

FILED: December 12, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Marriage of

KELLY EUGENE STEELE,
Petitioner-Appellant,

and

KELLY ANNE STEELE,
Respondent-Respondent.

Multnomah County Circuit Court
080868370

A143696

Merri Souther Wyatt, Judge.

Argued and submitted on October 03, 2011.

John M. Petshow argued the cause and filed the briefs for appellant.

Steven R. Scharfstein argued the cause for respondent. With him on the brief was Moore Law Group, P.C.

Before Ortega, Presiding Judge, and Brewer, Judge, and Hadlock, Judge.

ORTEGA, P. J.

Affirmed.

1 ORTEGA, P. J.

2 Husband appeals a general judgment of dissolution, challenging an award
3 of indefinite spousal support to wife and three supplemental judgments awarding wife
4 attorney fees. We conclude that the trial court's award of indefinite unallocated
5 compensatory and maintenance spousal support of \$4,200 per month is within the range
6 of legally correct outcomes and reject husband's attorney fee challenge without further
7 discussion.

8 Husband seeks *de novo* review, requesting that we make one or more
9 factual findings anew on the record and identifying those facts that he contends "do not
10 comport with the evidence in the record." We exercise our discretion to review *de novo*
11 only in "exceptional cases," ORAP 5.40(8)(c), and we are not persuaded that this is such
12 a case. ORS 19.415(3)(b). Accordingly, because we decline to review the facts *de novo*,
13 we are bound by the trial court's findings of historical fact if there is any evidence in the
14 record to support them. [Berg and Berg](#), 250 Or App 1, 2, 279 P3d 286 (2012). "[T]he
15 trial court's award will be upheld if, given the findings of the trial court that are supported
16 by the record, the court's determination that an award of support is 'just and equitable'
17 represents a choice among legally correct alternatives." *Id.*

18 We state the facts as the trial court found them and as supplemented by our
19 review of the record. The parties were married for 24 years and, at the time of the trial,
20 both were in their mid-forties. Wife had completed two-and-one-half years of college at
21 the time they married, and she completed her degree during the early years of the

1 marriage. Initially, she worked in a college admissions office, but she quit her job in
2 1992 when the parties' first child was born. The parties had agreed that, once they had a
3 child, wife would stay home while husband provided the family's sole source of income.
4 The parties had a second child in 1998. At the time of trial, husband had custody of the
5 older child and mother had custody of the younger child.

6 Husband has been a BIOS software engineer since 2000. He lacks a
7 college degree (unusual for his field), but has an innate ability for the work; he showed an
8 aptitude for software programming while working for the Gresham Police Department in
9 the 1990s as a technician, and he rose quickly in the field. He has received specialized
10 training and has held a series of jobs as a software engineer. The trial court found that, at
11 the time of trial, husband's gross monthly income was \$11,560. Wife, although
12 unemployed, was taking online classes toward a master's degree in accounting, which she
13 expected to complete in two years. She had not worked since quitting her job in college
14 admissions in 1992. The trial court imputed the minimum wage of \$1,455 as wife's gross
15 monthly income.

16 During the marriage, the family's finances were "sometimes good and
17 sometimes bad." However, the record reflects a series of financial difficulties. The
18 parties lost their 2,500 square foot, four-bedroom, two-and-one-half bathroom Gresham
19 house through foreclosure. The parties also had a vehicle repossessed and filed a joint
20 bankruptcy at some point during the marriage. Wife also filed an individual bankruptcy
21 during the marriage, and she testified at trial that she planned to file another bankruptcy

1 following the dissolution. Husband had liquidated the majority of his retirement account
2 during the marriage to pay off debt. The marital estate at the time of the trial was
3 practically nonexistent.

4 Wife testified that her employment prospects were minimal, particularly in
5 light of her physical ailments and the parties' poor financial history. She explained that
6 she suffers from various health problems, including permanent disabilities related to two
7 auto accidents and complications from diabetes, which have affected her ability to work.
8 In addition, wife testified that, even if she finished her master's degree, her chosen field
9 of accounting likely would be foreclosed to her as result of the parties' financial history--
10 that is, a person with her credit history would be undesirable to employers in the financial
11 services field.

12 After the trial, the court awarded wife "indefinite unallocated compensatory
13 and maintenance spousal support" of \$4,200 per month based on the duration of the
14 marriage, wife's contribution to husband's advancement in his career and earning
15 capacity, wife's custody of the younger child, the disparity in earning capacity between
16 the parties, wife's unemployability, the tax consequences of the award to the parties, and
17 the limited marital estate.

18 We begin with a brief overview of the types of spousal support that the
19 court awarded here, keeping in mind that "[t]he lodestar of a court's charge is to make a
20 spousal support award that is 'just and equitable.'" [*Bailey and Bailey*](#), 248 Or App 271,
21 276, 273 P3d 263 (2012); *see* ORS 107.105(1)(d). Compensatory spousal support is

1 authorized

2 "when there has been a significant financial or other contribution by one
3 party to the education, training, vocational skills, career or earning capacity
4 of the other party and when an order for compensatory spousal support is
5 otherwise just and equitable in all of the circumstances."

