

STATE OF MICHIGAN
COURT OF APPEALS

ABBY LYNN JUAREZ,

Plaintiff-Appellee,

v

MARTIN M. JUAREZ,

Defendant-Appellant.

UNPUBLISHED
December 12, 2013

No. 310470
Ottawa Circuit Court
LC No. 10-68411-DM

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Defendant Martin M. Juarez appeals as of right from an amended judgment of divorce awarding marital assets, spousal support, and attorney fees to plaintiff Abby Lynn Juarez. For the reasons set forth below, we affirm.

I. BACKGROUND

Abby Lynn Juarez (plaintiff) and Martin M. Juarez (defendant) were married for twenty five years and had five children. At the time of trial, two minor children lived with plaintiff and one lived with defendant. For the majority of the marriage defendant worked at the parties' business, Martin J. Concrete (MJC), and plaintiff stayed at home to care for their children. Plaintiff also worked periodically at waitressing jobs and for several years in the office at MJC.

Plaintiff filed the complaint for this divorce on October 14, 2010. In November 22, 2010, at a hearing for an Ex Parte Order for Custody, Support and Parenting time, the trial court ordered the parties "to pool their assets in order to maintain the marital home and all related living expenses." Plaintiff obtained a personal protection order against defendant in January 2011 which required him to leave the marital home.

The trial court's first order for spousal support was issued on April 14, 2011 for the amount of \$2,000 per month to plaintiff. The next month, on May 19, 2011 the trial court ordered defendant to pay \$5,000 to plaintiff to retain a business valuation expert and \$15,000 toward her attorneys' fees and costs. Plaintiff requested enforcement of the May 19th order and the trial court reserved the issue of enforcement after defendant alleged an "inability to pay."

A bench trial commenced on September 21, 2011 and lasted three days. Defendant testified to his monthly living costs and to the value of personal and business real estate. He valued the marital home at \$350,000, the parties' rental property at \$94,500, a vacant lot in an industrial complex at \$132,000, and a building on Randall Street to operate MJC at \$100,000. In total he valued other assets of MJC to be no more than \$300,000.

Defendant however, explained that MJC was not profiting because of money it lost in 2010 due to penalties and debts. In particular, defendant stated that the beginning cash flow balance for MJC in 2011 was only \$117,000, when it should have been \$600,000 or \$700,000 to start off the season. According to defendant, MJC owed a debt of restitution to the Michigan Department of Transportation in the amount of \$150,000, another \$50,000 to \$60,000 was owed to the city of Grand Rapids, \$58,000 was owed to the Ajax company, and \$200,000 to a bonding company. Defendant testified that he had a payment arrangement with the bonding company that extended over four years and included monthly as well as end of the year balloon payments. He acknowledged that this information had been disclosed during pre-trial discovery.

At trial, plaintiff described defendant as physically and emotionally abusive. She explained how defendant would withhold money and call her names. She alleged that defendant "controlled every dime that was taken out of the business in the household." Plaintiff said that sometimes defendant would come home with several thousand dollars in cash and tell her that she could have some of it if she would reciprocate with sexual favors. Plaintiff testified that before the divorce she had \$48,000 in savings and at the time of trial those savings were reduced to \$36,000. She had not received payment from defendant, as ordered by the trial court, for attorney and expert witness fees and was therefore, forced to use some of her own savings. Plaintiff testified that at the time of trial she was receiving \$2,000 a month in spousal support and \$1,700 a month in child support, but that those amounts were not enough to meet her budgetary expenses. She claimed defendant gave her \$1,200 per week to run the household before she filed for divorce. She detailed her expenses for the court which resulted in a monthly budget in excess of \$6,500.

Eric Jerome Larson was a certified public accountant retained by plaintiff to prepare a business valuation for MJC. Larson relied on financial statements prepared by the company's accounting firm, company tax returns, depreciation schedules, personal financial statements, and other miscellaneous information for a period of four to five years which he believed was sufficient to form an opinion of the business' value.

Larson utilized both the income and asset approaches to valuation. Under the income approach Larson valued MJC at \$710,000. He used a "capitalization of earnings method" where "the fair market value of a business is estimated based on the earning capacity of that business."¹ His goal was to "come up with some expectation of what the earning capacity of this business is going to be going forward." He took into account that MJC has had its "ups and downs" in terms of revenue and therefore, considered five years' worth of income.

