

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS EDMUND SPARKS,

Plaintiff-Appellant,

v

MARGO A. SPARKS,

Defendant-Appellee.

UNPUBLISHED

October 17, 2013

No. 312641

Wexford Circuit Court

LC No. 2011-023497-DO

Before: RIORDAN, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff, Dennis Edmund Sparks, appeals as of right the trial court's judgment of divorce that required him to pay spousal support to defendant, Margo A. Sparks. We affirm.

I. FACTUAL BACKGROUND

Plaintiff and defendant were married for 22 years. At the time of trial, plaintiff was 71 years old and defendant was 66 years old. The parties ran two businesses during the course of their marriage: a maple syrup business and a restaurant. They also took out two mortgages to finance the restaurant, one encumbering the restaurant and the other encumbering the marital home. At the time of trial, approximately \$157,000 in debt remained. Defendant claimed that she had worked at the restaurant seven days a week for 13 years without receiving a salary.

At the time of trial, the parties reached a property division settlement. Defendant received \$100,000 from plaintiff's IRA account. Plaintiff received the restaurant, the maple syrup business, the parties' marital home, real property that had Christmas trees on it, and the balance of the IRA account. In light of this settlement, the only substantive issue for the court to decide was whether an award of spousal support was justified.

Defendant claimed that her budget was \$1,355 a month, and that she only received \$614 a month in social security. While plaintiff claimed that he had a budget of \$2,758 a month, the court found that the mortgage payment was an obligation of the restaurant, which meant that plaintiff's budget was \$2,068. Plaintiff received approximately \$1,717 a month in social security. The testimony also established that plaintiff had supplemental income from the maple syrup business, snowplowing, and selling firewood. The court ultimately ordered plaintiff to pay defendant \$475 a month in spousal support. Plaintiff now appeals.

II. SPOUSAL SUPPORT

A. Standard of Review

“This Court reviews a trial court’s award of spousal support for an abuse of discretion.” *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). “An abuse of discretion occurs when the trial court’s decision falls outside the range of reasonable and principled outcomes.” *Loutts v Loutts*, 298 Mich App 21, 26; 826 NW2d 152 (2012) (quotation marks and citation omitted). This Court reviews a trial court’s findings underlying an award of spousal support for clear error. *Myland v Myland*, 290 Mich App 691, 694; 804 NW2d 124 (2010). “A finding is clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made.” *Id.* (quotation marks and citation omitted). If we find no clear error in the trial court’s findings, we must decide whether its dispositional ruling was fair and equitable in light of the facts. *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008). We will affirm the trial court’s dispositional ruling unless we are firmly convinced that it was inequitable. *Id.* at 717-718.

B. Analysis

Plaintiff raises several challenges to the trial court’s order awarding spousal support to defendant. “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 on the basis of what is just and reasonable under the circumstances of the case.” *Myland*, 290 Mich App at 695 (quotation marks and citation omitted). Factors to consider are:

(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).]

“The trial court should make specific factual findings regarding the factors that are relevant to the particular case.” *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003).

Plaintiff first argues that the trial court erred in considering the spousal support prognosticators and adopting an equalization of income goal. Plaintiff relies on *Myland*, *supra*, to support his argument that the trial court adopted a flawed approach in calculating the spousal support award. In *Myland*, 290 Mich App at 699-700, the trial court used a mathematical formula to calculate the parties’ incomes, with a primary focus on the length of the marriage. This Court found that was inconsistent with the general principles of equity, and held that “there is no room for the application of any rigid and arbitrary formulas when determining the appropriate amount of spousal support[.]”

