

STATE OF MICHIGAN
COURT OF APPEALS

JANET M. BLANSHINE,

Plaintiff-Appellee,

v

ROLLIN BLANSHINE,

Defendant-Appellant.

UNPUBLISHED
February 28, 1997

No. 180980
Muskegon Circuit Court
LC No. 93-29969-DO

Before: Markey, P.J., and Michael J. Kelly and M.J. Talbot,* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of divorce. Specifically, defendant challenges the trial court's distribution of the marital assets and award of spousal support to plaintiff. We affirm.

Defendant first claims that the division of the marital estate was disproportionate because plaintiff was awarded \$320.00 per week in alimony from defendant, two properties valued at approximately \$50,000.00, one of which produces rental income of \$85.00 per week, plus sixty percent of the remaining marital estate. Defendant maintains that the court's finding that plaintiff lacks the formal training and skills necessary to work is clearly erroneous. Defendant further contends that the court erred in only considering defendant's admitted extramarital affair and resulting fault in determining the division of assets. We disagree.

On appeal, this Court will uphold the trial court's findings of fact unless they are clearly erroneous, and we will affirm a dispositional ruling unless we are left with the firm conviction that the ruling was inequitable in light of those facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *Magee v Magee*, 218 Mich App 158, 161-162; 553 NW2d 363 (1996).

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

The trial court made the following findings of fact in this case: (1) both parties were fifty-five years old, (2) the marriage lasted for thirty-four years, (3) plaintiff was the primary caretaker of the children and a thirty-three-year contributor to the development and survival of the family business, (4) she was unable to produce income and lacked retirement funds, in part due to defendant's actions in contravention of court order, (5) defendant was at fault for the breakdown of the marriage, and (6) defendant was recalcitrant in disclosing his income and assets, which caused the court to take extraordinary measures, including the appointment of a receiver. The only factual findings that defendant disputes involve plaintiff's ability to work and his fault in causing the breakdown of the marriage. Defendant maintains that the skills plaintiff learned during her thirty-three years of clerical work for the family business could be easily transferred to another job. We do not believe, however, that it was clear error for the trial court to determine that a fifty-five-year-old woman with no formal training or work experience outside of the family business would have difficulty finding suitable employment. Also, although defendant testified that his thirteen-year affair did not cause the breakdown of the marriage, we are not left with a firm and definite and firm conviction that the trial court erred in placing fault for the demise of this marriage on defendant. MCR 2.613(C); see also *Poirier v Grand Blanc Twp*, 192 Mich App 539, 548; 481 NW2d 762 (1992).

Based upon these factual findings that are supported by the record, we find that the court's dispositional ruling is not inequitable. In *Sparks, supra* at 159-160, our Supreme Court established nine factors that the trial court should consider in reaching an equitable division of property. Fault is a relevant consideration in the distribution of property, but the trial court must consider all the relevant factors and not assign disproportionate weight to any one factor. *Id.* at 158. The trial court herein based its dispositional ruling on five of the factors listed in *Sparks* and also considered a sixth factor. This sixth factor, defendant's recalcitrance in disclosing his income and assets, is also a relevant factor that the court may consider in fashioning an equitable division of property. *Sands v Sands*, 442 Mich 30, 36-37; 479 NW2d 493 (1993); *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). In both *Sparks, supra*, and *Vance v Vance*, 159 Mich App 381, 386; 406 NW2d 497 (1987), upon which defendant relies, this Court found the property dispositions inequitable because fault was the only or predominant factor considered by the trial courts. Unlike the trial courts in *Sparks* and *Vance*, the trial court in this case made findings of fact regarding numerous relevant factors. Defendant's fault was a significant factor in the trial court's decision but certainly not the predominant factor. In light of the trial court's findings and the evidence presented on the record, this Court is not left with the firm conviction that the dispositional ruling was inequitable. *Magee, supra* at 162.

Further, given defendant's disruptive conduct during the proceedings, including his refusal to provide accurate financial information and his failure to comply with court orders regarding the marital assets, the separate award of attorney fees to plaintiff was also appropriate. *Lesko v Lesko*, 184 Mich App 395, 406; 457 NW2d 695 (1990).

Defendant also contends that the court improperly awarded plaintiff spousal support in another attempt to penalize him for breaking up the marriage. Defendant further argues that the court committed

legal error by not basing the award on defendant's earning ability or plaintiff's potential earning capacity. We disagree. The divorce court has the discretion to award alimony that it believes is just and reasonable under the circumstances. *Id.*; *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993). The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Magee, supra*; *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992).

In its opinion, the court found "that plaintiff's age, lack of formal training, limited skills, and defendant's fault all support an award of alimony to plaintiff." The court also noted in its findings of fact that plaintiff was unable to continue her employment with the family business as a result of the tension of the divorce proceedings and plaintiff's discovery of defendant's thirteen-year-long extramarital affair. These findings constitute several of the relevant factors to be considered in determining an alimony award. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

Moreover, defendant provided the court with very little information upon which to make its determination concerning the amount of the alimony award. The trial court appeared to base the amount on its finding that "Plaintiff was paid \$400 per week for her work, and then her wages were utilized to make house payments on the family home." Because defendant did not provide to the court any concrete documentation regarding his current income and expenses and, according to plaintiff, began refusing to bid on jobs and operating his business via cash transactions only, it was difficult for the court to make such an evaluation. Indeed, the court had the discretion to consider defendant's unexercised ability to earn income if the court believed plaintiff's claim that defendant was voluntarily reducing his income. *Healy v Healy*, 175 Mich App 187, 191-192; 437 NW2d 355 (1989). Accordingly, the decision of the trial court to award spousal support was equitable in light of the court's findings and the parties' circumstances.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Michael J. Talbot