¹ Martin J. Concrete, Inc., Valuation Report, p. 5.

Larson began with MJC's reported earnings and then made what he termed "normalizing adjustments" to those earnings in order to find the "true underlying earning capacity of" MJC. His two primary adjustments were for officer wages and depreciation. Officer wages were those payments that defendant made to himself from MJC which Larson noted to be historically "below-market compensation for someone in his position." These lower officer wages made the profitability of MJC appear higher. While depreciation was acknowledged as an expense by Larson, it was noted as a non-cash expense, one that a check was not written for, and therefore, added back to reported earnings rather than deducted as an adjustment. Larson also considered the "adjusted operating income" of MJC which was explained as the "pre-tax cash flow number." Taking all of the above factors into consideration, Larson determined the yearly cash flow or "expected operating income" of MJC as \$170,000.

Larson next used the expected operating income of \$170,000 to decide the company's after-tax cash flow. He accomplished this by taking into account factors such as income taxes, as well as reinvestments into the business, and the need to buy new machinery or equipment. He concluded the after-tax cash flow was \$46,000. The net equity value of MJC was determined by taking the \$46,000 amount, dividing it by a "capitalization rate", which then produced a value called "invested capital", and then taking the "invested capital" amount and subtracting any interest-bearing debt. The resulting value of MJC using this income approach was therefore, \$710,000.

Using the asset approach Larson valued MJC at \$770,000. The asset approach evaluated the company's balance sheets as well as its history of accounting. Larson considered the assets of MJC primarily to be cash, accounts receivable, machinery and equipment. The history of accounting did not reveal any potential liability to a surety. There was no appraisal performed on MJC's machinery and equipment thus, Larson relied on a depreciation listing and book value. Application of the asset approach method of valuation valued MJC at \$770,000. Larson noted that defendant's personal financial statement in December 2010 similarly represented MJC's value at \$772,000. After utilizing both the income and asset based approaches to valuation, Larson determined the ultimate value of MJC to be \$750,000.

The trial court issued its thirty-one page opinion on December 27, 2011. It ordered defendant to pay plaintiff \$3,372 per month in spousal support for life or until plaintiff remarries or cohabitates with an unrelated male.

The trial court made an independent determination of MJC's worth based on the business valuations of Larson as well as defendant's own testimony. Of the two valuations provided by Larson, the court chose the lower, \$710,000 as its starting point. In acknowledging MJC's debts, the trial court noted "it would not be equitable to use a December 31, 2010 valuation date and ignore the significant events of 2011 that affect the valuation of the company." The trial court also pointed out defendant's testimony that he was working to resolve MJC's debts through payment arrangements and would likely have them settled within four years. Given this information, the trial court reduced the \$710,000 valuation to \$665,000, using the same formula as Larson, but including an "estimated \$40,000 in payments from the company's cash flow over each of the next five years."

The court awarded MJC, MJ Randall, LLC, the Randall Street business property the LLC owned valued at \$67,800, and the LLC's bank account with a \$40,000 balance to the defendant. Plaintiff was awarded the marital home which it assessed at \$248,800 with first and second mortgages in the amounts of \$53,000 and \$98,000 respectively. She was also granted her savings, personal belongings in her possession and a personal vehicle. The trial court ordered the vacant commercial property be sold and the proceeds divided equally between plaintiff and defendant. In an effort to accomplish an equitable division of property, the trial court included an equalization payment from defendant to plaintiff in the amount of \$389,880. This amount was later amended to \$312,380 in response to defendant's Motion for a New Trial and/or to Amend the Judgment of Divorce.

The trial court also awarded plaintiff attorney fees and expert witness fees. Plaintiff owed \$23,000 in attorneys' fees and \$5,000 in expert witness fees. The court held defendant accountable for \$15,000 of the plaintiff's attorney fees and \$5,000 of the expert witness fees citing the defendant's ability to pay them and the plaintiff's inability to do so.

Defendant filed a Motion for a New Trial and/or to Amend the Judgment of Divorce on February 13, 2012. A hearing on defendant's Motion was held May 7, 2012 and the lower court issued its written opinion May 9, 2012. The court reduced the equalization payment awarded to plaintiff by \$77,500 based on the lower court's admitted error of imputing certain rental income to defendant but otherwise denied the defendant any relief.

