

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

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CHARLES ANTONIO MATTER,

Plaintiff/Counterdefendant-Appellee,

v

LISA CARLOTTA MATTER,

Defendant/Counterplaintiff-Appellant.

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UNPUBLISHED

December 16, 2021

No. 355101

Wayne Circuit Court

Family Division

LC No. 18-114548-DM

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

PER CURIAM.

Defendant appeals as of right the trial court’s judgment of divorce following a bench trial in this divorce action. We affirm.

**I. FACTS AND PROCEDURAL BACKGROUND**

This case concerns the denial of defendant’s request for spousal support. Plaintiff and defendant married in 1998 and had three children, but during their marriage, plaintiff and defendant separated on three occasions. The parties lived at two different residences during their marriage: a home on Grandmont Avenue in Detroit, Michigan, initially purchased by defendant’s father for plaintiff and defendant to use, and a rental home on Wyndham Boulevard in West Bloomfield, Michigan.

According to the parties, they fought throughout their marriage. Plaintiff indicated that most of the fights revolved around the parties’ finances and living beyond their means. Defendant, on the other hand, had concerns about plaintiff’s spending and its negative impact on his ability to provide for the family. At one time, defendant moved in with her cousin in Shelby Township, Michigan after a fight with plaintiff. She sought and obtained a child support order against plaintiff in Macomb Circuit Court for the parties’ special needs child’s benefit. Plaintiff denied any knowledge of the Macomb County child support order and denied having signed it. Plaintiff, however, paid over \$160,000 in child support during the marriage, apparently even at times during which the parties were together.

The parties lived at the Grandmont house until 2009, at which point they moved to the West Bloomfield house. Testimony established that rent for the West Bloomfield house started at \$1,500 but increased to \$2,500 which caused the parties to struggle to make their rental payments. In mid-2018 they were told to vacate. Around the same time, in July 2018, plaintiff and defendant separated for the last time.

Plaintiff filed his complaint for divorce, seeking joint legal and physical custody of the parties' two minor children and challenged plaintiff's Macomb County child support order. Defendant answered and filed a counterclaim for divorce seeking dissolution of the marriage and division of marital assets. Defendant also moved for an award of interim child support, spousal support, and attorney fees. After plaintiff answered defendant's counterclaim and responded to her motion, the trial court entered an order requiring plaintiff to make monthly child support payments of \$1,530 to support the two minor children.

The trial court held a four-day bench trial at which plaintiff and defendant testified. The trial court later issued a written opinion explaining, in relevant part that, after consideration of the spousal-support factors, it declined to award either party spousal support. The trial court entered the judgment of divorce dissolving the parties' marriage and awarded no spousal support. Defendant then moved for a new trial which the trial court denied. This appeal followed.

## II. STANDARD OF REVIEW

In *Loutts v Loutts*, 298 Mich App 21, 25-26; 826 NW2d 152 (2012), this Court observed:

It is within the trial court's discretion to award spousal support, and we review a spousal support award for an abuse of discretion. We also review for an abuse of discretion a trial court's decision whether to impute income to a party. An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. . . . We review for clear error the trial court's factual findings regarding spousal support. A finding is clearly erroneous if, after reviewing the entire record, we are left with the definite and firm conviction that a mistake was made. If the trial court's findings are not clearly erroneous, we must determine whether the dispositional ruling was fair and equitable under the circumstances of the case. We must affirm the trial court's dispositional ruling unless we are convinced that it was inequitable. [Quotation marks and citations omitted.]

Additionally, this Court "accord[s] special deference to a trial court's factual findings that were based on witness credibility." *Woodington v Shokoohi*, 288 Mich App 352, 358; 792 NW2d 63 (2010). The appellant has the burden to persuade this Court that a mistake has been committed, otherwise the trial court's findings may not be overturned. *Beason v Beason*, 435 Mich 791, 804; 460 NW2d 207 (1990).

## III. ANALYSES

Defendant argues that the trial court erred in its application of the spousal-support factors and made clearly erroneous factual findings. We disagree.

