

STATE OF MICHIGAN
COURT OF APPEALS

AMY E. ANDERSON,

Plaintiff-Appellee,

v

BLAINE D. ANDERSON,

Defendant-Appellant.

UNPUBLISHED
September 15, 2011

No. 299486
Kent Circuit Court
LC No. 08-005048-DM

Before: GLEICHER, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right the July 14, 2010 judgment of divorce. We affirm in part, reverse in part, vacate in part, and remand for further proceedings.

On appeal, defendant first argues that because he is entitled to “standard visitation” (every other weekend and one night a week) with the parties’ teenage daughter, his child support obligation should be calculated based on him having 104 overnights. Although defendant has abandoned this issue by failing to cite any supporting authority, *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003), we find the argument to be without merit.

A trial court must generally follow the Michigan Child Support Formula (MCSF) in determining the amount of child support. *Berger v Berger*, 277 Mich App 700, 722-723; 747 NW2d 336 (2008). The MCSF includes the “parental time offset,” which offsets a parent’s base support obligation for overnights a child spends with the parent. 2008 MCSF 3.03(A). However, the “parental time offset” is to “be calculated based on *actual* overnights even if that is contrary to an existing order regarding parenting time.” *Ewald v Ewald*, ___ Mich App ___; ___ NW2d ___ (2011) (emphasis in original), quoting 2008 MCSF 3.03(C)(4).

It is undisputed that defendant had not had any overnights with the parties’ daughter. In addition, defendant does not dispute the trial court’s finding that there was no reason to think that he would have any overnights with the daughter in the future. Accordingly, because defendant had not had any and would not have any actual overnights with the parties’ daughter, defendant was not entitled to the “parental time offset.” *Ewald*, ___ Mich App at ___. The trial court did not err in holding that defendant’s child support obligation should be calculated with defendant having zero overnights.

Defendant next argues on appeal that the trial court's award of spousal support of \$750 per month for six years was unjust and unreasonable. We disagree.

We review a trial court's factual findings regarding spousal support for clear error. *Berger*, 277 Mich App at 727. Clear error exists if we are left with a definite and firm conviction that a mistake has been made. *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). If the trial court's findings are not clearly erroneous, we must decide whether the dispositional ruling was fair and equitable in light of the facts. *Berger*, 277 Mich App at 727. We must affirm a trial court's award of spousal support unless we are firmly convinced that the award was inequitable. *Thornton v Thornton*, 277 Mich App 453, 459; 746 NW2d 627 (2007).

The goal of spousal support is to balance the incomes and needs of the parties so that neither party will be impoverished. *Berger*, 277 Mich App at 726. Factors that a trial court should consider in awarding spousal support include:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. [*Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

Defendant asserts that plaintiff has "more up-side potential" with her current employment as a loss prevention agent for Gap, Inc. than he has with his employment as the head golf professional and pro shop owner at Stonewater Country Club because his income has been steadily declining due to the dwindling number of club memberships. We view defendant's assertion as a challenge to the trial court's finding that defendant has a much greater earning capacity than plaintiff. The trial court's finding was not clearly erroneous. Plaintiff testified that she has never had the opportunity to use her criminal justice degree. Shortly after the parties' daughter was born until the daughter was a young teenager, plaintiff did not work in order to care for the daughter. For the past couple years, plaintiff has worked for Gap, Inc., where she earns \$13.88 per hour. Defendant, on the other hand, earns \$61,000 per year in his work at Stonewater County Club. Based on this evidence, we are not left with a definite and firm conviction that the trial court made a mistake in finding that defendant has a much greater earning capacity than plaintiff.

Defendant claims that the award of spousal support for six years was unreasonable because the prognosticators used by him and plaintiff indicated that only "short term" support, which is no more than four years, should be awarded. However, defendant cites no legal authority to support the notion that a trial court's award of spousal support must be consistent with that suggested by alimony prognosticators. Moreover, such a notion is contrary to case law, which establishes that an award of spousal support is within the trial court's discretion, *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003), and sets forth the factors a trial court should consider in making its award, *Olson*, 256 Mich App at 631. Accordingly, we reject

defendant's argument that, because the term of spousal support exceeds that suggested by the alimony prognosticators, the award of spousal support is unreasonable.