II. VALUATION OF MARITAL ASSETS

Defendant argues that the trial court abused its discretion by not accounting for more than \$400,000 in debt when it independently valued MJC and requests this Court remand for a redetermination of MJC's value. We agree with the trial court's valuation and subsequently deny defendant's request for remand.

We review a trial court's valuation of marital property for clear error. *Burba v Burba (After Remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000). "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." *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010).

Our review of the record does not support a finding that the trial court committed clear error when it both accepted and modified the Larson valuation and otherwise fashioned a remedy designed to achieve equity after a long term marriage. Defendant is critical of both the Larsen and trial court valuations, principally because he asserts they fail to take into account MJC's debt. MJC was an S-corporation whose common stock was 100% owned by defendant. Larson was multi-accredited with over a decade of work experience in business valuations. In conducting his valuation of MJC, Larson took into account the "historical experiences from operations [and] estimated [them] to be representative of continued future results." He testified

based on my review of some information regarding this business, there have been a handful in recent history of events where the organization has received substantial fines or other items like that, and the company has been able to absorb those and move on. And those are all included in the financial analysis that's been prepared over the last several years. Those expenses related to fines or other issues in the past are all embedded in this information.

Larson's business valuation of MJC did take into account the debts of which he was aware at the time of valuation. Larson understood that debt was a part of the business and was expected to occur in the future. Defendant did not offer an expert to oppose the testimony of Larson, nor did he object to the methods, principals or mathematical equations employed by Larson as inaccurate or non-reflective of MJC or its market construct.

We find that defendant failed to offer evidence of MJC's debts to Larson for consideration during his valuation of the company. Even though defendant testified regarding specific amounts of money owed, Larson did not learn of these debts or their amounts until trial. Defendant's indemnity agreement with the surety was signed October 8, 2010 but not disclosed until trial. Defendant produced at trial a summary of expenses for Ajax and MDOT dated as early as September 30, 2010 but still did not disclose his indemnity agreement. Larson's valuation report was dated December 31, 2010. Therefore, defendant had information in his possession that, if he had provided it to Larson, may have changed the value of MJC in his favor. Indeed, trial testimony indicated that defendant failed to share the extent of MJC's debt with his own accountants. Now on appeal, we will not allow defendant to establish error on information he secreted. In light of no testimony in contra to Larson's and him having produced an otherwise thorough and legitimate valuation of MJC, the lower court did not err in accepting his valuation.

Both plaintiff and defendant additionally argue to this Court that the trial court's independent valuation of MJC was improper. Plaintiff argues that the trial court should have restrained itself from adjusting the cash flow of MJC and that it was improper for the court to disregard Larson's calculations. Defendant argues that the trial court's attempt to adjust for MJC's debts, like Larson's valuation, did not take into account the total debt facing the company and arbitrarily reduced the company's annual cash flow by \$40,000. Given the facts presented at trial, we conclude otherwise.

The valuation of marital assets is within the sound discretion of the trial court. *Gates v Gates*, 256 Mich App 420, 427; 664 NW2d 231 (2003). This Court will not find clear error when the trial court's "valuation of a marital asset is within the range established by the proofs[.]" *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Larson's range of valuation was from \$710,000 using the income approach to \$770,000 using the asset approach and the court ultimately valued MJC at \$750,000 which was within range. The trial court "has great latitude in arriving at a final figure." *Pelton v Pelton*, 167 Mich App 22, 26; 421 NW2d 560 (1988). "The trial court may, but is not required to, accept either parties' valuation evidence." *Id.* at 25. In this case, the trial court accepted the formula of Larson and his lowest range value for MJC as a starting point for the court's ultimate valuation of MJC. The trial court subtracted \$40,000 "in payments from the company's cash flow over each of the next five years . . . and reduc[ed] the company's projected capital expenditures by the same percentage

reduction.” The trial court attempted to adjust Larson’s valuation so as to consider the \$200,000 surety debt defendant testified would be paid off in five years time. This modification reduced MJC’s value by \$85,000, reducing the company’s worth to \$665,000. Taking into consideration Larson’s valuation and defendant’s testimony, we find the trial court’s ultimate valuation to be supported by the evidence. Even if the trial court miscalculated individual factors, as long as its valuation was within the range established by the proofs, the determined value of the asset was not clear error. *Jansen*, 205 Mich App at 171. For these reasons, we find the trial court did not err in its valuation of the parties’ business.