MCL 552.23(1) authorizes trial courts to make spousal support awards 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 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.” *Loutts*, 298 Mich App at 26 (quotation marks and citation omitted). When determining whether to award spousal support, a 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. [*Richards v Richards*, 310 Mich App 683, 691; 874 NW2d 704 (2015), quoting *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

“The trial court should make specific factual findings regarding the factors that are relevant to the particular case.” *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010) (quotation marks and citation omitted). In doing so, the trial court must “not assign disproportionate weight to any one circumstance.” *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992). A trial court’s decision to award spousal support is not subject to any rigid formula but it should reflect what is reasonable and just under the circumstances of the case. *Cassidy v Cassidy*, 318 Mich App 463, 475; 899 NW2d 65 (2017).

Defendant first argues the trial court erred when it failed to analyze the parties’ ages in relation to an award of spousal support. We disagree.

In the trial court’s opinion following the divorce trial, the court analyzed each of the relevant factors for its spousal support decision. The trial court addressed the ages of the parties by noting their ages at the time of the proceedings: plaintiff, 52 years old, and defendant, 48 years old.<sup>1</sup> In her trial brief, defendant only noted the age of the parties and made no argument in that

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<sup>1</sup> The record also indicates that the trial court found that the parties had been married for approximately 20 years.

regard. In her closing argument, defendant simply stated that this factor “sp[oke] for itself.” The trial court did not err in its findings regarding the parties’ ages. Testimony at trial established the parties’ respective ages. The trial court did not clearly err in this regard. Defendant asserts that this factor required the trial court to analyze the parties’ ages in conjunction with her “sporadic” employment history, and the fact that she did not hold a comparable position in terms of work experience or income potential which she contends required a different disposition of the spousal support issue. The record, however, indicates that the trial court considered all relevant factors for making its spousal support decision.

Defendant argues that the trial court clearly erred in its findings regarding the parties’ respective ability to work and claims the trial court made inaccurate findings unsupported by the record as to the parties’ respective incomes. We disagree.

The record reflects that the trial court analyzed the parties’ ability to work based upon the evidence presented by the parties. The trial court found that the City of Detroit employed plaintiff and paid him approximately \$85,000 in gross annual income and that he lacked any diminished capacity to work. The trial court also found that, although defendant was “employed sporadically throughout the marriage,” at the time of trial, Optimeyes employed her and paid her approximately \$37,000 in gross annual income. The trial court found that no evidence established that defendant had a diminished capacity to work. The record supports the trial court’s findings related to this factor.

The trial court also addressed the ability of the parties to pay alimony. The trial court noted that plaintiff’s employment provided the “primary source of income for the family during the marriage” and that plaintiff remained “employed in the same capacity.” The trial court found that plaintiff “incurred significant debt” to pay the family’s “basic living expenses.” The trial court also found that the parties would “each have similar but separate expenses moving forward.” Further, the trial court concluded that plaintiff’s “income alone [was] sufficient to pay his own expenses, including the child support debt to [d]efendant,” but did “not provide an ability to pay alimony, as well.” Evidence in the record supported the trial court’s findings.

The trial court found that defendant had a gross annual income of approximately \$37,000. That figure comports with the Friend of Court’s final recommendation’s calculation results which were derived from information provided by both parties. Defendant testified at trial that her hours had been cut reducing her gross annual income to approximately \$28,000. She also testified that she received approximately a total of \$1,900 monthly which included child support for the minor children and the Social Security she received for the parties’ special needs adult child. Based on the record evidence, we cannot conclude that the trial court’s finding regarding defendant’s income constituted clear error. The record reflects that the trial court considered all the evidence presented to it over the course of the divorce proceedings and made its finding based upon that evidence and reflected its findings in its opinion following trial. The trial court did not clearly err regarding its finding of plaintiff’s gross income. Plaintiff testified that, at the time of trial, he earned a gross annual income of \$72,000, not including overtime. Plaintiff acknowledged that his 2018 gross income of approximately \$85,000 included overtime. Evidence in the record supports the trial court’s finding.

In her motion for a new trial, defendant argued that she earned \$28,000 and that plaintiff earned in excess of the trial court's finding following trial. In its opinion denying defendant's motion for a new trial, the trial court stated that "even considering the income alleged during oral argument" by defendant in relation to her motion for a new trial, its "decision awarding no spousal support would not change." The trial court explained that, "[a]ssuming the veracity of the information alleged at oral argument, the income disparity still is not great enough to overcome the weight of findings on the other factors." We are not persuaded that the trial court made a mistake in this regard.

