STATE OF MICHIGAN

COURT OF APPEALS

ROBERT QUINN,

Plaintiff–Appellee,

v

SALLY QUINN,

Defendant–Appellant.

UNPUBLISHED
August 2, 1996

No. 180861
LC No. 92-051719-DM

Before: Neff, P.J., and Fitzgerald and C. A. Nelson,* JJ.

PER CURIAM.

Defendant appeals by right from the terms of a divorce judgment, challenging the trial court's division of property and its refusal to grant her permanent alimony. We reverse in part and affirm in part and remand for further proceedings.

I

The trial court's award of only thirty-six months of alimony was not a fair and reasonable balancing of the equities. MCL 552.23; MSA 25.103; *Ianitelli v Ianitelli*, 199 Mich App 641, 642-643; 502 NW2d 691 (1993). Defendant devoted over twenty years of her adult life caring for plaintiff and the couple's children in the traditional role of homemaker and is now entering her later years without skills, earning capacity or job security, all of which plaintiff enjoys. See *McNamara v McNamara*, 178 Mich App 382, 389-390; 443 NW2d 511 (1989). There is no indication that defendant will be able to find employment that will provide a sustaining wage. Without alimony, her lifestyle would be dramatically affected with little likelihood of sustaining the standard of living she enjoyed during the marriage, which plaintiff still has the capacity to sustain for himself. See *Hanaway v Hanaway*, 208 Mich App 278, 296; 527 NW2d 792 (1995). Further, the court's finding that plaintiff made the greater contribution to the marital estate because he earned most of the money was clearly erroneous. The couple made a joint decision to divide the labor within the family with plaintiff pursuing his career while defendant cared for the family. Plaintiff was free to pursue his career because defendant was

* Circuit judge, sitting on the Court of Appeals by assignment.

responsible for the household tasks. This was a contribution that allowed plaintiff to reach his earning capacity. *Id*. at 294. "That [defendant's] contribution to the asset[s] came in the form of household and family services is irrelevant." *Id*. Absent ongoing alimony, at least until defendant may draw from the pension, she is likely to be left impoverished and therefore longer term alimony is indicated. On remand, the trial court is ordered to award such alimony as is equitable in light of all of the relevant circumstances. *Ianitelli, supra.* Once a new alimony determination is made, the trial court shall reevaluate whether an additional award of attorney fees is indicated. *Hanaway, supra*.

II

Although plaintiff chose to leave the marriage and nothing indicated that defendant sought or wished for the divorce, she did admit that she shared in the blame for the breakdown of the marriage. Further, plaintiff testified that defendant's conduct contributed to his dissatisfaction with the marriage, although there was evidence that plaintiff was possibly prompted to leave the marriage to pursue another relationship. Therefore, there was evidence that both parties were at fault and the trial court's finding that neither party should be attributed fault was not clearly erroneous. Plaintiff's counsel's statements in closing argument regarding plaintiff's fault for the breakdown of the marriage were not binding admissions, *Tozer v Kerr*, 342 Mich 136, 140-141; 69 NW2d 171 (1955), or evidence, see *Zantop Airlines v Eastern Airlines*, 200 Mich App 344, 364; 503 NW2d 915 (1993). Accordingly, this finding of fact by the trial court was not clearly erroneous.

III

Next, because we could find no explanation in the record or in plaintiff's brief of why defendant's ability to draw on her interest in the pension was limited, we remand this issue to the trial court. The court should modify the ruling to accommodate defendant if an earlier election by defendant would impose no burden on plaintiff. However, the court's order regarding the three-year delay in defendant taking her share of the VALIC account is affirmed. Defendant abandoned the issue by failing to cite any authority for her assertion that the court lacked the authority to enter the order. *Vugterveen Systems, Inc v Olde Millpond Corp*, 210 Mich App 34, 46-47; 533 NW2d 320 (1995).

IV

Finally, the trial court's finding, as applied to the property division, that plaintiff made the greater contribution to the marital estate, was clearly erroneous for the reasons stated above. Further, defendant supplemented the family income through her craft business, financial gifts and loans from her parents and savings she brought into the marriage. However, even with the court's erroneous factual finding, we find the disposition dividing the property equally to be equitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). In addition, the court's finding that plaintiff's Master's degree was not a marital asset was not clearly erroneous because no evidence of concerted family effort regarding the degree was introduced, except disputed evidence regarding the funds used. *Postema v Postema*, 189 Mich App 89, 101; 471

NW2d 912 (1991). Accordingly, except as otherwise noted in this opinion, the property division in the judgment of divorce is affirmed.

Affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet t. Neff
/s/ E. Thomas Fitzgerald
/s/ Charles A. Nelson