STATE OF MICHIGAN

COURT OF APPEALS

KIRAN B. SOOD,

Plaintiff-Appellant,

v

SERVESH C. SOOD,

Defendant-Appellee.

UNPUBLISHED
March 27, 2012

No. 301819
Macomb Circuit Court
LC No. 2009-004093-DO

Before: WHITBECK, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals by right several provisions of the parties' judgment of divorce. We affirm.

I

Plaintiff-wife and defendant-husband were married in Canada on March 30, 1985. Plaintiff is a registered nurse. Defendant has a degree in mechanical engineering. The parties had two children during their marriage. However, both children had already reached the age of majority at the time of the parties' divorce.

The parties moved from Canada to Texas in 1993 so that plaintiff could secure a nursing position there. Plaintiff held various nursing jobs in Texas between 1993 and 1997. Although defendant briefly worked as an engineer, he left the engineering field shortly after being hired and did not work as an engineer for the remainder of the time the parties lived in Texas. Instead, defendant held odd jobs as a security guard and started India Gifts, a business that sold handcrafted gifts and other merchandise from the parties' native country of India. Because plaintiff worked full-time, defendant was primarily responsible for the care of the parties' two children. Plaintiff admitted that while the family lived in Texas, defendant also had substantial responsibility for cooking and taking care of the family's home.

The parties moved to Michigan in 1998. In 2000, they purchased a home in Sterling Heights for approximately $280,000. Upon moving to Michigan, defendant was briefly employed as a salesperson, but quit after three months to focus his attention on India Gifts. Plaintiff gained employment as a nurse, first at Crittenton Hospital and then at Beaumont Hospital, where she continues to work. It is undisputed that, since 2002 and until recently, plaintiff was solely responsible for paying the taxes, insurance, and mortgage payments

associated with the marital home. At the time of the divorce, the record evidence indicated that the parties still owed approximately $240,000 on the marital home—significantly more than the home is worth. Defendant testified that he initially earned significant cash income from India Gifts that was used to pay for the family's utilities, food, automobile payments, and gasoline. However, the evidence established that India Gifts faltered sometime about 2001, and that its sales and business fell off significantly after that time.

Plaintiff acknowledged that she had refinanced the marital home on at least three occasions to withdraw equity and that she had failed to tell defendant about at least one of these refinancing transactions. Nonetheless, she maintained throughout the proceedings that she had been the primary earner for the family and that she had contributed significantly more to the marital estate than had defendant. Plaintiff argued that defendant was a bad husband and father and that he was not entitled to an equal share of the marital assets. In contrast, defendant maintained that plaintiff had been an excellent mother. Defendant believed that he was entitled to about half of the marital assets, but acknowledged that he would likely file for bankruptcy after the divorce was finalized and that he would be willing to accept a larger portion of the parties' joint debt. In addition, defendant sought attorney fees and an award of spousal support in the amount of $2,400 a month to allow him to transition into post-divorce life.

The circuit court divided the marital assets approximately equally, awarding defendant his 1998 automobile, all rights to India Gifts,[1] and various enumerated items of personal property contained in the marital home.[2] The circuit court also awarded defendant 100 percent of plaintiff's Beaumont Hospital 403(b) account valued at approximately $44,762, and 100 percent of a Prudential Roth IRA valued at approximately $12,143. The circuit court awarded plaintiff her 2009 automobile (together with its associated debt of $17,000), the marital home in Sterling Heights (together with its associated mortgage debt), all of plaintiff's clothing, personal items, and jewelry, and all remaining items of personal property in the marital home that were not specifically awarded to defendant. The court also awarded plaintiff $42,000, which had been paid to the parties in settlement of a lawsuit involving a sinkhole near the marital home.[3] The court awarded each party one-half of plaintiff's Beaumont Hospital pension, one-half of two

[1] The circuit court found that India Gifts was neither incorporated nor registered as an LLC, but was merely an assumed name under which defendant had operated his business. At the time of the divorce, the inventory and property of India Gifts had been depleted and the business apparently retained no value.

[2] Specifically, the circuit court awarded defendant all of his clothing, personal items, and jewelry, six religious statutes, various religious books, one computer with a printer, one bedroom set including a mattress and mirror, a dining room table and chairs, one curio cabinet, two small benches, four marble tables, four silver planters, two lamps, one-half of the linens, a living room mirror, one television set, one VCR, four small tables, two steel portable shelves, one computer desk, and miscellaneous DVDs and tapes.

[3] See *Sood v Detroit Water & Sewerage Dept*, Macomb Circuit Case No. 2006-001419-CZ.