III. PROPERTY DIVISION

Defendant contends that the trial court’s division of marital assets was inequitable because it did not take into account MJC’s debts. Our review of the record below does not support a finding that the trial court’s property distribution was inequitable.

Having found that the trial court’s factual findings in regards to MJC’s worth were proper, this Court must determine whether the lower court’s dispositional ruling was equitable in light of those facts. *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008). “This Court will affirm the lower court’s discretionary ruling unless it is left with the firm conviction that the division was inequitable.” *Id.* at 717-718; (citation omitted).

Defendant first asserts that his situation is similar to that in *Rethman v Rethman*, 156 Mich App 74; 401 NW2d 314 (1986) rev’d on other grounds 429 Mich 868; 413 NW2d 679 (1987). However, defendant is mistaken in this assertion. In *Rethman*, the parties stipulated to the division of most of their property before trial and the primary issue outstanding was the value of the parties’ dental practice. *Id.* at 76. In the instant case, every issue was in conflict. The parties in *Rethman* also each presented expert witness testimony on their business’ value, *Id.* at 78, versus the instant case where there was only one expert. A more significant difference between this case and *Rethman* was that in *Rethman* the parties both received \$49,653 in assets, *Id.*, and here, plaintiff received assets in the amount of \$239,040 while defendant was granted assets in the amount of \$863,800.

Defendant further complains that his weekly paychecks are being sent directly to Friend of the Court, leaving him with “no cash to live on” and therefore, making him even more akin to the defendant in *Rethman*. The trial court determined defendant’s gross income to be \$168,370. After adjustments for both child support and spousal support, defendant’s net income was \$73,367 and plaintiff’s was \$72,374. In *Rethman* the defendant was left with just \$30,000 after his payments of spousal support. *Rethman*, 156 Mich App at 77. In addition to defendant’s \$72,374 income, from his own testimony defendant has the potential to collect other income in the form of “cash jobs” where he performs cement work for cash. Historically, the parties’ business has had very little debt and at one point in time had cash assets over two million dollars. In fact, defendant expected MJC “to break even by the end of the year, on \$5 million in gross revenue” despite the financial challenges it faced. *Rethman* and the immediate case are not factually or legally similar. Therefore, defendant cannot argue the result in *Rethman* should apply here.

We find no support in defendant's claim that the trial court's opinion did not account for MJC's debts in its division of property. Indeed, the trial court opinion specifically recognized the Ajax debt and the debts owed to MDOT. In total, the trial court identified "over \$200,000 in expenses and claims" against MJC. When it revisited this issue through defendant's Motion for a New Trial and/or to Amend the Judgment of Divorce, the court recapped defendant's trial testimony and noted that defendant did "not allege any additional debt in his motion beyond that which was testified about at trial." The trial court relied on defendant's testimony regarding MJC's obligations and adjusted the value of the company accordingly. "In dividing marital assets, the goal is to reach an equitable division in light of all the circumstances." *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). The division of marital property "need not be mathematically equal, but any significant departure from congruence must be clearly explained by the trial court." *Gates*, 256 Mich App at 423. After consideration of all relevant factors, the trial court determined that the marital property should be equally divided between the parties. Defendant's argument that the division of property was inequitable because the trial court did not take into account all MJC's liabilities is unfounded. In light of these facts, we find the trial court's division of property was equitable.

IV. SPOUSAL SUPPORT

Defendant argues that the trial court improperly used the parties' business income twice, once in property distribution and again in calculating spousal support, resulting in an unfair "double dip" into the same stream of income. We disagree.

