STATE OF MICHIGAN

COURT OF APPEALS

SURESH K. GUGGILA,

Plaintiff-Appellee,

v

PUSHPA POLU,

Defendant-Appellant.

UNPUBLISHED
December 22, 2015

No. 328318
Oakland Circuit Court
Family Division
LC No. 2014-817649-DM

Before: SAWYER, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Defendant, Pushpa Polu, appeals as of right from a June 30, 2015 judgment of divorce. We affirm in part, vacate in part, and remand for further proceedings.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of the trial court's entry of a judgment of divorce that ended the arranged marriage of the parties. Plaintiff, Suresh Guggilla, is originally from India and moved to the United States in 1999 with a work visa that allowed him to work as an engineer. Plaintiff met defendant in India in 2000 and they were married there in December 2000. Defendant moved to the United States on a dependent visa approximately three or four months later. Defendant had earned a medical degree in India, but needed to pass three examinations and complete a three-year residency program before she could become a licensed physician in the United States. As of the date of the judgment of divorce, defendant had passed only one of the examinations. Defendant did not work during the marriage, but was authorized to work in the United States when she obtained her green card in 2013. Together the parties had one daughter, who was born in December 2008.

In March 2014, plaintiff filed a complaint for divorce and sought joint legal and physical custody of the child. In her answer, defendant sought sole legal and physical custody of the child. She also moved for temporary support. In May 2014, the trial court awarded defendant $2,700 per month in temporary support, but noted that defendant was a healthy woman and admonished her to "get a job" even if she could not work as a physician. The court noted that it would "understand" if defendant opted not to work and to instead continue to study for her medical examinations, but also noted that it would not "impute zero income to her" when calculating support and cautioned defendant that she would be unable "to live on support." Also

in May, the trial court entered a temporary order granting the parties joint legal custody of the child and granting defendant physical custody of the child. The court initially granted plaintiff supervised parenting time as a temporary protective measure in light of defendant's allegation that she seen "inappropriate touching" between plaintiff and the child. In October 2014, the court entered an order granting plaintiff unsupervised parenting time after determining that defendant's allegations were unsubstantiated.

A bench trial commenced in November 2014. At the beginning of the third day of trial, an off-the-record bench conference was held and the trial was adjourned without explanation. The trial court subsequently entered an order instructing the parties to submit proposed findings of fact and conclusions of law and indicating that the court would be issuing a written opinion and order.

The trial court issued an opinion and order on April 30, 2015. The court granted the divorce and (1) awarded the parties joint legal and physical custody of the child, (2) denied defendant's request to relocate with the child to Illinois, (3) imputed $25,000 of annual income to defendant and awarded child support consistent with the Michigan Child Support Formula, (4) ordered plaintiff to pay periodic spousal support of $1,500 per month for a term of two years, (5) ordered a specific division of the parties' property, and (5) denied defendant's motion for attorney fees.

II. FACTUAL FINDINGS REGARDING DEFENDANT'S ABILITY TO WORK

Defendant argues that the trial court clearly erred by finding that defendant became authorized to work in the United States in 2012. She also argues that the trial court clearly erred in finding that she had refused to obtain employment after the trial court *ordered* her to do so because the trial court had never entered such an order. The court made these findings in its discussion of child support in the court's opinion and order.

"A trial court's findings of fact made following a bench trial in a divorce action are reviewed for clear error." *Allard v Allard*, 308 Mich App 536, 560; 867 NW2d 866 (2014). " '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.* (quoting *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003)).

Defendant asserts that the trial court clearly erred by finding that she was legally authorized to work in the United States in 2012, citing the following portion of the trial court's opinion and order: "Although the evidence before the [c]ourt established that [defendant] was not permitted to obtain employment until she received her green card in 2012, [she] voluntarily refrained from getting a job after the employment restriction was lifted."

Defendant's argument is misplaced. Early in its opinion and order, the trial court explicitly recognized that defendant obtained her green card in 2013, a finding that is consistent with defendant's testimony. As such, it appears that the 2012 reference defendant cites was merely a typographical error.

Defendant further argues that the trial court clearly erred when it found that it had ordered defendant to obtain employment and that defendant had disregarded the court's order.

