

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

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FREDERICK J. GLOMB, JR.,

Plaintiff-Appellee,

v

VICKI R. GLOMB,

Defendant-Appellant.

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UNPUBLISHED

November 19, 2020

No. 349108

Calhoun Circuit Court

LC No. 2018-000829-DO

Before: REDFORD, P.J., and RIORDAN and TUKEL, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's divorce judgment awarding her spousal support and denying her request for attorney fees. We affirm the judgment of divorce, and we reverse the trial court's denial of defendant's request for attorney fees and remand to the trial court for further proceedings.

**I. FACTS & PROCEDURAL HISTORY**

This case arises from the dissolution of plaintiff and defendant's marriage. Defendant was a stay-at-home parent for the parties' two children during the majority of the marriage. The children were adults at the time of the separation and divorce. Plaintiff was a 50% shareholder of his computer services and product sales business. Plaintiff earned a base salary and took several draws against the profit of the business, totaling an income of approximately \$210,000 in 2018. Defendant was employed at a grocery store and earned approximately \$22,000 in 2018.

The trial court equally divided the value of the marital property. The trial court awarded defendant the marital home, two vehicles, personal property within the marital home, hand tools, the full value of defendant's 401(k) retirement account, half of the parties' trust account, and half of the balance of plaintiff's simple individual retirement account (IRA). Plaintiff was awarded two vehicles, a pontoon boat, the contents of the parties' barn, the full balance of plaintiff's Roth IRA, and the value of plaintiff's 50% interest in his business. The trial court determined that plaintiff owed defendant \$107,112 as a property equalization award, and awarded defendant \$1,500 per month in spousal support for a period of 10 years, at which time defendant would become eligible for social security income. Defendant now appeals.

## II. ANALYSIS

Defendant argues that the trial court clearly erred in making its findings of fact and weighing the relevant factors when it determined the award of spousal support. We disagree.

We review for an abuse of discretion a trial court's award of spousal support. *Loutts v Loutts*, 298 Mich App 21, 25; 826 NW2d 152 (2012). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). We review for clear error the trial court's factual findings regarding spousal support. *Id.* "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.* We give special deference to the trial court's findings of fact that are based on the credibility of a witness. *Id.*

"The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished; spousal support is to be based on what is just and reasonable under the circumstances of the case." *Berger v Berger*, 277 Mich App 700, 727; 747 NW2d 336 (2008). When awarding spousal support, the trial court should consider the following factors:

(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.* (quotation marks and citation omitted).]

The trial court must consider all relevant factors and must not assign disproportionate weight to any one factor. *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992).

In this case, the marriage lasted 29 years, and both parties were capable of working, as demonstrated by their respective full-time employment. At the time of the proceedings, approximately 10 years remained until defendant would reach retirement age and defendant is four years younger than plaintiff. In 2018, plaintiff's income was nearly ten times that of defendant's income. Although defendant visited the hospital for losing consciousness and attended counseling, there was no evidence that defendant or plaintiff had any serious health concerns. Both parties contributed to the marital estate, and the trial court divided the value of the marital estate equally between them. Although the trial court did not make findings regarding the effect of cohabitation on the parties' financial status, the record demonstrates that defendant and plaintiff shared a standard of living on the basis of plaintiff's income and that defendant's financial status only changed to assist their daughter with her college expenses. Thus, the trial court's findings regarding these factors were supported by the lower court record. See *Woodington*, 288 Mich App at 355.

Defendant argues that the trial court should have weighed plaintiff's past conduct against him because he left the marital home a year before the divorce, failed to assist defendant in paying for her expenses, and withheld spousal support. However, the trial court determined that defendant was entitled to spousal support in July 2018 as a part of the divorce judgment after considering the circumstances of this case, and there was no evidence that plaintiff's choice not to return to the parties' house during their separation was abusive, controlling, or otherwise blameworthy behavior. Accordingly, defendant did not demonstrate that the trial court clearly erred by deciding not to weigh plaintiff's past relations and conduct against him. See *id.* (explaining that we give deference to the trial court's findings of fact that are based on the credibility of a witness).

Defendant next challenges the trial court's finding that defendant received income producing assets as a part of the divorce. The trial court stated that defendant will have "income producing assets when she receives the property division in this particular matter." The trial court indicated that defendant was receiving certain assets at the time of the divorce and that defendant would receive assets in the future—defendant's portion of the parties' trust fund, defendant's portion of plaintiff's simple IRA, and the property equalization award. The trial court indicated that these assets would be future income, rather than implying that the property equalization award would "produce" income, as in the case of earned interest on an investment or rent from owning a rental property. Thus, the trial court did not consider this future income as a part of defendant's income stream, as demonstrated by the trial court's finding that defendant's income was \$22,000 for the purposes of the division of property and the determination of spousal support. Accordingly, we cannot conclude that the trial court clearly erred. See *id.*