It is within the trial court's discretion to award spousal support and this Court reviews the award on appeal for an abuse of discretion. *Korth v Korth*, 256 Mich App 286; 662 NW2d 111 (2003). The trial court "abuses its discretion when its decision results in an outcome that falls outside the range of reasonable and principled outcomes." *Ewald v Ewald*, 292 Mich App 706, 725; 810 NW2d 396, 406 (2011) (citation omitted). The trial court's findings of fact in awarding spousal support are reviewed for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). "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." *Woodington*, 288 Mich App at 355. "If the trial court's findings are not clearly erroneous, [we] must then decide whether the dispositional ruling was fair and equitable in light of the facts." *Moore, supra* at 655.

The awarding of spousal support is a statutory power. *West v West*, 241 Mich 679, 684; 217 NW 924 (1928). MCL 552.23 provides the statutory basis

(1) 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.

MCL 552.23(1).

“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 v Loutts*, 298 Mich App 21, 26; 826 NW2d 152 (2012) lv den 493 Mich 968 (2013) (citation omitted). To assist the trial court in its determination to award spousal support, the following factors should be considered

(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.

Myland v Myland, 290 Mich App 691, 695; 804 NW2d 124 (2010). “The trial court should make specific factual findings regarding the factors that are relevant to the particular case.” *Loutts*, 298 Mich App at 32.

In its December 27, 2011 opinion, the trial court evaluated each of the above factors from *Myland*. It first made specific findings regarding the dynamics of the twenty-five year marriage of the parties. In doing so the trial court highlighted that “[t]he significant disparity in the parties’ income-earning capacities left [plaintiff] financially dependent on [defendant], and this fact was also used by [defendant] in his abusive treatment of [plaintiff], adding to her corresponding resentment and anger.” As to the ability of the parties to work and the source and amount of property awarded to the parties, the court found

Both parties are able to work, although [defendant’s] earning capacity far exceeds that of [plaintiff’s]. She has a GED and a limited work history, and he has a business degree and a history of running a profitable business.

The parties have acquired a business and several real estate assets. These have been accumulated during the term of the marriage, but only the business produces significant income. [Defendant] will be retaining the business and the business real estate.

The trial court also considered that plaintiff was not employed outside the home and was the care-giver for the parties’ minor daughters. In concluding that plaintiff would require financial assistance to care for the parties’ children, “maintain the marital home, and prepare for her eventual self-support” the court conducted a line-by-line analysis of plaintiff’s submitted monthly budget. We found the trial court’s itemization of plaintiff’s budget to be prudent with

cautions that plaintiff could pay less for some services by bundling them and that her dining out and entertainment expenses were too high for just her and two minor children. In the end the trial court determined what was necessary for plaintiff and streamlined the budget accordingly decreasing it by approximately \$1,000 per month. In establishing the exact amount of spousal support to be awarded, the trial court began with defendant's expected yearly income for 2011 of \$139,200 and then subtracted his child support obligation of \$2,128 per month and plaintiff's total need of between \$5,500 and \$6,000 per month. The court concluded, "[t]his calculation, equivalent to approximately one-half of [defendant's] expected 2011 income, [was] not unreasonable given that [plaintiff] has two minor children in her primary care, and [defendant] has one minor child in his primary care." We find that the trial court's findings in this case were not clearly erroneous and were supported by the trial court record.

After the trial court's factual findings are determined to be without error, the next task is to decide whether the spousal support award was equitable. "[A] trial court's decision to award spousal support is discretionary and should reflect 'what is just and reasonable under the circumstances of the case.'" *Loutts*, 298 Mich App at 30, citing *Myland*, 290 Mich App at 697. Defendant argues that the trial court erred in its spousal support award in this case because it created a "double dip" by awarding plaintiff 50% of MJC as a "going concern" at the time of judgment as well as incorporating defendant's future distributions from MJC into his income to calculate the spousal support award.

In *Loutts*, this Court "decline[d] to adopt a bright-line rule with respect to 'excess' income and [held] that courts must employ a case-by-case approach when determining whether 'double-dipping' will achieve an outcome that is just and reasonable within the meaning of MCL 552.23(1)." 298 Mich App at 30.

