

STATE OF MICHIGAN
COURT OF APPEALS

DAVID ALLEN JUNGES

Plaintiff-Appellant,

v

MARY JO JUNGES

Defendant-Appellee.

UNPUBLISHED

March 20, 1998

No. 198741

Midland Circuit Court

LC No. 95-003815-DO

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, challenging the division of the marital estate, an award of alimony and an award of costs and attorney fees. We affirm.

Plaintiff first contends that the trial court's distribution of the marital estate was based on erroneous findings of fact and was an unfair and inequitable division of the parties' property. Disposition of a marital estate is reviewed first to make sure that the trial court's findings of fact were not clearly erroneous, and then to determine whether, in light of those facts, the distribution was fair and equitable. *Draggou v Draggou*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Plaintiff claims that the trial court erroneously found the amount of two loans to be \$12,000. Although the trial court misstated the amount of the loans in its opinion as being \$12,000 and testimony established the amount to be \$17,000, the judgment of divorce held plaintiff accountable for the entire \$17,000 as intended. Accordingly, the misstatement was inconsequential. Plaintiff also alleges that the trial court made an erroneous finding with regard to his annual income. There was, however, testimony given by plaintiff at trial supporting the trial court's finding regarding plaintiff's annual income. Accordingly, the trial court's finding was not clearly erroneous. Moreover, after considering the relevant factors, including the needs and circumstances of the parties, the great income disparity between plaintiff and defendant, plaintiff's ability to outearn defendant, the six and one-half years of marriage, and that both parties were responsible for the dissolution of the marriage, this Court finds that the trial court's distribution of the marital estate was fair and equitable. *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995).

Next, plaintiff argues that the trial court abused its discretion by awarding defendant alimony. Awards of alimony are within the discretion of the trial court, are to be based on "what is just and

reasonable under the circumstances,” *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993), and are primarily intended to “balance the incomes and needs of the parties in a way which will not impoverish either party.” *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). The trial court evaluated several of the factors to be considered in awarding alimony, *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993), but did not specifically address all the factors. Based on the factors taken into account, we conclude that it did not abuse its discretion by awarding defendant three years of alimony with decreasing annual payments. Evidence presented at trial indicated that this award accounted for the great income disparity between the parties, the fact that the parties were married for only six and one-half years, that plaintiff was in a better position to earn a living than defendant, that the assets from the marital estate were evenly distributed, that the parties were roughly the same age, that plaintiff introduced defendant to a lifestyle with a higher standard of living, and that the parties’ past relations were often volatile. On balance, we cannot say that a limited alimony award was unreasonable.

Plaintiff next challenges the trial court’s decision awarding defendant her attorney fees, and costs incurred for the parties’ appraisers and marriage counseling. This Court reviews awards of attorney fees and costs for an abuse of discretion. *Maake, supra* at 189; *Ianitelli, supra* at 644. Attorney fees should be awarded only when “it is necessary to enable the party to carry on or defend the suit.” *Maake, supra* at 189. Testimony presented at trial regarding defendant’s low annual income militated in favor of awarding her the attorney fees incurred in defending herself in this divorce action. Moreover, there was testimony indicating that the counseling fees and appraiser fees were incurred at plaintiff’s insistence. Accordingly, based on defendant’s low annual income, it was not an abuse of discretion for the trial court to award these fees and costs to defendant.

Lastly, plaintiff challenges the determination regarding assets included in the marital estate, claiming that proceeds from the sale of his premarital home should have been excluded while proceeds from the sale of defendant’s premarital home should have been included. Division of marital property is controlled by statute. MCL 552.2 *et seq.*; MSA 25.81 *et seq.*; *Reeves v Reeves*, 227 Mich App ____ (Docket No. 187577, issued 11/21/97), slip op, p 2. Before dividing the property, the trial court must first determine what constitutes the marital estate. *Id.* Invasion of a separate estate is proper if “after division of the marital assets ‘the estate and effects awarded to either party shall be insufficient for the suitable maintenance of either party,’ or when the other spouse ‘contributed to the acquisition, improvement, or accumulation of the property.’” *Reeves, supra* at 2, quoting MCL 552.401; MSA 25.136. The sale of defendant’s premarital home immediately following her marriage to plaintiff, coupled with the lack of testimony indicating that plaintiff made any contributions to this home, support the trial court’s decision to exclude the proceeds of the sale from the marital estate. Testimony indicated that while the parties were married equity contributions were made towards plaintiff’s premarital home and that the proceeds of the sale were treated as a marital asset. It was therefore appropriate for the trial court to treat proceeds from the sale as part of the marital estate.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Harold Hood
/s/ David H. Sawyer