STATE OF MICHIGAN

COURT OF APPEALS

PAMELA JOY SZYMANSKI, Plaintiff-Appellee,	UNPUBLISHED March 13, 2018
v	No. 336915 Lapeer Circuit Court Family Division
DAVID SHANE SZYMANSKI, Defendant-Appellant.	LC No. 16-049760-DM

Before: TALBOT, C.J., and BECKERING and CAMERON, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment of divorce, claiming the trial court erred in its child support and spousal support calculations. We disagree.

I. BACKGROUND

In 1984, plaintiff earned her bachelor's degree in medical technology. In 1985, defendant earned his bachelor's degree in electronics engineering technology. They married on February 24, 1994, and had four children during the marriage. At the time of the judgment of divorce, two of the children were still minors.

Early in the marriage, plaintiff worked at McLaren Hospital and earned slightly more annually than defendant, who obtained a job working as an instrument technician at Chrysler. When their first son was born in 1996, plaintiff cashed out her pension, reduced her hours to part-time, and focused on raising the children. From 1997 until 2007, defendant was the predominant earner for the family. However, plaintiff steadily increased her hours, and by 2007, she was earning nearly the same annual wage as defendant—approximately $55,000 per year. In 2008, defendant took a buyout from Chrysler, and he was laid off for the first nine months of 2009. He then obtained a job at Kettering University doing the same work he did at Chrysler, but his annual income dropped to approximately $38,000. Due to defendant's pay cut, plaintiff resumed working full-time, and by 2011, she was earning over $80,000 annually. From 2011 until the divorce filing in 2015, defendant earned a steady base salary of approximately $38,000, while plaintiff earned over $80,000. During the last two years of the marriage, their oldest son attended Kettering University and received a substantial tuition discount due to defendant's employment.

Plaintiff filed for divorce on April 18, 2016. Eventually, the parties had nearly finalized a consent judgment of divorce. However, at the settlement conference, the trial court raised the issue of spousal support—an issue neither party had discussed. Defendant claimed he was entitled to spousal support due to the disparity in income, but plaintiff refused to agree to any award of spousal support. Because the parties could not agree, the case proceeded to trial. Defendant testified that he had no intention of going back to school or leaving his position at Kettering to seek employment with higher wages until his son graduated in two years. When asked by plaintiff's counsel if defendant had "the capability of making over $75,000 a year," defendant responded "[t]hat's wrong." He explained that there were a few years that he made around $70,000 per year, but that was with substantial overtime. His average base pay was much less than that. When the trial court asked defendant what he was requesting in spousal support, defendant said, "If it was all worked out and everything, I could do $600 a month for five years."

Plaintiff testified that, after considering her income and monthly bills, she would not have $600 a month to pay spousal support. At the time of the divorce, the monthly bills were $5,697.58 per month, and she paid all but $900 that defendant would contribute. Plaintiff explained that she earned more than defendant early in the marriage. However, when their first child was born, she devoted most of her time to raising the children, causing her to work fewer hours and earn significantly less money. She acknowledged that in the last seven years of the marriage her income was approximately double defendant's income. However, she also testified that "[f]or most of the marriage he has been making the most money," and due to change in ownership at the hospital, her pay was cut to $76,000 per year.

At the close of arguments, the trial court provided the following ruling as to spousal support:

> The next big issue, and the one that resulted in this trial, actually, was spousal support. Now, under the law, there is no legal obligation to support an adult child. So if you provide support to an adult child, it's a gift, and there's no obligation to make the other parent pay for that.
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> In this case, that is a sword with two edges, and it cuts two ways. [Defendant] testified -- based on the totality of his testimony, I'm satisfied that he acknowledged that he could make more money, but he was staying at Kettering because his adult son was getting free tuition. I take him at his word.
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> I'm satisfied with his prior earnings ability, with his degree and his experience, that he could be making more than $38,000 a year; that he is intentionally under-employed, but it's not maliciously. And while I think it's admirable, I congratulate him for it, but I can't consider it. It's not what I want to do. It's not what I feel is right. It's what the law says. I have to follow the law. The law is, he is intentionally under-employed as a gift to his adult son.
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> Therefore, if we are to look at his ability to earn income based on his past performances, and [plaintiff] having hers slightly reduced to about [$76,000], I find that the parties make relatively close -- or, have the ability to make relatively close to the same amount. They are relatively close to the same age. They are

> both in good health. And, therefore, the [c]ourt makes no award on spousal support, as there is realistically no disparity of income or any other reason to do that. It's not based on what you want; it's based on the factors.
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> I find that the primary cause for this divorce is basically a reduction of income, and it really wasn't anybody's fault because of the downturn in economy, Chrysler releasing him or letting him go from his employment. I accept he didn't have a lot of choice. And I accept at that time, when he took this job at Kettering, that it was probably the best he could do, because you had to take what you could get at that time. But things have changed, and I believe he's under-employed as of right now.
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> It's not what each party made every year, or the difference in what they made throughout the course of their marriage. It's right now, because spousal support is modifiable based upon a change of circumstances. So that's what I'm looking at, is what's going on right now. I find that right now, he's intentionally under-employed, but not maliciously, but still I have to take that into consideration.

