STATE OF MICHIGAN

COURT OF APPEALS

ROBIN LEE WITZKE,

Plaintiff-Appellee,

v

RICHARD P. WITZKE,

Defendant-Appellant.

UNPUBLISHED
September 12, 1997

No. 191955
Macomb Circuit Court
LC No. 93-002701-DM

Before: Corrigan, C.J., and Markey and Markman, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment of divorce. Defendant raises a number of issues upon appeal. We affirm.

Plaintiff filed for divorce from defendant while she was in medical school in Missouri. On the date set for trial, defendant's counsel sent an associate to withdraw him from the case. The trial court did not allow counsel to withdraw, however, and proceeded to discuss the issues of the case. The parties agreed that the case would be referred to the Friend of the Court for an evidentiary hearing on all disputed matters. Both attorneys signed a stipulation and order to that effect indicating that if either party objected to the referee's recommendation, the trial court would hold a hearing based on the record created at the referee hearing. The trial court retained discretion to review additional testimony or evidence necessary for a final judgment, however. Thereafter, defendant objected to the recommendations of the Friend of the Court and the trial court denied defendant's motion for a de novo hearing based upon the stipulation. The trial court subsequently adopted the majority of the referee's recommendations.

I

Defendant first argues that the stipulation was invalid because it allowed the parties to seek de novo review pursuant to MCL 552.507(5); MSA 25.176(7)(5). We disagree.

MCL 552.507(5); MSA 25.176(7)(5) states as follows:

> The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. The request of a party shall be made within 21 days after the recommendation of the referee is made available to that party under subsection (4), except that a request for a de novo hearing concerning an order of income withholding shall be made within 14 days after the recommendation of the referee is made available to the party under subsection (4).

In *Balabuch v Balabuch*, 199 Mich App 661-662; 502 NW2d 381 (1993), the trial court did not hold its own evidentiary hearing but relied upon the recommendation of the Friend of the Court. This Court held that "[a]bsent a showing of some factors such as duress or fraud, defendant is bound by the parties' agreement to accept the recommendation of the friend of the court referee. See *Draughn v Hill*, 30 Mich App 548; 186 NW2d 855 (1971)." *Id*. In *Constantini v Constantini*, 171 Mich App 466, 469; 430 NW2d 748 (1988), the parties stipulated to refer a child custody issue to the Friend of the Court and agreed that any appeal would be based upon the referee's hearing. The trial court denied the defendant's request to reopen the proofs and accepted the referee's recommendation. *Id*. at 469-470. This Court held that because the parties agreed to admit the referee's report into evidence and the report thoroughly recited the facts, the trial court was not precluded from adopting the referee's findings as its own. *Id*. at 471.

Based upon *Balabuch* and *Constantini*, a trial court does not improperly delegate its discretion if it accepts the referee's evaluation so long as the parties agree to admit the findings into evidence. By signing the stipulation, the parties here agreed that the judicial hearing would be based upon the record created at the referee hearing and, if necessary for the entry of judgment or order, the trial court would allow additional testimony and evidence. Thus, the stipulation was valid and enforceable as these stipulations are not required to follow the specific language of the statute.

II

Defendant next argues that the stipulation must be set aside because defendant's attorney was forced into signing it. We disagree.

The trial court's findings concerning the validity of the parties' consent to a settlement will not be overturned absent an abuse of discretion. *Keyser v Keyser*, 182 Mich App 268, 270; 451 NW2d 587 (1990). In the present case, other than defendant's general allegations, there is no evidence of force, duress, or fraud. The attorney made no notation on the form that he was signing the stipulation under duress, that he was forced to sign it, or that he did not understand it. Absent such a showing, the trial court did not abuse its discretion in abiding by the stipulation.

III

Defendant also argues that the referee and the trial court did not make adequate findings of fact. We disagree.

