error is plain or obvious, and (3) the error affected a substantial

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<sup>41</sup> *Gates*, 256 Mich App at 438.

<sup>42</sup> *Smith v Khouri*, 481 Mich 519, 529-530; 751 NW2d 472 (2008) (citation omitted).

<sup>43</sup> *Id.* at 529 n 14.

<sup>44</sup> MCR 2.003(C)(1); *Cain v Dep't of Corrections*, 451 Mich 470, 494; 548 NW2d 210 (1996).

<sup>45</sup> *Wolford v Duncan*, 279 Mich App 631, 641; 760 NW2d 252 (2008).

right.<sup>46</sup> An unpreserved, constitutional error is forfeited unless there is a showing of plain error that affected substantial rights.<sup>47</sup>

“A trial judge is presumed to be impartial, and the party asserting partiality has the heavy burden of overcoming that presumption.”<sup>48</sup> To obtain judicial disqualification a proponent must demonstrate actual bias or prejudice.<sup>49</sup> A mere suspicion of possible bias is insufficient to prove partiality or prejudice. When a proponent of judicial disqualification is unable to demonstrate actual bias, due process only requires disqualification “in situations where ‘experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.’”<sup>50</sup> Such circumstances are extreme and include:

(1) when the judge has a pecuniary interest in the outcome; (2) when the judge has been the subject of personal abuse or criticism from the party before him; (3) when the judge is enmeshed in other matters involving the complaining party; or (4) when the judge might have prejudged the case because of having previously acted as an accuser, fact-finder, or initial decisionmaker.<sup>51</sup>

Houssam’s contention of bias centers on comments made by Judge Lita Popke during the proceedings regarding Houssam’s refusal to grant Abir an Islamic divorce and the cultural phenomenon of the parties’ arranged marriage. While the trial judge’s remarks were critical and disapproving of Houssam’s refusal to grant Abir an Islamic divorce and demonstrate a sense of frustration, the comments fail to show the actual bias or prejudice that is required for disqualification.<sup>52</sup>

The trial court acknowledged it was without any authority over the Islamic divorce but believed that the failure of Houssam to agree to the religious divorce had implications for Abir that the trial court was required to take into consideration in determining issues of support and in fashioning a property settlement. This fails to rise to the necessary level of demonstrating that the trial “judge harbor[ed] actual bias or prejudice” against Houssam that was “both personal and extrajudicial.”<sup>53</sup> The mere fact that some of the trial court’s rulings are erroneous is insufficient

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<sup>46</sup> *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

<sup>47</sup> *In re Osborne*, 237 Mich App 597, 606; 603 NW2d 824 (1999).

<sup>48</sup> *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898 (2006).

<sup>49</sup> *Cain*, 451 Mich at 495; *Impullitti v Impullitti*, 163 Mich App 507, 514; 415 NW2d 261 (1987).

<sup>50</sup> *Crampton v Dep’t of State*, 395 Mich 347, 351; 235 NW2d 352 (1975), quoting *Withrow v Larkin*, 421 US 35, 47; 95 S Ct 1456; 43 L Ed 2d 712 (1975).

<sup>51</sup> *Van Buren Twp v Garter Belt, Inc*, 258 Mich App 594, 599-600; 673 NW2d 111 (2003).

<sup>52</sup> MCR 2.003(C)(1); *Cain*, 451 Mich at 494-495.

<sup>53</sup> *Van Buren Twp*, 258 Mich App at 598.

to imply bias or prejudice.<sup>54</sup> While this Court notes the heavy-handed nature of the trial court's efforts to obtain a complete resolution in this matter and the errors resulting from those efforts, Houssam has not sufficiently demonstrated a level of bias or prejudice that would necessitate either disqualification or reassignment.

Affirmed in part, reversed in part and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Michael J. Talbot  
/s/ Cynthia Diane Stephens

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<sup>54</sup> *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009) (citations omitted).