Defendant also claims that the monthly award of \$750 is unreasonable because, when combined with his child support obligation of \$745 per month, plaintiff's monthly income is \$900 more than his income. We are aware of no legal support for the proposition that the parties' incomes, for purposes of determining the award of spousal support, should be adjusted by the amount of defendant's child support obligation. Defendant is legally obligated to support the parties' daughter. MCL 722.3; *In re Beck*, 488 Mich 6, 12; 793 NW2d 562 (2010). "The purpose of child support is to provide for the needs of the child. Child support is not imposed for the benefit of the custodial parent, but rather to satisfy the present needs of the child." *LME v ARS*, 261 Mich App 273, 288; 680 NW2d 902 (2004) (quotation marks and citations omitted). As defendant's child support obligation is for the benefit of the parties' daughter, and is not imposed for plaintiff's benefit, the amount of defendant's child support obligation should not be subtracted from his income and added to plaintiff's income.

Defendant's income is \$61,000, while plaintiff's income is \$28,000. The spousal support award of \$750 a month works toward the goal of balancing the incomes and needs of the parties. *Berger*, 277 Mich App at 726. While defendant's monthly living expenses may be more than plaintiff's expenses because defendant has a monthly housing payment and plaintiff does not, this fact does not lead us to conclude that the award of spousal support was inequitable. There was no testimony regarding the specifics of the parties' monthly expenses. In addition, there is no claim by defendant that the award of spousal support will impoverish him. We affirm the trial court's award of spousal support.

Defendant also argues on appeal that the trial court erred in finding that the \$46,000 of accumulated interest in the Wachovia account, which he opened with \$150,000 he received as an inheritance after his father's death, was marital property. He also argues that the trial court erred in finding that the cottage on Hubbard Lake was marital property.

We review a trial court's factual findings in a divorce action for clear error. *Reed*, 265 Mich App at 150.

A "trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Marital assets, which are those that came "to either party by reason of the marriage . . .," MCL 552.19, are divided between the parties. *Woodington v Shokoohi*, 288 Mich App 352, 358; 792 NW2d 63 (2010). However, a party is entitled to his or her own separate assets without invasion by the other party. *Id.*

The trial court found that the cottage was marital property because the parties treated the cottage as an essential part of the marital estate. We find nothing in the record to suggest that the court's finding was clearly erroneous. Defendant and plaintiff bought the cottage with defendant's father; the deed listed them as joint tenants with rights of survivorship. Defendant acknowledges in his brief on appeal that when his father died, title to the cottage passed to him and plaintiff. Nothing suggests that defendant received his father's interest in the cottage as part of an inheritance. In addition, nothing suggests that the parties intended to keep any interest in

the cottage separate from the marital estate. We affirm the trial court's finding that the cottage was marital property.

The trial court found that the \$150,000 placed in the Wachovia account, which defendant received after his father died, was defendant's separate property. Presumably, the trial court's finding was based on the rule that an inheritance received by one spouse during the marriage and kept separate from marital property is the spouse's separate property. *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010). However, the trial court found that the \$46,000 the Wachovia account accumulated in interest was marital property because the interest accumulated during the course of the parties' marriage.

The fact that the \$150,000 in the Wachovia account accumulated \$46,000 in interest during the course of the parties' marriage does not automatically render the \$46,000 marital property. The appreciation in value of a party's separate property during the course of the parties' marriage is properly classified as marital property unless the appreciation was "wholly passive." *McNamara v Horner*, 249 Mich App 177, 184; 642 NW2d 385 (2002); *Reeves*, 226 Mich App at 497. Here, there was no evidence that defendant placed any money other than the \$150,000 into the Wachovia account. In addition, there was no evidence that defendant expended any efforts in managing the account. The only conclusion that can be drawn from the testimony presented at the evidentiary hearing is that the value of the Wachovia account increased simply by earning interest. See *Hanaway v Hanaway*, 208 Mich App 278, 294; 527 NW2d 792 (1995). Because the increased value of the Wachovia account was due to "wholly passive" appreciation, the \$46,000 of accumulated interest is defendant's separate property. Accordingly, the trial court clearly erred in finding that the \$46,000 was marital property. We reverse the trial court's finding.

We vacate the property settlement in the judgment of divorce and remand for an equitable distribution of the parties' property that properly recognizes defendant's separate property. On remand, the trial court may consider whether invasion of defendant's estate is necessary. See *Reeves*, 226 Mich App 494, 497-498.

Affirmed in part, reversed in part, vacated in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens