

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT L. TOMPKINS,

Plaintiff-Appellant,

v

JUDITH M. TOMPKINS,

Defendant-Appellee.

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UNPUBLISHED

April 22, 1997

No. 193777

Oakland Circuit Court

LC No. 90-388785

Before: Doctoroff, P.J., and MJ Kelly and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's opinion and order on remand awarding defendant \$750 per month in alimony. We affirm.

On remand, this Court instructed the trial court to determine the amount of alimony to which defendant is entitled without considering defendant's support of the parties' adult daughters. In this appeal, plaintiff first argues that the trial court erred in denying his motion to reopen proofs on the grounds that it would exceed the scope of remand. Plaintiff contends that his request would not go beyond this Court's order because the reopening of proofs would ensure that any remand decision regarding alimony would be based on both the present circumstances and those in effect at the time of the judgment of divorce. We disagree.

The decision whether to reopen proofs in a divorce case is within the sound discretion of the trial court. *Esslinger v Esslinger*, 9 Mich App 11, 16; 155 NW2d 702 (1967). When a matter is remanded by an appellate court to the trial court, the trial court possesses the authority to take action that is consistent with the opinion of the appellate court. *Hadfield v Oakland Co Drain*, 218 Mich App 351, 355; 554 NW2d 43 (1996); *Vanderwall v Midkiff*, 186 Mich App 191, 196; 463 NW2d 219 (1990). We believe that plaintiff's motion was an attempt to use the remand to discover evidence of changed circumstances that would support a modification of alimony. Such proofs would be beyond the scope of remand. Therefore, the trial court did not abuse its discretion in denying plaintiff's motion to reopen proofs.

Plaintiff next argues that, even if the trial court was prohibited from reopening proofs by this Court's remand order, the trial court had discretion to modify the award of alimony after it made its decision on the issue on remand. We disagree. The modification of an alimony award must be based on new facts or changed circumstances arising after the judgment of divorce. *Ackerman v Ackerman*, 197 Mich App 300, 301; 495 NW2d 173 (1992). The party moving for modification has the burden of showing such new facts or changed circumstances. *Id.* In the present case, the trial court denied plaintiff's motion for modification of the judgment pending its review of the alimony award on remand. Although plaintiff continues to have the right to bring a post-judgment motion in the trial court to modify the alimony award upon a showing of changed circumstances, he has not done so. It is not necessary for this Court to review an issue on which no ruling was made. *Vugterveen v Olde Millpond*, 210 Mich App 34, 38; 533 NW2d 320 (1995). Therefore, this claim is premature and will not be addressed.

Plaintiff next argues that the trial court erred when, on remand, it again awarded defendant permanent alimony of \$750 per month. The award of alimony is within the trial court's discretion and is to be based on what is just and reasonable under the circumstances of the case. *Thames v Thames*, 191 Mich App 299, 307; 477 NW2d 496 (1991). Factors to be considered are: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties health, (10) the prior standard of living of the parties and whether either is responsible for support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. In addition, the court may consider a party's fault in causing the divorce. *Id.* at 308. The trial court should make specific findings of fact regarding those factors that are relevant to the particular case. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (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 v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996).

Plaintiff argues that, because this Court expressly found that the trial court erred in considering defendant's support of the parties' adult daughters, the removal of that factor from consideration should have resulted in a lower amount of alimony awarded. We disagree. On remand, the trial court applied the factors required by *Thames, supra*, and determined that plaintiff should pay defendant alimony of \$750 per month. We find that the court's findings of fact were not clearly erroneous. Because the award of alimony was also fair and equitable in light of the facts, plaintiff's argument has no merit.

Affirmed. Defendant being the prevailing party, she may tax costs pursuant to MCR 7.219.

/s/ Martin M. Doctoroff

/s/ Robert P. Young, Jr.