

STATE OF MICHIGAN
COURT OF APPEALS

GARRY J. BUNDY,

Plaintiff-Appellant,

v

JANET M. BUNDY,

Defendant-Appellee.

UNPUBLISHED
October 22, 1996

No. 177057
LC No. 88-007567-DM

Before: White, P.J., and Sawyer and R.M. Pajtas,* JJ.

PER CURIAM.

Plaintiff appeals from a judgment of divorce entered by the circuit court. We affirm in part, reverse in part and remand.

Initially, we will collectively consider plaintiff's arguments related to alimony and attorney fees. Plaintiff argues that the trial court erred in awarding \$50,000 in alimony in gross and \$15,000 for defendant's attorney fees, those amounts to be paid in four installments over approximately a year-and-a-half period, as well \$550 per week in transitional alimony for 3-1/2 years, totaling approximately \$100,000. We do not believe that any particular award is improper. That is, the trial court considered the appropriate factors for awarding alimony, see *Ianitelli v Ianitelli*, 199 Mich App 641; 502 NW2d 691 (1993), and attorney fees, see *Jansen v Jansen*, 205 Mich App 169; 517 NW2d 275 (1994). Viewed alone, each particular award is justifiable.

However, the cumulative effect of the awards is certainly unjust in that plaintiff does not have the ability to pay as ordered by the court. The trial court found that plaintiff has \$6,480.71 per month in disposable income. That is approximately \$1500 per week. From that amount, plaintiff must pay \$550 in transitional alimony, \$327 in child support and \$223 in alimony and support arrearage. That leaves \$400 per week for plaintiff to pay the alimony in gross and attorney fees, as well as to live on. However, it would take in excess of \$400 per week to meet the payment schedule set in the judgment just to pay the alimony in gross and attorney fees. Therefore, even without considering living expenses, plaintiff would have a negative cash flow under the judgment. Furthermore, plaintiff was not awarded

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

any liquid assets to speak of under the judgment. Simply put, based upon the trial courts findings, there is not sufficient assets or income to provide plaintiff with the ability to pay the amounts awarded under the terms of the judgment.

Because there is nothing inherently erroneous with any of the individual awards, but only with the cumulative effect of the awards under the payment terms imposed by the trial court, we decline to modify the judgment ourselves. Rather, the trial court on remand shall reconsider the payment terms of its award and fashion an award which, when viewed as a whole, is fair to both parties and which plaintiff has the ability to pay.

The remaining issue to be resolved is the trial court's requirement that plaintiff pay for the travel expenses incurred for the visitations with the children. We are not persuaded that the trial court erred in its decision on this issue. *Koron v Melendy*, 207 Mich App 188; 523 NW2d 870 (1994).

Affirmed in part, reversed in part and remanded. We do not retain jurisdiction. No costs, neither party having prevailed in full.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Richard M. Pajtas