Defendant next argues that the trial court erroneously concluded that some of the expenses in defendant's proposed budget were excessive. In her proposed budget, defendant included expenses that she conceded were not necessary and that were anticipated expenses but not determined, such as unexpected home repairs, replacement of the roof on the house, and a retirement account that she intended to open and fund. Additionally, defendant testified that she was able to meet her expenses with the temporary spousal support award and her income when plaintiff paid the parties' marital expenses. Therefore, defendant has not demonstrated that the trial court clearly erred in weighing defendant's needs and finding that defendant's request of \$4,500 for spousal support was based on nonessential and unknown, albeit anticipated, expenses. See *id.*

Defendant next argues that the trial court clearly erred by failing to consider plaintiff's marital fault. Defendant testified that plaintiff told her at their daughter's wedding in 2016 that he was "back with his high school girlfriend." Defendant also testified that plaintiff rarely returned to their home during 2017 and that plaintiff told her that he was busy with work. Plaintiff filed for divorce in January 2018. However, defendant did not testify that the alleged extramarital relationship caused the divorce, and plaintiff did not testify regarding his reasons for filing for a divorce or that he was in a relationship with his former girlfriend. Thus, the evidence and testimony presented at the bench trial did not support that plaintiff caused the breakdown of the parties' marriage and defendant has not demonstrated that the trial court clearly erred by not considering or weighing marital fault in its determination of spousal support. See *id.*

Defendant next argues that the trial court clearly erred when it failed to consider that defendant could not support herself and maintain her standard of living because her income was

earmarked for her daughter's college education. Although defendant began her employment in 2013 to assist her daughter with college expenses, at the time of the bench trial, neither plaintiff nor defendant were supporting their daughter or anyone else. Thus, we cannot conclude that the trial court clearly erred. See *id.*

Accordingly, the trial court considered each of the factors for awarding spousal support and did not assign disproportionate weight to any factor. Additionally, the trial court's findings regarding the past relations and conduct of the parties, the source and amount of property award to the parties, the needs of the parties, marital fault, and the parties' prior standard of living and support were not clearly erroneous, and the trial court's decision to award defendant spousal support was not an abuse of discretion. See *Loutts*, 298 Mich App at 25; *Woodington*, 288 Mich App at 355.

Defendant next argues that the trial court abused its discretion by awarding her spousal support in the amount of \$1,500 for a period of 10 years. We disagree.

MCL 552.23 authorizes a trial court to award a party in a divorce action spousal support. "The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished; spousal support is to be based on what is just and reasonable under the circumstances of the case." *Berger*, 277 Mich App at 727.

In this case, defendant earned approximately \$22,000, or about \$1,800 per month, in 2018 and submitted a proposed budget of \$5,958.22 per month, excluding an anticipated future home equity loan for an addition to the marital house. Defendant received \$1,500 in spousal support since July 2018. Defendant testified that she was able to meet her expenses with her total income of \$3,300 per month when plaintiff paid for marital expenses pursuant to the temporary spousal support order. Defendant is now responsible for paying the expenses that plaintiff previously paid, in addition to utilities, groceries, and defendant's personal expenses. However, she has not demonstrated how the trial court's division of assets does not allow her to meet her expenses.

Additionally, the trial court divided equally the parties' marital property. Defendant also received the full value of her 401(k) retirement account that was valued at \$16,482.99, half of the parties' trust account, and half of the balance of plaintiff's simple IRA at the time of the bench trial. The trial court also awarded defendant \$107,112 in a property equalization award that the trial court ordered plaintiff to pay within two years of the divorce judgment. The trial court expressly considered that defendant's standard of living after the parties' divorce would decrease "dramatically" from a household income of \$230,000 to defendant's income of \$22,000 and that an award of spousal support would increase defendant's income to \$40,000 per year and reduce plaintiff's income by \$18,000 per year. The trial court was not required to equalize the parties' incomes. Rather, the trial court determined an award of spousal support that was reasonable under the circumstances of the case and that balanced the needs of the parties such that neither defendant nor plaintiff was impoverished. See *Berger*, 277 Mich App at 726-727.

Moreover, defendant had full-time employment and was seeking other full-time employment opportunities. The trial court equally divided the marital property, and defendant received assets, including half of the parties' trust account, half of plaintiff's simple IRA, and the property equalization award, that were or could be liquid assets depending on the payment of the

funds. In addition to these assets, defendant received the full amount of her retirement account and personal property from the marital house and barn. Moreover, defendant did not have any health concerns that would prevent her from working until she reached retirement age. The trial court indicated that it awarded defendant spousal support for a period of 10 years to give defendant additional income until she was eligible for social security income. Defendant had minimal debt and was not providing for her children or another individual at that time. Additionally, defendant testified that she lived frugally and modestly. The spousal support award ensured that defendant would not be impoverished, and the spousal support award was “just and reasonable” given the circumstances. See *id.* at 726. Therefore, the trial court did not abuse its discretion in awarding defendant \$1,500 per month for 10 years. See *id.* at 726-727.