In deciding a divorce action, the circuit court must make findings of fact and dispositional rulings. On appeal, the factual findings will be upheld unless they are clearly erroneous. A dispositional ruling, however, should be affirmed unless the appellate court is left with the firm

conviction that it was inequitable. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996); *Magee v Magee*, 218 Mich App 158, 161-162; 553 NW2d 363 (1996). In determining a proper property settlement, the trial court should consider a number of factors where relevant to the circumstances of the case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. *McDougal, supra* at 89, quoting *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). In order to facilitate this Court's review of the disposition of marital assets, a trial court must make specific findings of fact where any of the factors set forth above are relevant to the case. *Sparks, supra* at 159-160. Moreover, while it is permissible for a court to consider the "fault" of one party in causing the divorce when dividing the marital property, the trial court must not place disproportionate emphasis on fault or any other factor; instead, all of the relevant factors must be weighed. *Id.* at 158.

Contrary to defendant's assertion, the referee made findings of fact as to each of the *Sparks* factors. The referee concluded that based upon the testimony and the evidence, plaintiff's desire to obtain a medical degree was not the sole reason for the break-down of the marriage, and the fault could not be attributed to her only. Based upon the findings, the referee recommended a fairly equal distribution of property.

The trial court rendered its opinion based upon the referee's recommendation and incorporated the referee's findings into its opinion. However, it also took testimony as to the statutory grounds for the divorce and allowed defendant to file objections to the proposed judgment of divorce. Moreover, the trial court made changes to the recommendation where appropriate. Thus, the findings of fact made by the referee and the trial court were sufficient and were not clearly erroneous. Furthermore, based upon its consideration of all the factors, the trial court's disposition was not inequitable. *McDougal, supra*.

IV

Defendant also argues that plaintiff's attainment of a medical degree should have been included in the property distribution. We disagree.

A spouse should be compensated whenever the other spouse's advanced degree is the end product of concerted family effort involving mutual sacrifice and effort by both spouses. *Postema v Postema*, 189 Mich App 89, 94; 471 NW2d 912 (1991). Concerted family effort is reflected through a spouse's tangible efforts and financial contributions associated with working and supporting the mate while the mate pursues the advanced degree. *Id*. at 95-96. It also includes intangible, nonpecuniary efforts and contributions such as an increase in the share of the daily tasks, child-rearing responsibilities, or other details of household and family management undertaken in order to provide the mate with the necessary time and energy to study and attend classes. *Id*. at 96. A concerted family effort also includes sharing the emotional and psychological burdens of the educational experience. *Id.*

In the present case, plaintiff was attending medical school in another state when she filed for divorce. Although at different times during the course of these proceedings and while plaintiff was in medical school the two minor children lived with plaintiff and defendant, defendant shouldered most of the child-rearing and household responsibilities. Nonetheless, while defendant at first encouraged plaintiff's enrollment, his emotional support quickly waned. Moreover, defendant failed to produce evidence that he contributed $26,000 to plaintiff's medical school expenses as he claims. Indeed, it appears that plaintiff has incurred substantial debt in the form of student loans; however, defendant has been released from any debt plaintiff has incurred in obtaining her degree. Taking into consideration the tangible and nontangible factors, defendant's support did not rise to the level of concerted family activity. We therefore find that the trial court did not err in excluding plaintiff's medical degree from the property distribution.

V

Finally, defendant argues that the trial court abused its discretion by awarding attorney fees to plaintiff. We disagree. Attorney fees in a divorce action are awarded only as necessary to enable a party to prosecute or defend a suit, and we will not reverse the trial court's decision absent an abuse of discretion. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). Attorney fees may be awarded when the requesting party has been forced to incur expenses as a result of the other party's unreasonable conduct in the course of litigation. *Id*. at 298.

The referee awarded plaintiff attorney fees because defendant had refused to cooperate during discovery. Defendant admitted that he had refused access to the marital home for appraisal purposes and refused requests to provide financial information. The trial court also acknowledged that the record was replete with defendant's delaying tactics. Thus, we find that the trial court did not abuse its discretion in ordering defendant to pay plaintiff's attorney fees.

Affirmed.

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

/s/ Maura D. Corrigan
/s/ Jane E. Markey
/s/ Stephen J. Markman