She contends that the court used these erroneous factual findings against her when making determinations regarding custody, child support, and spousal support. Although the trial court referred in the child support section of the opinion and order to the court's comments at the hearing regarding temporary spousal support as a *directive* for defendant to obtain employment and that defendant had ignored the *order*, at most the court's comments during the hearing foreshadowed her later imputation of income to defendant. The trial court seemed to use the term "order" in a colloquial sense in its opinion and order, indicating that the court had directed defendant to obtain employment, that defendant had failed to obtain employment, and that it was reasonable to impute income to her. We are not left with a definite and firm conviction that the trial court made a mistake.

III. CHILD CUSTODY

Defendant argues that the trial court improperly awarded the parties joint legal and physical custody of the child.[1] We disagree.

A. Standards of Review

Child custody orders are subject to three standards of review. *Brausch v Brausch*, 283 Mich App 339, 347; 770 NW2d 77 (2009). All custody orders must be affirmed unless the trial court's findings of fact were against the great weight of the evidence, the court made a clear legal error, or the court committed an abuse of discretion. MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). A trial court's factual findings are against the great weight of the evidence if the facts clearly preponderate in the opposite direction. *Shade v Wright,* 291 Mich App 17, 21; 805 NW2d 1 (2010). Where the evidence conflicts, this Court defers to the trial court's determinations of credibility. *McIntosh v McIntosh*, 282 Mich App 471, 474; 768 NW2d 325 (2009). The abuse of discretion standard applies to the trial court's decision to award custody to a particular party. *Berger v Berger,* 277 Mich App 700, 705; 747 NW2d 336 (2008). An abuse of discretion occurs when "the trial court's decision 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.*

"The Child Custody Act, MCL 722.21 *et seq.,* governs custody disputes. The act is intended to promote the best interests of children, and it is to be liberally construed." *Berger,* 277 Mich App at 705, citing MCL 722.26(1). As a threshold matter in custody cases, the trial

---

[1] In several of her arguments, defendant argues that the trial court erred by failing to afford "some weight" to a report and recommendation by the Friend of the Court (FOC). Since the parties did not stipulate to the admissibility of that report and recommendation, it was not admissible evidence, and could only "be considered by the trial court as an aid to understanding the issues to be resolved." *Duperon v Duperon*, 175 Mich App 77, 79; 437 NW2d 318 (1989), criticized on other grounds by *Harper v Harper*, 199 Mich App 409, 412; 502 NW2d 731 (1993).

court must determine whether the children have an established custodial environment with one or both parents. See MCL 722.27(1)(c). "Whether an established custodial environment exists is a question of fact to which the great weight of the evidence standard applies." *Kubicki v Sharpe*, 306 Mich App 525, 540; 858 NW2d 57 (2014).

B. Established Custodial Environment

Defendant contends that the trial court erred by finding that the child had an established custodial environment with both parties. Pursuant to MCL 722.27(1)(c), a custodial environment is established where "over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered." *Id.* "An established custodial environment is one of significant duration, both physical and psychological, in which the relationship between the custodian and child is marked by security, stability, and permanence." *Id.* at 202-203.

Here, although the child had been living with defendant exclusively since the parties separated, defendant admitted that plaintiff had been exercising all of his parenting time, with the exception of overnights that would force the minor child to stay with plaintiff and his male roommate in their shared room, and defendant further acknowledged that she was affording plaintiff "extra" parenting time whenever he wanted it. Plaintiff testified at length about the parent-child bond he had with the child, who was his only daughter. He explained that before the parties separated the child would look to plaintiff whenever she needed something or had a "problem or concern." Plaintiff took the child to school and picked her up, arranged for schooling and extracurricular activities, did all of the necessary paperwork, paid for everything, and researched new programs and activities for her to enjoy. Plaintiff was primarily responsible for the child's discipline and he guided her with positive, reward-based discipline. When the child was sick, plaintiff would stay up all night with her while she slept on his shoulder. Plaintiff testified that after the parties separated the child remained bonded to, and affectionate toward, him and often confided in him. Plaintiff generated all financial support for the child and the household, thereby providing her with the necessities of life. Consequently, there was ample evidence to support the trial court's conclusion that the child had an established custodial environment with both parties.

C. Best Interests of the Child

Defendant also contests the trial court's finding that joint physical and legal custody was in the child's best interests under the factors enumerated by MCL 722.23. In pertinent part, MCL 722.27(1)(c) provides as follows:

> The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child.

