

STATE OF MICHIGAN
COURT OF APPEALS

LERROY DOUGLAS MALTBY,

Plaintiff-Appellant,

v

RUTH ANN MALTBY,

Defendant-Appellee.

UNPUBLISHED

February 3, 1998

No. 196167

Allegan Circuit Court

LC No. 93-016380-DO

Before: Neff, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce entered on June 24, 1996. On appeal, plaintiff challenges the trial court's award of periodic alimony to defendant. We affirm.

The parties were married on October 5, 1973. They did not have any children during the marriage. Plaintiff filed a complaint for divorce in 1993. The trial court awarded a property division of fifty percent each, alimony to defendant in the amount of \$286 a week for thirty-six months from the date of the entry of the judgment of divorce and \$250 a week thereafter, and attorney fees of \$10,000 to defendant. Plaintiff now contests only the award of alimony to defendant.

I

Plaintiff first argues that the trial court failed to sufficiently state its findings regarding fault where the award of alimony was based on fault.

The record does not support plaintiff's contention in this regard. The trial court stated the following:

I did award property in essentially a 50/50 split. There is substantial fault in this case which would have amply justified a different split, but I have not done so because I think the award of alimony is enough so that in the end the equity's balanced out.

Although the trial court mentioned fault and alimony in the above statement, the statement was made entirely in the context of the trial court's determination as to the split of property; and further, the trial court specifically *rejected* the consideration of fault by saying that it could have split the property differently but chose not to do so. While the trial court added that awarding alimony would result in an equitable balance, there is nothing in the record that the trial court considered fault in its decision to award alimony. In fact, the record indicates that the parties' arguments concerning alimony were centered around factors such as the length of the marriage, defendant's age, and defendant's education and income.

Because there is no indication that the court gave undue weight or even any consideration to fault when deciding to award alimony, there is no error by the trial court. Moreover, we note that fault is a relevant factor regarding a property settlement, but only that the trial court may not assign disproportionate weight to any one circumstance. *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992); *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996). The trial court's factual findings, which are adequate, certainly indicate that it did not assign disproportionate weight to fault, and indeed, attempted to minimize assigning fault. There was no need for the trial court to have made more specific findings of what constituted plaintiff's fault where fault was not the reason for the alimony award. Rather, the reason for the alimony award was to ensure a fair and equitable distribution in light of the facts of this case. See *Sparks, supra*, p 152.

II

Next, plaintiff argues that defendant voluntarily lowered her income and that it was inequitable to order plaintiff to pay alimony based upon defendant's lower income.

Evidence was presented that defendant worked on and off doing secretarial and clerical work for the first sixteen years of the marriage, until 1989, when she began working as a secretary for Haworth Corporation. At that time, she and plaintiff mutually agreed that defendant would purchase a newsstand and gift shop business and would quit her secretarial job to run the business full time. Defendant's income fell substantially because her business failed to earn a profit. Plaintiff argues that because defendant voluntarily lowered her income, the alimony award should be based on her previous higher income.

Plaintiff relies on this Court's holdings in *Rohloff v Rohloff*, 161 Mich App 766; 411 NW2d 484 (1987), and *Healy v Healy*, 175 Mich App 187; 437 NW2d 355 (1989). This Court held in *Rohloff, supra*, pp 773-776, that the trial court did not abuse its discretion by entering a child support award based upon a parent's unexercised ability to earn where the parent voluntarily reduced his or her income. This Court subsequently extended this concept to analysis of an alimony award in *Healy, supra*, p 192.

A review of the holdings in those cases reveals that they do not apply to the facts of the present case to support plaintiff's argument. This Court's holdings, both with regard to child support in *Rohloff* and alimony in *Healy*, were based on the theory that the paying party should not be rewarded for purposely lowering his or her income in order to avoid such payments. No such vindictive motivation

was present in this case where defendant changed jobs at the suggestion and agreement of plaintiff and her income had been lowered four years before plaintiff even filed for divorce. Further, both *Rohloff* and *Healy* were directed at the *payor* of alimony or child support who was attempting to reduce payments by decreasing his or her income. We decline to extend that concept to the present situation where it is the *receiver* of alimony who has experienced a reduction in income. Such an extension is particularly unwarranted because the rule expressed in *Healy* was based on the factor of “ability to pay alimony” as part of the determination of a fair alimony award. The reduced income of the receiver of alimony has nothing to do with the payor’s ability to pay. Moreover, plaintiff agreed with defendant that she should change jobs. Since there is no indication that defendant changed jobs in order to receive alimony, it was not inequitable for the trial court to award alimony based on defendant’s income at the time of the divorce.

III

Plaintiff next argues that the trial court did not make findings regarding the present situation and needs of the parties when it awarded alimony.

Other than stating that the alimony award may exceed defendant’s needs, plaintiff does not assert that the alimony award was unfair and inequitable. Further, both parties offered substantial testimony and argument regarding the financial situations of the parties. The trial court indicated that it considered a set formula for alimony as a guideline and that it considered the parties’ arguments for various values to be applied to that formula. It is also evident that the trial court was aware of the factual issues involved because it refused to accept either plaintiff’s or defendant’s proposed figures for the amount of alimony.

The trial court made brief, definite, and pertinent findings and conclusions regarding the contested matters. This is sufficient and our review is not hampered by a lack of findings on the record. See MCR 2.517(A)(1). Accordingly, the trial court’s factual findings are adequate and its disposition was fair and equitable in light of those findings. *Sparks, supra*, p 152.

IV

Finally, plaintiff argues that the trial court abused its discretion in excluding testimony regarding the fact that two of plaintiff’s businesses closed while the divorce proceedings were taking place. Upon review of the record, we conclude that the testimony offered was cumulative of previous testimony and the trial court did not abuse its discretion, particularly when the proposed evidence was offered in redirect examination on the last day of the divorce proceedings. MRE 403; *People v Mills*, 450 Mich 61, 74-75; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995); *Dunn v Nundkumar*, 186 Mich App 51, 55; 463 NW2d 435 (1990).

Affirmed.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ Jane E. Markey