In the instant case, the income stream used in the division of property was different than that used in the determination of spousal support. The trial court awarded MJC and its assets to defendant upon division of the marital estate. It determined the value of MJC based on the business valuation report prepared by Larson using the capitalization of earnings method. That value was 665,000. The trial court determined spousal support upon consideration of fourteen individual factors enunciated in case law. Next, it relied on three years' worth of average wage and distribution figures from the parties' personal joint income tax returns to generate an income for defendant. Then the court scrutinized the parties' proposed household budgets. While the distributions from MJC were factored into defendant's total income, defendant has not shown how an inequitable spousal support award resulted from such a "double dip". To the contrary, the net incomes of the parties after the spousal support award, \$72,374 for plaintiff and \$73,367 for defendant are nearly equal. The defendant's argument fails to make a recommendation to this Court of what income stream the trial court should have used. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *People v Kevorkian*, 248 Mich App 373, 388-389; 639 NW2d 291 (2001).

Therefore, we conclude that the trial court did not err in its factual findings and its award of spousal support was equitable given the facts of the case.

V. ATTORNEY FEES

Defendant argues that the trial court abused its discretion when it ordered that he pay a portion of plaintiff's attorney and expert witness fees. He asserts that after the court's awards of property and support, plaintiff was in a better position to pay the fees. After an examination of the trial record, we conclude otherwise.

"We review for an abuse of discretion a trial court's ruling on a request for attorney fees." *Smith v Smith*, 278 Mich App 198, 207; 748 NW2d 258 (2008). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Id.* "The findings of fact on which the trial court bases its decision are reviewed for clear error." *Woodington*, 288 Mich App at 369.

"[A]wards of costs and attorney fees are recoverable only where specifically authorized by statute, the court rules, or a recognized exception." *Yuhase v County of Macomb*, 176 Mich App 9, 14; 439 NW2d 267 (1989) (citation omitted). MCR 3.206(C) allows a party to request that the court order the other party to pay its legal fees and expenses. MCR 3.206(C) (2) states

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that

(a) the party is unable to bear the expense of the action, and that the other party is able to pay, or

(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

In its opinion, the trial court specifically cited MCR 3.206(C)(2)(a) and held that the trial testimony depicted plaintiff's inability to pay. It recognized the payments already being made to plaintiff in accordance with the Judgment of Divorce and the amount of fees that defendant owed to his own attorneys, but concluded that defendant had a greater ability to pay than plaintiff. The trial court more clearly articulated its reasons for awarding attorney fees in its Opinion and Order regarding defendant's Motion for a New Trial and/or to Amend the Judgment of Divorce. There, the court opined that defendant has had "an income which has ranged from a low of \$165,000 per year to more than \$365,000, while [plaintiff] has a high school education, a minimal work history and an annual income that has never exceeded minimum wage."

Moreover, the trial court did not order that defendant pay all of plaintiff's legal fees and expenses, just a portion. Plaintiff had already paid over \$2,500 in fees and according to the trial court's opinion was responsible for an additional \$8,000 of the \$23,000 she still owed. The trial court did not abuse its discretion when it decided that plaintiff was unable to bear the total expense of litigation and defendant had more of an ability to pay.

“[A]ttorney fees are awarded only if necessary to enable a party to carry on or defend litigation.” *Ozdaglar v Ozdaglar*, 126 Mich App 468; 337 NW2d 361 (1983). Larson’s valuation was necessary to determine the value of the parties’ business and consequently to assist in the equitable division of the marital estate. Defendant was not going to hire an expert and it was therefore incumbent upon plaintiff to do so out of her own savings to in order to defend the litigation. Plaintiff testified that at the time of trial she had \$36,000 in savings. She initially had more, but had paid a \$2,500 retainer fee to her attorney and expert witness fees to Larson for his business valuation. Plaintiff had attorneys’ fees in the amount of \$23,000 and expert witness fees in the amount of \$5,000 still owing at the end of trial. Plaintiff testified to not being able to make payments beyond that which she had already made. She further testified that at the time of trial she was receiving \$2,000 a month in spousal support and \$1,700 a month in child support and that those amounts were insufficient and not meeting the needs of the household. The trial court’s decision to order defendant to pay attorney fees that were necessary for plaintiff to defend herself did not constitute an abuse its discretion.

Accordingly, we hold that the trial court did not err in its independent evaluation of the parties’ business and it divided the parties’ assets equally between them. We further find that the trial court did not err in its factual findings to award spousal support, and did not abuse its discretion in awarding plaintiff attorney and expert witness fees.

Affirmed.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Cynthia Diane Stephens