Contrary to plaintiff's argument, nothing in *Myland* prohibits the consideration of spousal support prognosticators. Rather, *Myland* prohibits the use of rigid and arbitrary formulas when determining the appropriate amount of spousal support. The trial court in the instant case did not apply any such rigid or arbitrary formulas, and gave no indication that it was attempting to equalize the parties' income. Further, the trial court specifically stated that it was not bound by the spousal support prognosticators, and was using them only as a guide. The trial court also relied on numerous equitable factors in rendering its decision, such as the length of the marriage, the parties' abilities to work, the source and amount of property awarded to the parties, the parties' ages, the needs of the parties, the prior standard of living of the parties, the present situation of the parties, the health of the parties, and general principles of equity. Thus, plaintiff has failed to establish that the trial court adopted a flawed approach to determining the spousal support award.¹

Plaintiff next argues that the trial court failed to make factual findings regarding whether he had the ability to pay spousal support and whether defendant had the ability to work. Alternatively, plaintiff argues that even if the trial court made findings, those findings are clearly erroneous. We again disagree.

First, the trial court explicitly found that plaintiff "has the ability to pay in light of his ability to have supplemental income." That finding is not clearly erroneous because the evidence established that plaintiff received income from: (1) social security, (2) his maple syrup business, (3) snowplowing and selling firewood, and (4) his Consumer's Energy stock.² There also was testimony that plaintiff had earned money from the sale of Christmas trees on his mother's property and could realize income from the sale of Christmas trees on his property. Merely because there was uncertainty regarding the exact amount of plaintiff's monthly income does not mean that the trial court clearly erred in finding he had the ability to pay the amount awarded.³ Accordingly, we are not left with a definite and firm conviction that a mistake has been made.

Second, the trial court specifically found that defendant had health concerns that limited her ability to work. Defendant testified that she had significant problems, and especially with her legs. Thus, the trial court's finding that defendant's health adversely affected her ability to

¹ Plaintiff also argues that the trial court was prohibited from considering the prognosticator because it was never received into evidence, it was "rank hearsay," and suffers from "further evidentiary violations too numerous to mention." Plaintiff failed to support or explain his conclusory statements. See *Lawrence v Will Darrah & Assoc, Inc*, 445 Mich 1, 4 n 2; 516 NW2d 43 (1994) (quotation marks, citation, and brackets omitted) ("failure to brief a question on appeal is tantamount to abandoning it.").

² Plaintiff also testified that he typically receives approximately \$1,000 from rental property that he inherited.

³ Further, the court noted that plaintiff's restaurant expenses were unclear, but found that he had supplemental income regardless.

work was not in error.⁴ Further, the trial court did consider the IRA money defendant received, finding that defendant had to rely on that money to make up for any deficit in the spousal support and social security.

Plaintiff next argues that the spousal support award was inequitable. We disagree once more. Plaintiff's social security income was almost three times the amount of defendant's social security income. Further, in the property division settlement plaintiff received the income producing assets, such as the maple syrup business as well as Christmas trees that potentially could yield \$20,000. Defendant, on the other hand, was awarded part of the IRA account. She also had her relatively modest social security income, presumably lower because she had been working at the restaurant without a salary for 13 years. She also had considerable medical issues, effectively preventing her from working.

The trial court appropriately calibrated the award, finding that it was "not satisfied that the Court is required or in this circumstance must make up the complete difference between [defendant's] budget and her Social Security income[.]" Rather, it recognized that defendant was required to dip into her IRA award to make up the difference. The court also justified the amount of the award in reference to the parties' expenses and income derived from social security. Because we find that the trial court's spousal support award reflected a proper balance of the incomes and needs of the parties, without impoverishing either party, we find no error requiring reversal. *Myland*, 290 Mich App at 695.

III. CONCLUSION

The trial court made no errors requiring reversal of its order granting spousal support to defendant. We have reviewed all other arguments in plaintiff's brief and find them to be without merit. We affirm.

/s/ Michael J. Riordan

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly

⁴ Moreover, while plaintiff objects to the permanency of the award, he does so without articulating his reasons or providing legal support for his claim that the trial court erred. *Lawrence*, 445 Mich at 4 n 2 (quotation marks and citation omitted) ("failure to brief a question on appeal is tantamount to abandoning it."); *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).