When asked about imputing income for purposes of child support, the trial court explained: "As of for today, we'll impute $25,000 income regarding child support." (Tr II, p 109.) Plaintiff's counsel asked, "So [$38,000] plus $25,000, Judge?" The trial court replied, "That's what I said." The trial court then entered a judgment of divorce, ordering child support based on defendant's net monthly income of $3,049[1] and plaintiff's net monthly income of $5,889. It denied spousal support to either party. On appeal, defendant challenges the trial court's imputation of $25,000 in income for purposes of the child support and spousal support calculations.

II. STANDARD OF REVIEW

We review for an abuse of discretion a trial court's decision to impute income to a party. *Carlson v Carlson*, 293 Mich App 203, 205; 809 NW2d 612 (2011). A trial court abuses its discretion when the outcome falls outside the range of reasonable and principled outcomes. *Id*. We review for clear error a trial court's findings of fact concerning the calculation of child support under the Michigan Child Support Formula (MCSF), *Ewald v Ewald*, 292 Mich App 706, 714; 810 NW2d 396 (2011), as well as the calculation of spousal support, *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). We will only find clear error if we are definitely and firmly convinced that the trial court made a mistake. *Carlson*, 293 Mich App at 205. We review de novo the interpretation and application of the MCSF. *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007).

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[1] A net monthly income of $3,049 equates to $36,588 per year. This amount appears to reflect approximately $26,000 in other deductions and adjustments, such as taxes, healthcare, retirement, and life insurance premiums. See 2013 MCSF 2.07 (providing the allowable deductions for purposes of calculating income for child support).

III. CHILD SUPPORT

Defendant first argues that the trial court abused its discretion when it imputed $25,000 in income for purposes of the child support calculation. We disagree.

"[O]nce a trial court decides to order the payment of child support, the court must 'order child support in an amount determined by application of the child support formula . . . .' " *Borowsky*, 273 Mich App at 673, quoting MCL 552.605(2). "A trial court must strictly comply with the requirements of the MCSF in calculating the parents' support obligations unless it 'determines from the facts of the case that application of the child support formula would be unjust or inappropriate . . . .' " *Borowsky*, 273 Mich App at 673, quoting MCL 552.605(2). "The first step in determining the parents' support obligation under the MCSF is to determine each parent's net income[.]" *Borowsky*, 273 Mich App at 673. Net income is determined in order to "establish, as accurately as possible, how much money a parent should have available for support." 2013 MCSF 2.01(B). "Net income" is defined as "all income minus the deductions and adjustments permitted by [the MCSF]." 2013 MCSF 2.01(A). The trial court may consider imputed income as well as actual income. *Carlson*, 293 Mich App at 205.

Defendant first argues there was insufficient evidence to determine that he was voluntarily underemployed for purposes of imputing $25,000 on top of his actual income. The pertinent MCSF provision provides:

> When a parent is voluntarily unemployed or underemployed, or has an unexercised ability to earn, income includes the potential income that parent could earn, subject to that parent's actual ability.
>
> (1) The amount of potential income imputed should be sufficient to bring that parent's income up to the level it would have been if the parent had not voluntarily reduced or waived income.
>
> (a) The amount of potential income imputed (1) should not exceed the level it would have been if there was no reduction in income, (2) not be based on more than a 40 hour work week, and (3) not include potential overtime or shift premiums.
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> (b) Imputation is <u>not</u> appropriate where an individual is employed full time (35 or more hours per week), but has chosen to cease working additional hours (such as leaving a second job or refusing overtime). Actual earnings for overtime, second job, and shift premiums are considered income. § 2.01(C)(1). [2013 MCSF 2.01(G)(1)(a) and (b).]

The trial court did not abuse its discretion when it ordered defendant to pay child support based on a total income of $63,000, which amounted to a monthly net income of $3,049. Defendant testified that he earned his bachelor's degree in electronic engineering technology in 1984. He soon began working for Chrysler and steadily increased his wages. His base salary topped out at approximately $64,000 before he was forced to take a buyout in 2008. In 2009, he was unemployed for a number of months before obtaining a position with Kettering University. Since then, he has earned approximately $38,000 per year working as a technician. At trial,

defendant admitted that he did not seek other employment because his son was enrolled at the university and received a discount on tuition based on defendant's employment. When asked if he intended to pursue higher-paying employment opportunities, defendant said not until his son graduated. For these reasons, the trial court properly held:

> I'm satisfied with his prior earnings ability, with his degree and his experience, that he could be making more than $38,000 a year; that he is intentionally under-employed, but it's not maliciously. And while I think it's admirable, I congratulate him for it, but I can't consider it. It's not what I want to do. It's not what I feel is right. It's what the law says. I have to follow the law. The law is, he is intentionally under-employed as a gift to his adult son.

