

STATE OF MICHIGAN  
COURT OF APPEALS

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CONNIE D. LUDGE,

Plaintiff–Appellee,

v

ROLF LUDGE,

Defendant–Appellant.

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UNPUBLISHED

May 28, 1996

No. 181808

LC No. 93-079781-DO

Before: Sawyer, P.J., and Griffin and M.G. Harrison,\* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court’s judgment of divorce with respect to the division of the parties’ marital property and the award of alimony to plaintiff. We affirm.

I

Defendant first argues that the trial court’s division of property was inequitable because the court failed to (1) consider all the necessary and relevant factors, including plaintiff’s extramarital affairs, before dividing the parties’ property; (2) characterize defendant’s corporate tax liability as a “marital debt” to be shared equally between the parties; and (3) make specific factual findings as to the value of the property and the parties’ businesses. We disagree.

In reviewing a dispositional ruling in a divorce case, this Court first reviews the trial court’s findings of fact for clear error and then decides whether the dispositional ruling was fair and equitable in light of those facts. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). Property dispositional rulings will be affirmed unless we are left with the firm conviction that the distribution was inequitable. *Id.*

The goal of distributing marital assets in a divorce proceeding is to reach a “fair and equitable” distribution in light of all the circumstances. *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). To reach an equitable division, the trial court is given broad discretion in fashioning

its rulings, is held to no strict mathematical formula, and only is required to consider the factors relevant to the facts of the case before it. *Sands v Sands*, 442 Mich 30, 34-35; 497 NW2d 493 (1993). Among the factors to be considered are the source of the property; the parties' contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity. *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992).

After reviewing the record, we are not left with a firm conviction that the ordered property distribution was inequitable, or that the court committed clear legal error in its factual findings.

First, as to the court's consideration of the relevant factors, the record clearly establishes that the trial court not only addressed the issue of fault and discounted plaintiff's extramarital affairs as being the immediate cause of the marital breakdown, it also specifically addressed the duration of the parties' marriage, the parties' needs and earning capacity, and their relative contributions to the marriage. We find no factor that was relevant to the present case, yet neglected by the trial court, nor are we able to find any definite mistake in the court's findings with respect to the factors addressed. *Hanaway, supra* at 292.

Next, as to defendant's argument that the court erred in attributing the entire tax liability to him, the record reveals that defendant's close corporation became liable for approximately \$60,000 in federal and state tax liability, and that defendant neglected to provide the court with evidence that he, rather than the corporation, was personally responsible for the debt, or that plaintiff in any way directly benefited from the corporation's refusal to pay its taxes (i.e., defendant presented no proof that such money was used to provide for his family).

In *Perrin v Perrin*, 169 Mich App 18, 23; 425 NW2d 494 (1988), this Court explained that the role of the trial court is that of "factfinder," not "fact provider," and noted that it was the parties' obligation to present evidence beyond that of "vague generalities." Thus, we find no clear error in the court's unwillingness to devise an arbitrary figure, nor in its finding that defendant's corporate tax liability is not a marital debt subject to division between the parties. *Hanaway, supra* at 292. We also note that defendant was previously informed by the court, during a motion hearing, of his obligation to produce evidence necessary to hold plaintiff mutually liable for the tax debt. It is that obligation that defendant failed to meet.

Similarly, defendant argues that the court erred in failing to place a definite cash value on each of the parties' businesses. Once again, we find that the trial court cannot be faulted for the parties' failure to produce relevant evidence for its consideration. *Perrin, supra* at 23.

## II

Defendant next argues that the trial court abused its discretion in imposing sanctions on him, contending that a real dispute existed regarding the ownership of the parties' horse trailer, and that he

did not act in bad faith or intentionally conceal assets when he failed to produce the trailer, pursuant to court order, for plaintiff's use . We disagree.

In securing a party's compliance to court orders, the trial court is given broad discretion in imposing sanctions, or requiring a party to pay the other's attorney fees and/or costs. *Sands, supra* at 36; *Mauro v Mauro*, 196 Mich App 1, 3; 492 NW2d 758 (1992). We find that the trial court in this case did not abuse that discretion.

In *Sands, supra* at 36-37, although our Supreme Court was unwilling to qualify certain deliberate behavior as justifying automatic sanctions, it did note that sanctions were an option when a party engaged in "devious and deceptive conduct undertaken with the intent of misleading the court." Also, in *Hanaway, supra* at 298, this Court held that a party's improper conduct could be considered in the court's division of marital property, and in fact, could justify an unequal division as being "equitable" under the circumstances.

Based on the record, it is evident that a lot of time and effort were spent on the court's repeated effort to push defendant into compliance, and that defendant routinely displayed reluctance and reported "half-truths," with the intent of defying both the court and plaintiff. Furthermore, considering that the trial court is in the best position to assess the veracity of the situation before it, we find that it did not abuse its discretion in determining that defendant's behavior was "devious, deceptive, and deliberate" to the extent justifying a sanctions penalty.

### III

Last, defendant argues that the trial court, in failing to consider and weigh the needs and incomes of the parties, plaintiff's fault, and defendant's enormous tax debt, abused its discretion in awarding alimony to plaintiff. We disagree.

On appeal, the trial court's factual findings concerning an award of alimony are reviewed for clear error. *Beckett v Beckett*, 186 Mich App 151, 153; 463 NW2d 211 (1990). The court's findings are presumed correct and defendant bears the burden of showing otherwise. *Id.* A finding is clearly erroneous if we, after reviewing the entire lower record, are left with a definite and firm conviction that a mistake was made. *Ackerman v Ackerman*, 197 Mich App 300, 301-302; 495 NW2d 173 (1992). After determining that the court's findings of fact are not clearly erroneous, we must then determine whether the alimony award is fair and equitable in light of those facts. *Id.*

Here, the record clearly establishes that the trial court specifically addressed the factors defendant now claims it neglected, and in turn found that plaintiff was not disproportionately at fault for the breakdown of the parties' marriage, that defendant had a far greater earning capacity, that plaintiff was in need of assistance, and that despite defendant's tax liability, his alimony obligation could come from the equity he received from the sale of the marital home. Because the court's findings are supported by the evidence presented at trial, with no "firm and definite mistake" being found by this Court, the presumption stands that such findings are without error. *Beason v Beason*, 435 Mich 791,

804-805; 460 NW2d 207 (1990). In addition, considering the court's finding that defendant had the ability to pay alimony, and that plaintiff had a need for it, we find that the trial court's alimony award was "fair and equitable" under the circumstances. *Ackerman, supra* at 302.

Affirmed.

/s/ David H. Sawyer  
/s/ Richard Allen Griffin  
/s/ Michael G. Harrison