STATE OF MICHIGAN

COURT OF APPEALS

RENEE K. THIBAULT

Plaintiff-Appellee,

v

MICHAEL A. THIBAULT,

Defendant-Appellant.

UNPUBLISHED
December 20, 1996

No. 188667
LC No. 94-418085

Before: Doctoroff, C.J. and Corrigan and Danhof,* JJ.

PER CURIAM.

Defendant appeals by right the April 7, 1995, judgment of divorce which granted him a divorce from plaintiff. Defendant contests the trial court's distribution of the marital property. We affirm.

Defendant first argues that, in the interest of fairness, the judgment of divorce should be set aside. Defendant contends that his attorney was having chest pains during the settlement hearing and thus agreed to a settlement that was "grossly unfair." We find that the settlement was a fair disposition of the marital property.

Under the settlement agreement, defendant was to retain the marital home and his car. In return, defendant was to make a payment to plaintiff which represented her share in the marital home and her equity in his car. In addition to the lump sum payment she was to receive from defendant, plaintiff was to keep her car and receive her share of the proceeds of defendant's 401(k). Plaintiff agreed to pay off the various debts she owed.

The disposition of property in a divorce case should be awarded based on all relevant factors and the individual circumstances of the case. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). These factors include the duration of the marriage, contributions of the parties to the marital estate, necessities and circumstances of the parties, earning abilities of the parties, and general principles of equity. *Perrin v Perrin*, 169 Mich App 18, 22; 425 NW2d 494 (1988). In this case, the parties were married for three years, and the brunt of the care for their two special needs children will

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

fall on plaintiff. In addition, defendant was gainfully employed while plaintiff was not. Further, there was evidence that defendant was physically and mentally abusive to plaintiff. Under these circumstances, the trial court's disposition of the marital assets and liabilities was fair and equitable. *McDougal, supra* at 89; *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987).

Defendant next argues that the settlement was reached as a result of coercion and thus should be set aside and the case remanded for another pre-trial hearing. We disagree. A trial court's finding regarding the validity of the parties' consent to a settlement agreement will not be overturned absent an abuse of discretion. *Keyser v Keyser*, 182 Mich App 268, 270; 451 NW2d 587 (1990). Because there is nothing on the record to suggest that the settlement was reached as a result of fraud, duress, mutual mistake or severe stress, *Id.* at 269-270; *Hall v Hall*, 157 Mich App 239, 244; 403 NW2d 530 (1987), the trial court did not abuse its discretion when it refused to set aside the settlement agreement. *Keyser, supra* at 270.

Finally, defendant argues that the actual judgment of divorce did not reflect the settlement as reached at the settlement hearing. Defendant thus contends that the judgment should be set aside. We disagree.

In reviewing the settlement agreement with the trial court, plaintiff's attorney stated that defendant was to pay "the sum total of $8,104.50 plus whatever the Cobra cost are for the six months." Upon the court's inquiry as to what the $8,104.50 represented, plaintiff's attorney stated:

> That represents the value, marital debts, the equity in the marital home, the equity in the two cars and a 401(k).
>
> THE COURT: Okay.
>
> PLAINTIFF'S ATTORNEY: *In addition* we're going to take the 401(k) balance that he has as of December 31st of this year and assigned it to a quadro through my client. [Emphasis added.]

Defendant's attorney indicated that he agreed with the terms of the settlement as set forth by plaintiff's attorney. On the record, defendant's attorney stated, "[t]hat's, basically, the full agreement of the parties."

Defendant now complains because the trial court's order requires defendant to pay plaintiff a lump sum of $8,104.50 and, in addition, it awards "One Hundred (100%) Percent of the Defendant's 401(k) Plan as of the December 31, 1994, by utilization of a Qualified Domestic Relations Order. Any amounts accumulated after December 31, 1994, is Defendant's property solely." Defendant contends that, under the settlement agreement, he was to pay a *total* of $8,104.50, with the payment out of the 401(k) to go toward that sum. Defendant's argument is not supported by the record. Although plaintiff's attorney mentioned the 401(k) while stating what the $8,104.50 represented, she specifically stated that the balance of the 401(k) as of December 31, 1994, would be given to plaintiff *in addition*

to the other assets awarded to plaintiff. Accordingly, the trial court's order was in compliance with the settlement to which both parties agreed on the record. We find no error in the trial court's order.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Maura D. Corrigan
/s/ Robert J. Danhof