Based on the foregoing, the trial court did not err in finding that defendant was underemployed, and it was not outside the range of reasonable and principled outcomes to impute $25,000 to defendant's total income.

Defendant argues that the trial court abused its discretion because it did not rely on any statistical data regarding his electronics engineering technology degree. While it is true that the trial court did not rely on statistical data—none was provided to it—the trial court relied on over 20 years of defendant's earnings, along with defendant's own testimony, and the relevant MCSF factors. Defendant admitted he was not going to look for a high-paying job, and his earning history showed he was making much less at his current job than he was in the past. In fact, defendant had not received any kind of raise since starting at Kettering in 2009. Defendant has not cited any authority that mandates a trial court to rely on statistical data. Instead, the trial court was required to determine whether defendant could actually earn the imputed income, and the record shows that he had, in fact, made that kind of income doing the same work in the past. The trial court's decision to impute $25,000 in income and then calculate a net monthly income of $3,049, i.e., a net annual income of $36,588, was not an abuse of discretion.

Defendant also argues that the trial court was required to address each of the MCSF factors and articulate why the factor did or did not apply. We disagree.

First, defendant relies on the 2017 MCSF for this argument, but the divorce judgment was entered in 2016—well before the newest standard was released. The 2017 version, unlike the 2013 version, prohibits trial courts from "[f]ailing to articulate information about how each factor in § 2.01(G)(2) applies to a parent having the actual ability and a reasonable likelihood of earning the imputed potential income, or failing to state that a specific factor does not apply." Because this standard was not yet in existence, the trial court was only required to address factors that it relied on. Regardless, the trial court did address all *relevant* factors for purposes of its decision to impute $25,000 in income.

According to the 2013 MCSF, the following factors may be relevant to a determination for calculating income: (1) prior employment experience and history, (2) educational level and any special skills or training, (3) physical and mental disabilities, (4) availability of opportunities for work, (5) availability of opportunities in the local geographical area, (6) prevailing wage rates in that area, (7) diligence exercised in seeking employment, (8) evidence the parent can earn the imputed income, (9) personal history, including present marital status and means of support, (10)

presence of the parties' children in the parent's home and impact on earnings, and (11) any significant reduction in income since the filing of divorce. See 2013 MCSF 2.02(G)(2)(a)-(k).

The trial court considered defendant's prior employment and wages with Chrysler, his bachelor's degree in the electronics and technology field, his good health, his diligence in exercising employment, and the fact that he has earned a wage similar to that imputed. While the trial court may not have addressed every factor, such as personal history or any significant reductions since the divorce proceedings, the record evidence shows that the trial court considered the factors at issue and came to a rational conclusion that defendant was underemployed. Importantly, the parties did not provide any statistical data that may have been relevant to determining defendant's earning potential, and therefore, was required to look at the other relevant factors under the 2013 MCSF. The trial court's findings were not clearly erroneous, and the child support award was not outside the range of reasonable and principled outcomes.

IV. SPOUSAL SUPPORT

Defendant also argues that we should remand to allow the trial court an opportunity to reconsider its decision on spousal support. We disagree.

First and foremost, defendant failed to raise in his statement of questions presented the issue of spousal support. Instead, he asks in the conclusion section of his brief that this Court remand this case for a decision on spousal support, relying on his child support argument. We are not required to address any issues not raised in the statement of questions presented. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000); MCR 7.212(C)(5). However, even if we do address this issue, it fails.

The Legislature has authorized trial courts to order spousal support "if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party." MCL 552.23(1). The trial court may order support "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." MCL 552.23(1). The objective of spousal support is to balance the incomes and needs of the parties in a way that is just and reasonable under the circumstances. *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). To determine whether spousal support is just and reasonable, the trial court should consider a wide variety of factors, including:

> (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. [*Id*. at 726-727 (citation omitted).]

Furthermore, "[t]he voluntary reduction of income may be considered in determining the proper amount of alimony." *Cassidy v Cassidy*, 318 Mich App 463, 475; 899 NW2d 65 (2017), quoting *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 2d 723 (2000) (quotation marks omitted; alteration in original). "If a court finds that a party has voluntarily reduced the party's income, the court may impute additional income in order to arrive at an appropriate alimony award." *Cassidy*, 318 Mich App at 475, quoting *Moore*, 242 Mich App at 655 (quotation marks omitted). "In order to aid in appellate review, a trial court should make specific factual findings as to each of the relevant factors." *Cassidy*, 318 Mich App at 475.

The factors for the purpose of imposing spousal support are similar to the MCSF factors on child support, and we need not again explain how the factors apply. Furthermore, the trial court was not mandated to review every single factor. Rather, only those "relevant factors" need be discussed, *id*., which the trial court clearly did. As with the child support determination, the trial court did not abuse its discretion when it imputed income to defendant and ordered no award of spousal support.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Thomas C. Cameron