After finding that the minor child had an established custodial environment with both parties, the trial court correctly noted that "[a] change of legal and physical custody . . . [could] only be made on clear and convincing evidence that the change is in the best interests of [the child]." Accordingly, it proceeded to consideration of the best interest factors, MCL 722.23, analyzing them at length and explicitly stating its findings and conclusions with regard to each factor, *Thompson v Thompson*, 261 Mich App 353, 357; 683 NW2d 250 (2004), before concluding that joint legal and physical custody was in the best interest of the child.

Defendant offers little substantive argument with respect to the best interest factors. Essentially, defendant contends that the trial court placed improper emphasis on defendant's failure to obtain employment when determining the best interest of the child. The record does not, however, support this contention. The trial court engaged in a thorough review of the best interest factors and found certain factors weighing in favor of defendant, others in favor of plaintiff, and still others equally in favor of both parties. In discussing the best interest factors, the trial court only mentioned defendant's lack of employment in its analysis of factor c, which was altogether appropriate, as factor c contemplates "[t]he capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs." Even assuming that defendant was *unable* to work due to her limited English as she contends, she has cited no authority indicating that the trial court was precluded from considering her employability under factor c. Indeed, defendant can cite no such authority because "earning capacity" is a directly relevant consideration under that factor. See, e.g., *Berger*, 277 Mich App at 711 (discussing the relative "earning capacity" of the parties under factor c). Defendant has failed to show that the trial court's custody determination constituted a palpable abuse of discretion, clear legal error, or a decision contrary to the great weight of the evidence.

IV. MOTION FOR CHANGE OF DOMICILE

Defendant next argues that the trial court improperly denied her motion to change the domicile of the child. We disagree.

"This Court reviews a trial court's decision regarding a motion for change of domicile for an abuse of discretion and a trial court's findings regarding the factors set forth in MCL 722.31(4) under the 'great weight of the evidence' standard." *Rains v Rains*, 301 Mich App 313, 324; 836 NW2d 709 (2013), quoting *Gagnon v Glowacki*, 295 Mich App 557, 565; 815 NW2d 141 (2012). "Under the great weight of the evidence standard, a reviewing court defers to the trial court's credibility determinations, and the trial court's factual findings should be affirmed unless the evidence clearly preponderates in the opposite direction." *Pierron*, 486 Mich at 96.

In *Rains*, 301 Mich App at 325, this Court took an "opportunity to reiterate the correct process that a trial court must use when deciding a motion for change of domicile":

> A motion for a change of domicile essentially requires a four-step approach. First, a trial court must determine whether the moving party has established by a preponderance of the evidence that the factors enumerated in MCL 722.31(4), the so-called *D'Onofrio*[3] factors, support a motion for a change of domicile. Second, if the factors support a change in domicile, then the trial

court must then determine whether an established custodial environment exists. Third, if an established custodial environment exists, the trial court must then determine whether the change of domicile would modify or alter that established custodial environment. Finally, if, and only if, the trial court finds that a change of domicile would modify or alter the child's established custodial environment must the trial court determine whether the change in domicile would be in the child's best interests by considering whether the best-interest factors in MCL 722.23 have been established by clear and convincing evidence.

[3] *D'Onofrio v D'Onofrio*, 144 NJ Super 200, 206-207; 365 A2d 27 (1976).

MCL 722.31(4) provides:

> Before permitting a legal residence change otherwise restricted by subsection (1),[2] the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:
>
> (a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.
>
> (b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.
>
> (c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.
>
> (d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.
>
> (e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

In this analysis, "only *after* it determines that the moving party has shown by a preponderance of the evidence that a change of domicile is warranted," may a trial court consider whether a

[2] "MCL 722.31(1) prohibits 'a parent of a child whose custody is governed by court order [from changing] 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.' " *Rains*, 301 Mich App at 326, quoting MCL 722.31(1) (alteration in original).

custodial environment exists, whether such an environment would be altered or modified by the proposed change, and whether the proposed change has been proven to be in the best interest of the child. *Rains*, 301 Mich App at 327-328.

The trial court made extensive factual findings and reasoning regarding each of the *D'Onofrio* factors and concluded that defendant failed to show by a preponderance of the evidence that a change of domicile was warranted. Defendant argues, without providing any legal framework or authority, that the trial court was simply *wrong* about whether the proposed move had the potential to better the lives of defendant and the minor child. Despite the trial court's extensive analysis of the *D'Onofrio* factors, defendant offers no contrary analysis and fails to cite *Rains*, 301 Mich App at 326; MCL 722.31(4), *D'Onofrio*, or any other authority in support of her position. By failing "to cite any authority in support of [her] argument," defendant has abandoned it. See *King v Mich State Police Dep't*, 303 Mich App 162, 176, 193; 841 NW2d 914 (2013).