Defendant also argues the trial court erroneously found that no evidence demonstrated that she had a diminished capacity to work. She asserts that she has a diminished capacity to work because of her age, lack of an advanced degree, limited experience and employment history, and because she cares for the parties' special needs adult child and has primary custody of their one remaining minor child, and cannot afford her own home. She contends that these contributed to her "general stress level" which affects her employment performance and advancement. The record, however, reflects that the trial court appropriately considered the record evidence when deciding whether either party had anything that diminished their respective capacity to work. The record evidence before the trial court indicated that defendant had the capacity to perform her duties at her place of employment and earn a suitable living. Testimony established that defendant served as the primary caregiver for the parties' special needs adult child and usually picked him up from school. Defendant testified that her care for that child affected her job, making it "unsteady" because he had "a lot of behavioral issues" and she frequently had to leave work early to pick him up. The trial court's order denying defendant's motion for a new trial states that "inasmuch as the Court failed to articulate that it considered [d]efendant's financial and other responsibilities to the parties' adult son, the Court corrects and/or supplants the record by clarifying that the fact was carefully considered." The record, therefore, establishes that the trial court considered defendant's particular circumstances and responsibilities in making its spousal support decision. The trial court analyzed the present situation of the parties, their health, parental obligations, and needs. The trial court did not ignore defendant's financial condition nor disregard her care for the parties' special needs adult son.

Further, the trial court explained that it awarded all of the marital debt to plaintiff despite the fact that the debt had been incurred by the parties during the marriage because they lived beyond their means. The trial court clarified that it took into consideration many facts for its no spousal support decision including that defendant received Social Security for the parties' special needs adult son plus a significant amount of child support from plaintiff. The trial court concluded that defendant failed to justify an award of spousal support considering all of the findings on other facts. Contrary to defendant's contentions, the record establishes that the trial court considered the effect that defendant's care for the parties' adult special needs son had on defendant's ability to work and that, although defendant testified that she "can't work more" because her obligations to that adult child prevented her from doing so, defendant failed to establish any diminished capacity to work. Her present employment status both at the time of trial and at the time of the trial court's consideration of her motion for a new trial indicated that she certainly had the capacity to work at the same level. Accordingly, the trial court did not err in this regard.

Defendant also argues the trial court's findings regarding the past relations and conduct of the parties were clearly erroneous. She contends that the trial court failed to make specific findings

regarding defendant's allegations of domestic and emotional abuse and infidelity, or its effect on spousal support. We disagree.

Respecting the parties' past relations and conduct factor, the record reflects that the trial court addressed this factor first. The trial court found that plaintiff and defendant were married for 20 years and the trial court took into consideration defendant's allegations of two incidents of domestic violence and emotional abuse by plaintiff and her allegations of plaintiff's infidelity. The trial court acknowledged defendant's allegations regarding domestic violence and emotional abuse by plaintiff. Examination of the record reveals that defendant testified that when she was pregnant with their eldest child, the parties got into a fight over an insurance check that led to plaintiff physically abusing her. Plaintiff denied the allegations of spousal abuse. Defendant testified that not long after the incident she gave birth to their son prematurely requiring hospital care and that at some time much later doctors diagnosed the child as having cerebral palsy. The record evidence does not contain medical or police records pertaining to alleged domestic violence. It also does not contain evidence that links the alleged event with their son's physical and mental condition. The trial court was in the best position to make findings regarding allegations of domestic violence and abuse and the credibility of the parties in this regard. Therefore, we cannot conclude that the trial court's spousal support findings were clearly erroneous.

The trial court's findings regarding defendant's allegations of plaintiff's infidelity also were not clearly erroneous. The trial court found that, although defendant testified that plaintiff committed marital infidelity that caused a breakdown in their relationship, she "offered no evidence to support her allegations." The record reflects that defendant testified at trial about her suspicions of plaintiff's infidelity and the effect her suspicions had on their marriage, but she produced no evidence that he actually had been unfaithful. Defendant testified that she started suspecting plaintiff of cheating in 2015 because she "felt less and less love" and that he began saying "really insulting[,] vulgar things" about defendant and her "anatomy" and did other things that resulted in their no longer sleeping together. Defendant, however, produced no evidence of plaintiff's infidelity and could not testify about any specific incidents of unfaithfulness. Plaintiff denied being unfaithful during their marriage and before their 2018 separation. The trial court did not clearly err by finding that no evidence supported defendant's allegations of plaintiff's infidelity.