Prudential accounts valued at $7,967 and $4,895, respectively, and one-half of the parties' cash savings of $60,000.

With respect to the issue of marital debt, the circuit court assigned each party one-half of the Sears debt, Bank of America debt, and Ford Motor Credit debt. All of the remaining marital debt, including the indebtedness associated with two MasterCard accounts and one Visa account, as well as certain indebtedness accumulated by India Gifts, was assigned to defendant.

The circuit court determined that defendant had been without sufficient assets to carry on his defense and ordered plaintiff to pay defendant $12,520 in attorney fees.[4] Lastly, with regard to the matter of spousal support, the circuit court ordered plaintiff to pay defendant alimony in the amount of $1,500 per month until defendant's death or remarriage. The court specifically noted that this award of spousal support was modifiable.

II

"In deciding a divorce action, the circuit court must make findings of fact and dispositional rulings." *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). We review for clear error the circuit court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "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 has been made." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). We give special deference to the circuit court's findings when they are based on the credibility of the witnesses. *Id*. If the findings of fact are upheld, we must decide whether the circuit court's dispositional rulings were fair and equitable in light of those facts. *Sparks*, 440 Mich at 151-152. The circuit court's dispositional rulings must be affirmed unless we are left with the firm conviction that they were inequitable. *Sands*, 442 Mich at 34. This same standard applies to the circuit court's division of marital property and the circuit court's award of spousal support. *Berger v Berger*, 277 Mich App 700, 727; 747 NW2d 336 (2008).

We review for an abuse of discretion the circuit court's award of attorney fees in a divorce action. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). However, any findings of fact on which the circuit court bases its decision to award attorney fees are reviewed for clear error. *Id*.

III

Plaintiff first argues that the circuit court erred by failing to consider and properly weigh the relevant factors enumerated in *Sparks* before dividing the marital estate. Specifically, plaintiff argues that defendant was financially irresponsible and not committed to the marriage, and that the circuit court failed to adequately consider these facts. We disagree.

[4] Specifically, the circuit court ordered plaintiff to pay defendant $11,000 "for attorney fees" and an additional $1,520 "for post-judgment attorney fees."

In *Sparks*, 440 Mich at 159-160, our Supreme Court explained that, before dividing the marital estate, the circuit court should consider the following nine factors whenever they are relevant to the circumstances of 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.

Additional factors may be relevant in a particular case as well. *Id*.

In the present case, the circuit court carefully considered and weighed the relevant factors in its detailed, written opinion. The court found that the parties had been married for 25 years and that both parties were 62 years old and in generally good health at the time of the divorce. The court noted that plaintiff had a degree in nursing and that defendant had a degree in mechanical engineering; while plaintiff had been earning between $75,000 and $85,000 per year as a nurse at Beaumont Hospital, defendant had earned only about $10,000 per year through India Gifts and his other, various jobs. The circuit court observed that defendant had not worked as an engineer in many years and that he had held only lower-paying jobs during the latter part of the marriage. However, the court found that in light of all the evidence, defendant had still made significant financial contributions to the marriage throughout the 25-year relationship. Specifically, the court observed that the parties had accumulated substantial cash savings before moving to Michigan, some of which was used for a down payment on the marital home in Sterling Heights, and that much of this money had been contributed by defendant from the pre-2001 revenues of India Gifts. Indeed, the court determined that prior to the parties' move to Michigan, defendant had earned sufficient income, both through India Gifts and through his other employment, to pay for the household utilities, purchase groceries, and pay the family's automobile expenses. In addition, defendant had supported plaintiff financially when she studied to receive her nursing certification before the parties left Canada. The court found that defendant had made significant non-financial contributions to the marriage as well. For instance, defendant was the primary caretaker for the parties' two children during much of the marriage.

The circuit court determined that "[p]laintiff's earning potential is excellent given her training and experience" but that "defendant's earning potential is substantially less given that he has not worked in his profession in a number of years." Nevertheless, the court was "confident that defendant has the ability to earn at least minimum wage until retirement." Although defendant had not held a long-term, steady job for much of the latter part of the marriage, even plaintiff admitted in her testimony that defendant was a hard worker and always looking for employment to earn income and support the family. In sum, the circuit court concluded that "[e]ach party contributed substantially to the marital estate."