Defendant's argument is, nevertheless, without merit. Defendant failed to demonstrate by a preponderance of the evidence that the proposed move would improve her lifestyle and that of the child, who turned six years of age during the pendency of the trial. Defendant failed to pass the requisite examinations for her medical license over the more than 13 years in the United States preceding the trial. Even assuming that after moving to Chicago she could have passed all of the examinations before the minor child turned seven, defendant would still have been required to spend the following three years completing her residency program before she could obtain her medical license. Thus, the trial court correctly concluded that there was no reasonable chance the move would allow defendant to secure her medical license, and thereby obtain a better job, within a reasonable time.

V. CHILD SUPPORT

Defendant contends that the child support award was neither adequate nor equitable, largely because it was based on the trial court's imputation of $25,000 of annual income to defendant. We disagree.

This Court generally "reviews child support orders for an abuse of discretion." *Butler v Simmons-Butler*, 308 Mich App 195, 224-225; 863 NW2d 677 (2014). "The determination of whether a trial court has operated within the statutory framework for child support calculations is a question of law reviewed de novo." *Id.* at 225.

Defendant waived her challenge to the adequacy of the child support award by failing to "challenge the method of calculation used," or "the resultant recommendation," in the trial court. *Jansen v Jansen*, 205 Mich App 169, 172; 517 NW2d 275 (1994). Moreover, plaintiff does not explain how or why the trial court's child support award constituted an abuse of discretion. See *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority").

Defendant nonetheless challenges the trial court's factual finding that she was *capable* of working, a finding that supported the court's decision to impute income to defendant, in light of defendant's limited English skills. However, defendant offered no evidence to contravene the court's finding. She presented no evidence in the trial court that that her English skills are so poor as to prevent her from obtaining employment, and the trial court, with its opportunity to hear defendant's testimony firsthand, evidently found her capable of obtaining employment that would gross $25,000 annually. Notably, despite the presence of an interpreter at trial, defendant generally responded to questions in English, sometimes while the interpreter was still translating the question, and further informed the trial court, in post-trial proceedings, that she did not require an interpreter. Defendant also failed to present evidence that she had actually sought employment since becoming authorized to work, and merely opined that such efforts would fail *if* she sought employment. Defendant has failed to demonstrate that the trial court clearly erred in finding that defendant had the capability to work and earn income.

VI. PROPERTY DIVISION

Defendant argues that the trial court unjustly divided the marital and nonmarital assets. We disagree.

A. Dowry

Defendant testified at trial that her family had paid plaintiff a dowry as part of the parties' arranged marriage.[3] Defendant, relying on a case from the Supreme Court of India, argues that the trial court erred by failing to treat the dowry as her separate premarital property under "Hindu Law of Saudayika," but she cites no authority indicating that Indian law has authoritative weight in this matter.[4] Nonetheless, defendant failed to provide the trial court with sufficient evidence about the purported dowry for it to be rationally considered in the property division. Although defendant testified that a dowry of "thirty thousand" was paid by her family to plaintiff, defendant did not clarify whether she was referring to $30,000, its equivalent in Indian rupees, 30,000 rupees, or 30,000 of some other unit of currency. Defendant also failed to adduce any proof of the payment of the dowry or any evidence with respect to whether the dowry had been spent. Thus, the trial court had insufficient evidence regarding the purported dowry for it to be coherently included in the property division. Further, plaintiff denied at trial that a dowry had ever been paid to him. Given the conflicting testimony, the trial court's decision to disregard the alleged dowry was an implicit credibility determination in favor of plaintiff to which we defer. See *Berger*, 277 Mich App at 718.

---

[3] Defendant refers to a dowry as a "stridhan," and asserts that plaintiff was merely the custodian of the dowry.

[4] Additionally, under MCR 2.112(J)(3), a party who intends to rely on or raise an issue concerning the law of a foreign nature must give notice of that intention either in his or her pleadings or in a written notice served by the close of discovery. There is no indication in the record that defendant provided the requisite notice of her intent to rely on Indian law to plaintiff, or that plaintiff was already on notice that Indian law would be cited.

B. Factual Findings

Defendant also contends that the trial court's property division relied on clearly erroneous factual findings. "In deciding issues on appeal involving division of marital property, this Court first reviews the trial court's findings of fact," which will be reversed only if clearly erroneous. *Butler*, 308 Mich App at 207-208. "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake was made." *Id.* at 208. Special deference is given to a trial court's findings of fact when they are based on the credibility of witnesses. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). "If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and will be affirmed unless this Court is left with a firm conviction that the division was inequitable." *Id.*

Defendant first argues that the trial court clearly erred by considering $35,000 in debt, which plaintiff allegedly accrued during the course of the marriage, as marital debt. However, the debt is not mentioned in the property division portion of the trial court's opinion and order, and there is nothing in the record indicating that the court treated the purported $35,000 of debt as *marital* debt. Indeed, after holding that plaintiff would "be responsible for any and all existing joint credit card debt incurred by the parties during the marriage," the trial court specified that "each party is responsible for any and all debt in his or her own name." The sole testimony about the $35,000 in debt was that it was money *plaintiff borrowed* from his friends and family, and there was never an indication that defendant was jointly obligated on such debt. Thus, defendant is mistaken in her assertion that the trial court's property division treated the purported debt as marital debt. She is likewise mistaken in her assertion that payment of the debt reduced the marital estate by $35,000, given plaintiff's testimony that he had accrued the debt and was obligated to pay it back, not that he had *already* paid it.

Second, defendant argues that the trial court clearly erred by failing to consider as marital debt $11,000 of debt that she had incurred between December 2013 and May 2014, including $5,000 she had borrowed to pay her divorce attorney's retainer. Defendant fails to explain how or why the trial court clearly erred, and instead merely announces that the trial court should have considered the $11,000 obligation as marital debt. Thus, her argument necessarily fails. See *Houghton*, 256 Mich App at 339.

Third, defendant argues that the trial court clearly erred by failing to consider, as a marital asset, real estate that plaintiff allegedly owned in India. Aside from her own testimony that plaintiff owns property in India, including "his own house" and "some shops" that his family members rent on his behalf, defendant offered no evidence that plaintiff owned real estate in India or anywhere else. Plaintiff denied owning any real estate. The trial court found that defendant failed to substantiate her allegation. The trial court's factual finding was based on a credibility determination, to which this Court defers. See *Berger*, 277 Mich App at 718. In any event, defendant cites no evidence to contradict the trial court's reasoning, or to demonstrate that, if plaintiff actually owned real estate in India at the time of trial, the property was obtained during the marriage and therefore a marital asset. See *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005) (explaining that marital assets are generally those gained "during the marriage[.]").

C. Equitable Division of the Property

In addition to her challenges to the trial court's factual findings, defendant asserts that the trial court's property division was inequitable.

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of marital property in light of all the circumstances. *McNamara v Horner,* 249 Mich App 177, 188; 642 NW2d 385 (2002). The division need not be mathematically equal, but any significant departure from congruence must be clearly explained by the trial court. *Id.* The trial court's disposition of marital property is intimately related to its findings of fact. *Id.* In reaching an equitable division, the trial court should consider the following factors whenever they are relevant to the particular case:

> (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 v Sparks,* 440 Mich 141, 159–160; 485 NW2d 893, 894 (1992).]

In support of its division of the marital estate, the trial court reasoned as follows:

> Although [defendant] testified that [plaintiff] owns real estate in India, [defendant] did not substantiate her claim and [plaintiff] denied owning any real estate whatsoever. As [plaintiff] currently drives a Honda Civic valued at $2,500 and [defendant] drives a Honda CR[-]V that is in [plaintiff]'s name and is being leased at [$400] per month, the Court finds that each party shall be awarded the vehicle currently in their possession. Each party shall fully cooperate to transfer title of the Honda CR[-]V from [plaintiff]'s name to [defendant]'s name and each party is responsible for any and all costs associated with the vehicle awarded to them, including automobile insurance for the vehicles.
>
> Any joint credit card accounts shall be closed immediately and the parties shall fully cooperate to remove one another from all accounts on which the other party is an authorized user.[14] Whereas [plaintiff] shall be responsible for any and all existing joint credit card debt incurred by the parties during the marriage, each party is responsible for any and all debt in his or her own name. Because [plaintiff] is being held accountable for the parties' joint debts, the Court finds that it is equitable to award [plaintiff] the entirety of his life insurance policies and retirement accounts. Finally, whereas each party is awarded any and all marital property currently in their possession, any personal property obtained prior to the marriage shall be returned to its rightful owner.
>
> ---
>
> [14] [Plaintiff] testified at length about [defendant]'s excessive online shopping and maintained that his aforementioned $8,000 credit card debt is a direct result of [defendant]'s unnecessary spending habit.