Defendant argues further that the trial court's findings regarding the source and amount of property awarded to the parties were clearly erroneous because, although the trial court noted plaintiff assumed most of the debt, that the debt accumulated largely due to plaintiff's "excessive spending." We disagree.

In its opinion following the divorce trial, before addressing the spousal support issue, the trial court explained its determination of the division of property to the parties. The trial court first determined what constituted the marital property. It found that the parties did not hold real property together, but to the extent that plaintiff had any interest in the Argus property, she would be entitled to 50% of the marital portion of the equitable value of that interest. The trial court found that the parties had no significant cash balances in their individual bank accounts and shared no joint bank accounts. The trial court found that plaintiff had a pension through the City of Detroit, a marital asset requiring equal division of it between the parties. The trial court awarded the parties their respective personal property and vehicles.

The record indicates that the trial court awarded plaintiff the marital debt of approximately \$115,000 and noted that he continued to bear a significant child support arrearage of about \$17,500 for which defendant would “continue to receive payment on that debt from [p]laintiff.” The trial court did not clearly err in its findings regarding the source and amount of the property awarded to the parties. The record reflects that, despite defendant’s testimony that much of the debt at issue resulted from plaintiff’s “excessive spending,” plaintiff testified that he paid for the parties’ bills related to the home including the rent, utilities, and groceries, and indicated that his income “went to taking care of the home.” Plaintiff denied that defendant helped with monthly expenses related to the home. Plaintiff also testified that he contributed to expenses for school dances, braces, and college tuition for the parties’ daughter. Further, plaintiff testified that he took out a loan to help pay rent due for the West Bloomfield home. Regarding that home, plaintiff also testified that the parties were “over [their] heads instantly” because they could not afford to live there. He indicated that the cost for things like utilities and the amount of furniture “tripled.” The record indicates that, although defendant blamed plaintiff for the marital debt, she failed to provide explanation on what constituted “excessive spending” by plaintiff and evidence did not support her contentions in this regard. The trial court’s findings regarding the source and amount of property awarded factor were supported by evidence in the record and were not clearly erroneous.

Defendant also argues that the trial court incorrectly found that the parties would have similar but separate expenses going forward. We disagree. The trial court found that the parties had “similar needs” but concluded that neither party presented evidence demonstrating “he or she has any extraordinary needs to be considered by the Court.” Defendant argues that she has extraordinary need because she cares for the parties’ special needs adult son. She essentially asserts that the trial court disregarded that child’s needs and her role in caring for him. The record, however, reflects that the trial court considered these facts as part of its spousal support decision and clarified that in its ruling on defendant’s motion for a new trial. The trial court, therefore, did not clearly err in its findings regarding this factor.

Defendant argues the trial court clearly erred in its findings related to the ability of the parties to pay alimony. Defendant contends that the trial court incorrectly found that the parties would have similar but separate expenses going forward, and that the debt awarded to plaintiff was “incurred for family living expenses,” despite defendant’s testimony that they incurred the debt because of plaintiff’s irresponsible spending and reasons unrelated to the marriage and family. The trial court addressed the ability of the parties to pay alimony. The trial court noted plaintiff’s employment had served as the “primary source of income for the family during the marriage” and that he remained “employed in the same capacity.” The trial court found plaintiff “incurred significant debt” to pay the family’s “basic living expenses.” The trial court also found the parties would “each have similar but separate expenses moving forward.” Further, the trial court concluded plaintiff’s income sufficed to pay his own expenses, including the child support debt owed to defendant, but did not provide an ability to pay alimony. The trial court did not clearly err in finding that the debt substantially had been incurred for the family expenses which resulted from the parties living beyond their means. The trial court explained in its opinion after the divorce trial that the parties struggled financially and lived beyond their means by taking on credit obligations and getting family assistance. The trial court’s allocation of responsibility solely to plaintiff to pay off those debts took into consideration the relative financial positions of the parties and their respective incomes in light of the fact that the parties would have similar but separate expenses moving forward. The record reflects that the trial court recognized that both parties had

to support their minor daughter and that defendant provided primary support for their special needs adult son. Based upon the record, we cannot conclude that the trial court clearly erred regarding the factors pertaining to the parties' abilities to pay alimony or their previous standard of living and responsibility for supporting others.

Defendant argues the trial court's findings regarding the present situation of the parties were also clearly erroneous. We disagree.