Defendant next argues that the trial court abused its discretion by denying her request for a hearing regarding attorney fees and by denying her request for attorney fees. We agree.

We review a trial court’s award of attorney fees in a divorce action for an abuse of discretion which occurs when the result falls outside the range of principled outcomes. *Richards v Richards*, 310 Mich App 683, 699; 874 NW2d 704 (2015). The trial court must provide a reasoned basis for its discretionary decision regarding attorney fees. See *Mich Dep’t of Trans v Randolph*, 461 Mich 757, 767-768; 610 NW2d 893 (2000).

Attorney fees are authorized by statute and by court rule in a divorce action. MCL 552.13; MCR 3.206. The trial court has authority to order a party’s payment of the other party’s attorney fees during the pendency of the divorce case. MCL 552.13(1). MCR 3.206(D)(1) permits a party to request “at any time, . . . 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.” However, the party making the request must allege facts sufficient to show that “the party is unable to bear the expense of the action, and that the other party is able to pay.” MCR 3.206(D)(2)(a). The fact that the income of the party who is requesting attorney fees is less than the amount owed in attorney fees supports that the party is not able to pay attorney fees. See *Loutts*, 309 Mich App at 216-217. The trial court must give “ ‘special consideration to the specific financial situations of the parties and the equities involved.’ ” *Id.* at 218 (citation omitted). A trial court awards attorney fees “ ‘only as necessary to enable a party to prosecute or defend a suit.’ ” *Richards*, 310 Mich App at 700 (citation omitted). A party is not required to invade his or her assets that he or she relies on for support in order to pay attorney fees to prosecute or defend an action. *Loutts*, 309 Mich App at 216.

In this case, after the close of proofs but before the trial court issued its oral opinion, defendant requested a hearing regarding attorney fees because “it was impossible to determine, at the time of the trial, the amount of attorney’s fees that were generated by [sic] client and to give the court an understanding as to how much attorney fees my client has paid.” The trial court indicated that proofs were closed and that the parties waived closing arguments. The trial court also indicated that the issue regarding attorney fees was not addressed during the bench trial. The trial court denied defendant’s request for a hearing regarding attorney fees and declined to address whether defendant was entitled to attorney fees. After the trial court issued its oral opinion, defendant requested that the value of her property award be adjusted from \$145,000 to \$125,000 to reflect her debt of \$20,000 in attorney fees. The trial court indicated that defendant failed to raise the issue of attorney fees before the close of proofs and that it would not address whether

defendant was entitled to attorney fees. The trial court ordered each party to pay their respective attorney fees.

Defendant's request for attorney fees was timely under MCL 522.13(1) because it was made during the pendency of the divorce proceeding and before the trial court gave its oral opinion regarding the divorce judgment, rather than after the entry of an order that resolved the last pending claims and closed the case. Defendant's request for attorney fees was also timely under MCR 3.206(D) because a request for attorney fees under this court rule can be made "at any time." MCR 3.206(D)(1). Therefore, the trial court had authority to award defendant attorney fees at the time of defendant's request under MCL 522.13(1) and MCR 3.206(D).

Defendant testified during the bench trial that she had a credit card balance of \$2,000 for legal fees in this case. Defendant also testified that she borrowed approximately \$20,000 from her sister to pay for attorney fees in this case, although there were no loan documents. The lower court record also supports that defendant's salary was \$22,000 per year in 2018 before taxes and payroll deductions and that plaintiff's income was \$210,000 in 2018. Defendant was not required to invade her assets that she relied on for support or to invade the property award in order to pay attorney fees to defend this action. See *Loutts*, 309 Mich App at 216. These facts support defendant's request for attorney fees on the basis of defendant's inability to pay to defend the divorce proceeding and plaintiff's ability to pay. See *Richards*, 310 Mich App at 700; *Loutts*, 309 Mich App at 216-217.

However, the trial court did not give defendant the opportunity to argue and allege sufficient facts to support her request for attorney fees. By failing to hold a hearing or to allow defendant to support her request for attorney fees, the trial court did not render a decision on the basis of the particular facts and circumstances regarding the parties' financial situations and the equities involved. Accordingly, the trial court failed to provide a reasoned basis for its denial of defendant's request for attorney fees and remand is required to permit the parties to develop the factual record and allow the trial court to consider defendant's request and to exercise its discretion in the first instance. See *Mich Dep't of Trans*, 461 Mich at 767-768; *Loutts*, 309 Mich App at 218.

### III. CONCLUSION

We affirm the trial court's judgment of divorce awarding defendant spousal support. However, we reverse the trial court's denial of defendant's request for attorney fees and remand for the trial court to consider the merits of defendant's request. We do not retain jurisdiction.

/s/ James Robert Redford  
/s/ Michael J. Riordan  
/s/ Jonathan Tukel