Defendant contends that, by awarding plaintiff "the entirety of his life insurance policies and retirement accounts," the trial court failed to divide the marital estate equitably. Given the

parties' limited assets, however, and the fact that plaintiff was ordered to assume *all* joint debts, we are not left with a firm conviction that the division was inequitable. The life insurance policies plaintiff was awarded were a term life insurance policy and a supplemental life insurance policy, with the minor child named as the sole beneficiary, and had no cash-surrender value. And, contrary to defendant's unsupported claim that plaintiff's retirement accounts were worth more than $20,000, plaintiff's undisputed trial testimony was that he had no pension and two retirement accounts with a combined value of $13,157.90. Although the trial court awarded plaintiff all of his retirement assets, it specifically indicated that it was doing so to recompense plaintiff for the roughly $8,000 in revolving credit card debt that he was assigned. Defendant has failed to demonstrate that the property distribution was inequitable.

VII. SPOUSAL SUPPORT

Defendant also argues that the trial court's award of periodic spousal support was inequitable. We disagree.

"The same review standard applicable to the division of marital property applies to awards of spousal support." *Berger*, 277 Mich App at 727.

MCL 552.23(1) governs spousal support and "favors a case-by-case approach," *Loutts v Loutts*, 298 Mich App 21, 29; 826 NW2d 152 (2012), providing as follows:

> 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.

The decision to award spousal support is discretionary. *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010). When deciding whether to order spousal support, a trial court should consider several factors, including the following:

> (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; 671 NW2d 64 (2003).]

As "[t]he primary purpose of spousal support is to 'balance the incomes and needs of the parties in a way that will not impoverish either party' on the basis of what is 'just and reasonable under

the circumstances of the case,' " *Myland*, 290 Mich App at 695, quoting *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000), "[a] strict formula is not used" to determine the amount of the award, *Butler*, 308 Mich App at 223.

The trial court expressly referenced the relevance of the 14 factors listed above and found that: (1) the parties were married for thirteen-plus years and that defendant never worked during the marriage, (2) defendant could have worked during the marriage and chose not to, (3) both parties are forty-five years of age and in good mental and physical health and capable of earning an income for the foreseeable future, (4) with joint physical custody, defendant would not be the child's primary caretaker, (5) plaintiff paid for all of the expenses during the parties' marriage as well as temporary support totaling approximately $3,300 per month during the pendency of the proceedings, (6) plaintiff had fluctuating balances in his bank accounts of about $3,000 in checking and $500 in savings, and retirement savings of roughly $13,000, (7) defendant's excessive spending put the parties in joint credit card debt totaling approximately $8,000 and that plaintiff took out personal loans totaling upwards of $35,000 prior to filing for divorce. Ultimately, the trial court awarded defendant periodic spousal support of $1,500 per month, for a period of two years. The court reasoned that the two-year allotment provided defendant with ample time and opportunity to decide whether she wanted to complete the education necessary to transfer her medical degree to the United States and/or to obtain employment of her choosing.

Defendant's claim of error is unfounded. First, her argument that the trial court failed to account for plaintiff's unexercised overnights, and the resulting financial burden to her, is ill-conceived. Overnights are a consideration that impacts *child support*, not spousal support. See, e.g., *Diez v Davey*, 307 Mich App 366, 375; 861 NW2d 323 (2014).

Second, defendant's assertion that she has "no income" is incorrect. Pursuant to the trial court's judgment, plaintiff was ordered to pay defendant $1,500 per month in spousal support, plus $380 per month in child support, for a total of $1,880 in monthly income, or $22,560 per year. On top of that, the trial court imputed $25,000 of annual income to her. Thus, in the eyes of the trial court, defendant's annual income stood at just under $50,000 per year.