6 ORS 107.105(1)(d)(B). In determining the amount and duration of such an award, the
7 court considers the amount, duration, and nature of the contribution by the spouse, the
8 duration of the marriage, the relative earning capacity of the parties, the extent to which
9 the marital estate has already benefited from the contribution, the tax consequences to
10 each party, and any other factors the court deems just and equitable. *Id.*

11 Maintenance support generally "allows one financially able spouse to
12 contribute to the support of the other, depending on the financial needs and resources of
13 each party." [*Abrams and Abrams*](#), 243 Or App 203, 207, 259 P3d 92, *rev den*, 350 Or
14 716 (2011). Although it is true, as husband points out, that, in determining the amount
15 and duration of spousal support, the goal of self-sufficiency is an important consideration,
16 in long-term marriages "the parties should be separated on as equal a footing as possible,"
17 and the primary goal of spousal support is to provide a standard of living to both spouses
18 that is roughly comparable to the one enjoyed during the marriage. *Id.* at 211-12. In
19 determining the proper amount and duration of a maintenance spousal support award, the
20 court considers the duration of the marriage; the age of the parties; their health, including
21 their physical, mental, and emotional condition; the standard of living established during
22 the marriage; the relative income and earning capacity of the parties; a party's training
23 and employment skills and work experience; the financial needs and resources of each

1 party; the tax consequences to each party; and a party's custodial and child support
2 responsibilities. ORS 107.105(1)(d)(C).

3 In a letter opinion to the parties, the court ruled that
4 "[w]ife is awarded indefinite unallocated compensatory and maintenance
5 spousal support * * * for all the reasons stated in [wife's] trial memorandum
6 and the court's prior findings, in the amount of \$4,200 per month. The
7 Court considered that [wife] was a homemaker and stayed home to raise the
8 parties' two children and to enable husband to pursue his career. Husband
9 has custody of the oldest daughter who has two years of high school
10 remaining, while [wife] has custody of the 10 year-old daughter with eight
11 years of school remaining. [Wife] is working on a Master's degree but is
12 unemployable, due in large part to the parties' poor financial history.
13 Husband's spousal support is deductible for him but taxable to Wife."

14 Consistently with the letter opinion, the court's judgment of dissolution explained that,
15 "in addition to the findings noted in its opinion letter,"

16 "[h]usband is highly qualified and very intelligent, as reflected in his job
17 career and qualifications; this is a 24 year marriage; there are two joint
18 children; Wife has historically been a homemaker, and has health issues
19 which affect her employment options; Wife is in graduate school; Wife has
20 lesser employment prospects in her lifetime; Husband's financial
21 misconduct has impacted Wife's job prospects; Husband's mismanagement
22 has caused home and vehicle foreclosures, and two bankruptcies[.]"

23 On appeal, husband contends that the amount and duration of spousal
24 support is "outside the range of reasonableness by a significant enough margin so as not
25 to be just and equitable in the totality of the pertinent circumstances." In particular, he
26 contends that the award exceeds wife's monthly needs by \$500, while it leaves him with
27 insufficient funds to meet his own needs. Further, although husband recognizes that the
28 marriage was of long duration, he asserts that wife will have an advanced college degree
29 that would allow her to surpass husband's earning capacity. Alternatively, he claims that,

1 even if wife is only able to make a modest living, she will eventually be able to meet her
2 expenses without the level of support ordered by the court.

3 As noted, the goal of spousal support in a long-term marriage such as this is
4 to leave the parties on as equal footing as possible. However, other than the bare
5 assertion that the award will leave him with insufficient funds to meet his own expenses,
6 husband fails to explain that statement or point to evidence in the record that supports it.
7 Accordingly, we reject it. As to husband's argument that wife's earning capacity was
8 underestimated by the court when making the award, we are bound by the trial court's
9 determination of wife's limited earning capacity because evidence supports its finding
10 that wife was essentially "unemployable," given her physical infirmities, her limited
11 training and employment skills, and the parties' history of bankruptcy and foreclosure.
12 Accordingly, given the duration of the marriage, wife's poor health, the clearly disparate
13 earning capacities of the parties, and the other factors considered by the court, the spousal
14 support award was within the range of legally correct alternatives.

15 Finally, we address husband's argument that the trial court impermissibly
16 used husband's "financial misconduct" and "mismanagement" of the marital estate as a
17 basis for awarding compensatory spousal support. He declares, relying on [*Garza and*](#)
18 [*Garza*](#), 201 Or App 318, 118 P3d 824 (2005), that an award of compensatory spousal
19 support cannot be a punitive measure for "mistreatment" of the spouse. In particular,
20 husband asserts that attributing the foreclosures and other financial problems of the
21 family to husband "just because he was the breadwinner" was punitive.

1 We reject husband's assertion that the court impermissibly granted
2 compensatory spousal support on the basis of its finding that husband mismanaged the
3 parties' finances. The court's findings related to husband's "financial misconduct" and
4 "mismanagement," when read in context, refer to the effect of those actions on the marital
5 estate, as well as on wife's employment prospects. Accordingly, there is no indication
6 that the court awarded compensatory spousal support as a punitive measure for husband's
7 financial "mismanagement."

8 Affirmed.