STATE OF MICHIGAN

COURT OF APPEALS

RICHARD W. RAU,

Plaintiff-Appellee,

v

DIANNE P. RAU,

Defendant-Appellant.

UNPUBLISHED
October 29, 1996

No. 183351
LC No. 93-005280-DO

Before: MacKenzie, P.J., and Jansen and T.R. Thomas,* JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce entered on February 6, 1995 in the Macomb Circuit Court. We affirm.

The parties were married in 1968. Their son was born in April 1975. Plaintiff filed for divorce in December 1993, and the case was referred to the Friend of the Court in September 1994. Plaintiff, a forty-eight-year-old insurance agent employed at Complete Protection Company, netted $7,000 and $8,000 in income in each of the two years previous to the hearing before the court-appointed referee. Defendant, who was forty-seven at the time of the hearing and was working as a secretary for the U.S. Army Tank Automotive Command, was earning nearly $30,000 a year. The parties agreed that neither was solely at fault for the breakdown of the marriage.

On appeal, defendant first contends that the trial court erred in denying her motion for contribution and marital expenses. Specifically, she contends that the court erred in adding the equity of the marital home to the marital estate without providing that plaintiff should pay one half of the mortgage and tax expenses while the parties were separated. In reviewing a dispositional ruling in a divorce case, we review the trial court's findings of fact for clear error and then decide whether the dispositional ruling was fair and equitable in light of the facts and circumstances. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). While defendant has failed to cite any authority to support her argument regarding this issue and thus has technically abandoned it, *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995), we nevertheless find

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

her contention to be without merit. The record reveals that the parties were separated and living apart well before the divorce action was filed. Common sense dictates that each party be responsible for their own living expenses during separation. Furthermore, the trial court's ruling on this issue was neither unfair nor inequitable in light of the testimony revealing plaintiff's declining health (he is diabetic) and the disparity in the parties' income. Finally, the record reveals that while the parties were living together in the marital home during the marriage, each contributed to its equity. Therefore, plaintiff was not required to make half of the mortgage and tax payments on the marital home when living in an apartment, even though the trial court valued the equity of the home when dividing the martial estate.

Next, defendant argues that the trial court erred in denying her motion to strike plaintiff's pleadings with regard to an alimony award since neither plaintiff's complaint nor his motion for referral to the Friend of the Court properly alleged need for such support as required by MCR 3.206(A)(5). We disagree. We review a trial court's discretionary decision to strike pleadings for an abuse of discretion. *Phillips v Deihm*, 213 Mich App 389, 394; 541 NW2d 566 (1995). Plaintiff's motion for referral to the Friend of the Court alleged that he was a diabetic in declining health. Plaintiff also alleged that defendant earned more money than he and that defendant was otherwise able to pay alimony. These allegations satisfy MCR 3.206(A)(5). Nevertheless, MCR 3.206(A)(5) does not require that allegations regarding spousal support be in the complaint or in some other written form. Accordingly, we find no abuse of discretion in denying the motion to strike.

Next, defendant contends that the trial court's $5,200 lump sum spousal support award to plaintiff was erroneous. In reviewing a dispostional ruling such as an award of alimony, we first review the trial court's findings of fact under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1993). If the findings are upheld, we then decide whether the ruling was fair and equitable in light of these facts. *Id*, pp 151-152. The ruling should be affirmed unless we are left with a firm conviction that the division was inequitable. *Id.*, p 152. The main objective in awarding alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party. *Hanaway, supra*, p 295. We believe that the record supports the trial court's findings. The referee's report contains a thorough summary of the relevant testimony including the great disparity in their incomes. Moreover, such a disparity can be a factor for an award of alimony. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993). Accordingly, we are not firmly convinced that the trial court's lump sum award was inequitable.

Finally, defendant contends that the trial court's award of a portion of defendant's auto accident settlement proceeds to plaintiff was clearly erroneous. We disagree. Again, we employ the clearly erroneous standard to the court's factual findings and examine the award in light of the equities of the case. *Hanaway, supra*. The referee found that defendant's accident proceeds were accumulated more than ten years prior to the filing of this action and that the proceeds were jointly converted into financial instruments bearing both parties' names as primary payees. The record supports these findings. The referee then awarded plaintiff $15,000 of the remaining $28,000 originating from the accident proceeds. We find an award of this nature to be analogous to an inheritance. An inheritance may be treated as part of the marital estate and thus subject to division if an award otherwise was insufficient to maintain either party. *Demman v Demman*, 195 Mich App 109, 112-113; 489 NW2d

161 (1992). Because of the great disparity in the parties' incomes and in light of the fact that plaintiff actually assisted defendant in procuring the settlement proceeds shortly after the accident, we do not find the award to be either unfair or inequitable.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Kathleen Jansen
/s/ Terrence R. Thomas