Regarding the present situation of the parties, the trial court noted that both parties were employed, finding that plaintiff's employment "appear[ed] permanent" and that defendant "may have an[] increased earning ability in the future as she has just entered her current workforce." The trial court also noted that although defendant had family support at the time of the opinion, plaintiff did not. The trial court found that each party needed to "secure their own separate housing and will have their own regular living expenses in the future." The trial court's findings regarding the present situation of the parties were supported by evidence and not clearly erroneous.

Defendant argues that the trial court relied on mere speculation to find that defendant might be able to obtain a higher income in the future. She contends that the trial court ignored her age, work history, and present situation, and asserts that she has no chance to increase her earning in the future. The record, however, contains no evidence establishing that defendant may not be able in the future to increase her income. Accordingly, the trial court did not clearly err in its finding regarding the present situation of the parties factor.

Defendant argues the trial court's findings regarding the parties' previous standard of living and whether either party was responsible for the support of others were clearly erroneous because the trial court should have given more consideration to the fact that defendant's care for the parties' special needs adult son will continue forever. We disagree.

As mentioned previously, respecting the parties' previous standard of living and whether either had the responsibility for the support of others, the trial court found that evidence established that the parties "struggled financially" and "lived beyond their means through credit and family assistance." The trial court found both parties would "continue to support their minor daughter" while defendant primarily supported their adult special needs son. The trial court's findings regarding the parties' previous standard of living and whether either bore responsibility for the support of others were not clearly erroneous. Plaintiff testified that upon moving to the West Bloomfield home, the parties were "over [their] heads instantly" because they could not afford to live there. Defendant acknowledged that the parties could not maintain making the \$2,500 rental payments. Although defendant asserts that the trial court "failed to apply" her care for their special needs adult son in deciding whether to award spousal support, this is contradicted by the trial court's specific finding that defendant provided the primary support for him. The trial court further explained its finding in its order denying defendant's motion for a new trial, noting particularly that it had carefully considered the fact that defendant had financial and other responsibilities for the parties' special needs son. The trial court, therefore, did not clearly err in its finding regarding the parties' previous standard of living and responsibility for the support of others.

Lastly, defendant argues that, under the general principles of equity factor, the trial court failed to discuss defendant's contributions during the marriage (other than noting her role as



caregiver), the history of domestic abuse, defendant's limited opportunities for additional income, and the fact she lives with her mother. We disagree.

The record indicates that the trial court did not fail to consider defendant's service as caregiver to the parties' children, her income and potential for additional income, her financial condition, and the fact that she lived with her mother. The trial court explained that, accounting for "relevant case law, testimony[,] and documentary evidence of the parties," it "would not be reasonable or equitable to award spousal support" to defendant at the time of its opinion issued after the divorce trial. The trial court addressed defendant's opportunity and potential for additional income in its analysis of the various factors, noting that defendant may have an "increased earning ability in the future" having just returned to the workforce. As discussed, the trial court did not clearly err in this regard. The trial court also addressed the fact that defendant lived with her mother. Specifically, the trial court acknowledged that "each party will need to secure their own separate housing . . . ." Thus, the trial court did not fail to consider these specific issues.

Further, as explained earlier, the trial court did not clearly err in finding that defendant failed to support her allegations of domestic and emotional abuse with evidence at trial. Although defendant testified about specific incidents of domestic and emotional abuse, she did not provide any other evidentiary support to establish her allegations. Plaintiff denied her allegations. Under the circumstances, we defer to the trial court's determination of this issue because it was in the best position to assess the credibility of the witnesses' testimonies and we are not persuaded that the trial court committed clear error in this regard.

The trial court did not specifically address in its posttrial opinion the "contributions of the parties to the joint estate" factor as part of its spousal support decision. Nevertheless, the record indicates that the trial court considered the parties' relative contributions to the marital estate and family during the marriage and recognized that each party provided differently to the joint estate. Further, the record reflects that the trial court considered all of the evidence and the relevant factors including the general principles of equity for its decision. Because we conclude that defendant has failed to meet her burden of establishing the trial court's clear error respecting the spousal support factors, we are not persuaded that she is entitled to reversal or modification of the trial court's spousal support decision.

Affirmed.

/s/ David H. Sawyer  
/s/ Michael J. Riordan  
/s/ James Robert Redford