Third, defendant never introduced any evidence to establish that the award is unjust in light of her monthly expenses. Defendant never introduced any evidence to establish the amount of such expenses in the trial court. The fact that plaintiff had been paying a particular amount in temporary support is insufficient to establish that plaintiff actually requires that amount each month for her household expenses. Further, contrary to defendant's suggestion, the trial court properly considered defendant's ability to work and her failure to do so. See *Olson*, 256 Mich App at 631 (including, in its list of 14 factors, "the abilities of the parties to work," and the "contributions of the parties to the joint estate[.]"). Defendant's mere disagreement with the trial court's award of spousal support does not make that award inequitable.

VIII. ATTORNEY FEES

Defendant argues that the trial court erred by denying her motion for attorney fees. We agree.

This Court reviews the "trial court's decision whether to award attorney fees for an abuse of discretion," reviewing its related "findings of fact for clear error, and any questions of law de novo." *Diez*, 307 Mich App at 395, citing *Loutts*, 298 Mich App at 24. By denying a motion for attorney fees on an improper basis, a trial court commits legal error. *Myland*, 290 Mich App at 702-703.

MCR 3.206(C) governs motions for attorney fees in domestic relations matters. *Diez*, 307 Mich App at 395. It provides as follows:

> (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 or a specific proceeding, including a post-judgment proceeding.
>
> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
>
> (a) the party is unable to bear the expense of the action, and that the other party is able to pay, or
>
> (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

"This Court has interpreted this rule to require an award of attorney fees in a divorce action 'only as necessary to enable a party to prosecute or defend a suit.' " *Myland*, 290 Mich App at 702, quoting *Gates v Gates*, 256 Mich App 420, 438; 664 NW2d 231 (2003). "With respect to a party's ability to prosecute or defend a divorce action, a party 'may not be required to invade her assets to satisfy attorney fees when she is relying on the same assets for her support.' " *Myland*, 290 Mich App at 70, quoting *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). The party seeking attorney fees bears the burden of "proving both financial need and the ability of the other party to pay . . . as well as the amount of the claimed fees and their reasonableness[.]" *Ewald v Ewald*, 292 Mich App 706, 725; 810 NW2d 396 (2011,) citing *Smith*, 278 Mich App at 207; *Reed*, 265 Mich App at 165-166.

On the day that she first appeared in this action, defendant sought payment of her "interim attorney fees" of $5,000 to defend the action. Defendant alleged that she lacked sufficient funds to pay for an attorney and that plaintiff had sufficient income to do so, with gross annual earnings exceeding $100,000. The trial court reserved the fee issue for resolution at trial. At trial, defendant testified that she had borrowed the initial $5,000 for her attorney and owed another $20,000 in accrued fees that she could not pay. The trial court denied defendant's motion. Defendant appeared in post-trial proceedings without legal counsel.

"[A] party sufficiently demonstrates an inability to pay attorney fees when that party's yearly income is less than the amount owed in attorney fees." *Myland*, 290 Mich App at 702. Absent spousal support and child support, which defendant was presumably using to support herself and the minor child, defendant had no income. During the marriage, plaintiff had removed her from the parties' joint bank accounts and cancelled her credit cards, leaving her dependent on him for money. Thus, defendant sufficiently demonstrated an inability to pay the

$20,000 in accrued attorney fees she owed, or to repay the $5,000 she had borrowed to pay her retainer. Notwithstanding that fact, and without making findings with respect to plaintiff's financial ability to pay the fees or the reasonableness of the fees, the trial court denied defendant's motion for attorney fees, reasoning that its two-year award of $1,500 per month for spousal support would adequately allow defendant to pay her attorney fees. However, "a party 'may not be required to invade her assets to satisfy attorney fees when she is relying on the same assets for her support.' " *Id.,* quoting *Maake*, 200 Mich App 189. By holding otherwise, the trial court committed legal error. *Myland*, 290 Mich App at 702. Consequently, we vacate the order denying defendant's motion for attorney fees and remand this matter to the trial court for further proceedings. On remand, the trial court must "apply the correct legal analysis, giving special consideration to the specific financial situations of the parties and the equities involved. In addition, the trial court must also consider whether plaintiff is entitled to appellate attorney fees pursuant to MCR 3.206(C)(1), applying the same analysis." *Id.* at 703. It must also consider the reasonableness of the fees claimed. *Ewald*, 292 Mich App at 726.

We affirm the parties' judgment of divorce, vacate the trial court's denial of defendant's motion for attorney fees, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Neither party may tax costs as neither prevailed fully. MCR 7.219(A).

/s/ David H. Sawyer
/s/ Jane M. Beckering
/s/ Mark T. Boonstra