Contrary to plaintiff's assertions on appeal, it does not appear from the record evidence that defendant was financially irresponsible or unmotivated to work. It is true that defendant left several jobs during the 25-year marriage, but not all of these instances were truly "voluntary" as plaintiff contends. As the circuit court correctly pointed out, defendant left one position to gain a higher-paying job and left another position to care for plaintiff after she sustained injuries in an

automobile accident. Moreover, defendant took time off to care for the children when they were young, as plaintiff was working long hours as a nurse at that time.

Nor is plaintiff correct in arguing that the circuit court did not properly weigh the nine factors enumerated in *Sparks*. While the court may not have given equal weight to each factor, our Supreme Court has made clear that the circuit court need only consider the factors that are "relevant to the circumstances of the particular case." *Sparks*, 440 Mich at 159. Plaintiff has not identified any particular errors committed by the circuit court in its consideration of the relevant factors. Nor has she identified any other factors that would have been relevant to the circumstances of this case.

We acknowledge that, over the course of the 25-year marriage, and particularly in the latter half of the marriage, plaintiff earned substantially more than defendant and therefore most likely contributed more money to the marital estate. But as the circuit court found, defendant contributed significantly during the first years of the marriage, and these early financial contributions by defendant allowed the parties to accumulate significant cash savings.

Ultimately, the circuit court divided the positive assets of the marital estate almost equally, awarding roughly one-half to each party. In contrast, defendant took a much larger percentage of the marital debt than did plaintiff. Considering all the circumstances of the parties' marriage, and in light of the evidence presented at trial, we cannot conclude that the circuit court's division of the marital estate was inequitable. *Sands*, 442 Mich at 34. The circuit court properly distributed the marital assets.

IV

Plaintiff also suggests, without specifically arguing the point, that she should not have been required to pay defendant $12,520 in attorney fees. To the extent that plaintiff intended to challenge the award of attorney fees as a separate issue on appeal, she has abandoned any claim of error in this regard by failing to include it in her statement of the questions presented. MCR 7.212(C)(5); *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 553; 730 NW2d 481 (2007). Nevertheless, even if this issue had been properly presented for appellate review, we would conclude that the circuit court did not abuse its discretion by ordering plaintiff to assist defendant with his legal fees. "Attorney fees in a divorce action are awarded only as necessary to enable a party to prosecute or defend a suit." *Gates v Gates*, 256 Mich App 420, 438; 664 NW2d 231 (2003). "It is well settled that a party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support." *Id*. The evidence amply established that defendant would have been unable to carry on his defense of the action without financial support, and that he would have been required to use the same assets on which he was relying to support himself to satisfy his attorney fees. We perceive no abuse of discretion in the circuit court's award of attorney fees for defendant.

V

Lastly, plaintiff argues that the circuit court erred by ordering her to pay defendant spousal support in the amount of $1,500 per month until defendant's death or remarriage. We cannot agree.

The circuit court has discretion to grant spousal support that it 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); see also *Korth v Korth*, 256 Mich App 286, 288; 662 NW2d 111 (2003). The primary purpose of spousal support is to "balance the incomes and needs of the parties in a way that will not impoverish either party," and spousal support should be "based on what is just and reasonable under the circumstances of the case." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

It is undisputed that defendant's present earning capacity is much less than plaintiff's and that defendant has not worked in his professional field of mechanical engineering in quite some time. Moreover, defendant will likely need to refresh his skills or obtain new training in order to reenter the job market as an engineer. While it appears that defendant may be able to earn more than minimum wage, it is beyond serious dispute that his earning potential will not be as great as plaintiff's in the foreseeable future.

We do not agree with plaintiff that the circuit court's award of alimony in the amount of $1,500 per month will impoverish her at defendant's expense. Instead, it appears to us that this alimony award will serve to balance the incomes and needs of the parties as intended. *Moore*, 242 Mich App at 654. The award will also allow defendant to pursue the training necessary to reenter his professional field or to otherwise attain a greater standard of living in his post-divorce years. Lest there be any doubt by plaintiff, we wish to emphasize that the circuit court's award of spousal support is *modifiable*, meaning that plaintiff may seek a reduction in her alimony payments to defendant should defendant secure new employment, begin collecting social security, or otherwise improve his financial condition in the future. See *Ackerman v Ackerman*, 197 Mich App 300, 301; 495 NW2d 173 (1992). Given the particular facts and circumstances of this case, we simply cannot conclude that the circuit court's award of modifiable spousal support for defendant in the amount of $1,500 per month was inequitable. See *Ianitelli v Ianitelli*, 199 Mich App 641, 644-645; 502 NW2d 691 (1993); *Demman v Demman*, 195 Mich App 109, 111-112; 489 NW2d 161 (1992).

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly