

STATE OF MICHIGAN
COURT OF APPEALS

GAIL T. DRAPLIN,

Plaintiff-Appellee,

v

BRIAN J. DRAPLIN,

Defendant-Appellant.

UNPUBLISHED

January 19, 1999

No. 201523

Oakland Circuit Court

LC No. 95-502749 DM

GAIL T. DRAPLIN,

Plaintiff-Appellee,

v

BRIAN J. DRAPLIN,

Defendant-Appellant.

No. 209436

Oakland Circuit Court

LC No. 95-502749 DM

Before: Kelly, P.J., and Hood and Markey, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals from a judgment of divorce, raising several issues on appeal. We affirm.

Defendant first argues that the trial judge should have been disqualified because he was biased or prejudiced against him. Our review of the record fails to reveal any factual support for defendant's claim. *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996). Defendant's claim of bias and prejudice is based largely on what he perceives as the trial judge's repeated rulings against him. However, repeated rulings against a litigant, even if erroneous, are generally not grounds for disqualification. *People v Houston*, 179 Mich App 753, 755-756; 446 NW2d 543 (1989). As this Court has indicated in the past, "[t]he court must form an opinion as to the merits of the matters before

it. The opinion, whether pro or con cannot constitute bias or prejudice.” *Band v Livonia Associates*, 176 Mich App 95, 118; 439 NW2d 285 (1989). In this case, the decisions of the trial judge appear to have been made on the basis of the facts before the court and the applicable law, not on the basis of bias or prejudice. Defendant has failed to show any actual bias on the part of the trial judge and, therefore, the denial of his motions for disqualification did not constitute an abuse of discretion. *Cain, supra*.

Next, defendant claims that the trial court abused its discretion by refusing to grant his motion to adjourn the divorce trial, scheduled for October 14, 1996, until after his criminal matter was resolved. We disagree. Defendant had already been granted several adjournments and no fixed date had been established for a trial of the pending criminal matter. Moreover, at an evidentiary hearing in the divorce case, defendant had already testified as to his version of the events at issue in the criminal case. Therefore, his claim that the trial court should have adjourned the divorce trial until after the criminal trial, so that he would not have to testify as to the events surrounding the criminal matter, seem disingenuous at best. Under these circumstances, the trial judge’s decision to deny defendant’s request for an adjournment did not constitute an abuse of discretion. *People v Williams*, 386 Mich 565, 575, 578; 194 NW2d 337 (1972); *People v Pena*, 224 Mich App 650, 660; 569 NW2d 871 (1997).

Defendant also claims that the trial court erred in refusing to order plaintiff to submit to a psychological evaluation. We disagree. Defendant failed to demonstrate good cause under MCR 2.311 to require plaintiff to submit to a psychological evaluation. Contrary to defendant’s claim, the fact that plaintiff’s niece had killed her own parents for allegedly sexually abusing her and her siblings, standing alone, did not constitute good cause to require plaintiff to submit to a psychological examination. Although certainly a tragedy, there is nothing in the record to indicate that plaintiff’s brother’s death caused plaintiff to become mentally unbalanced. Hence, the trial court did not abuse its discretion in failing to order a psychological evaluation.

Defendant’s claim that the trial court wrongfully excluded evidence of physical and sexual abuse in plaintiff’s brother’s family is also without merit. Evidence of what occurred in plaintiff’s brother’s family was not relevant to the instant case. MRE 402.

Next, defendant argues that the trial court’s findings of fact with regard to several of the statutory best interest factors, MCL 722.23; MSA 25.312(3), are against the great weight of the evidence and that the court erred in awarding sole physical custody of the minor children to plaintiff. We disagree.

After having conducted a thorough review of the record, we believe that the trial court correctly determined that awarding plaintiff sole physical custody of the children was in their best interest. The trial court carefully considered the factors relative to the best interests of the children set forth in MCL 722.23; MSA 25.312(3), and our review of the record reveals that the court’s findings of fact with respect to each factor was not contrary to the great weight of the evidence. Further, the court’s discretionary ruling regarding the ultimate custody decision did not constitute an abuse of discretion. *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994); *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998).

Next, defendant claims that the trial court erroneously used an artificially low figure for plaintiff's income when computing child support. We disagree. Although plaintiff testified that she earned approximately \$177 per week as a nail technician, the trial court imputed additional income to her based on the fact that she had earned more money in 1996. Instead of finding that plaintiff earned \$177 per week as she claimed, the trial court found that plaintiff took home approximately \$290 per week. Defendant points to no evidence on the record to indicate that the net amount of \$290 per week is an artificially low figure for plaintiff. On the basis of defendant's admission that he grossed approximately \$1,000 per week, the trial court determined that his net weekly income was approximately \$695 per week. Using these figures, \$290 per week for plaintiff and \$695.00 per week for defendant, the award of \$199 per week is in accord with the child support guidelines. Under these circumstances, we can discern no abuse of discretion in the trial court's child support award of \$199 per week. *Morrison v Richerson*, 198 Mich App 202, 211; 497 NW2d 506 (1992); *Thompson v Merritt (Amended Opinion)*, 192 Mich App 412, 416; 481 NW2d 735 (1991).

Defendant next claims that the trial court erred when, in dividing the marital property, it refused to provide him with the opportunity to retain the marital home. Defendant does not contend that the property settlement reached by the court, which was roughly a fifty-fifty split, was otherwise inequitable. He simply claims that the trial court erred in ordering the marital residence sold (and the proceeds divided equally) instead of providing him with the opportunity to retain the marital home by purchasing plaintiff's share in the residence. The trial court's decision in this regard has not been shown to be an abuse of discretion, *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 556 NW2d 642 (1997), particularly when considering defendant's claims throughout the pendency of this matter that he did not have enough money to pay child support and other obligations. Under these circumstances, it would have been reasonable for the trial court to assume that defendant lacked the financial resources to purchase plaintiff's share in the marital residence. Moreover, the trial court's decision did not prevent defendant from obtaining the marital home on his own. It simply required that the residence be sold for the best price obtainable. Finally, any error in the trial court's decision was harmless in light of the fact that defendant was able to acquire the residence after the judgment of divorce was entered.

Next, we find no abuse of discretion in the trial court's decision to award plaintiff \$11,200 in attorney fees. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997); *Jansen v Jansen*, 205 Mich App 169, 173; 517 NW2d 275 (1994). The evidence established that plaintiff was not in a position to pay her attorney fees. There was also evidence that defendant unreasonably complicated this matter and caused unnecessary legal fees for both parties. Under the circumstances, an award of attorney fees was proper. MCR 3.206(C)(2); *Hawkins, supra*; *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992).

Lastly, defendant claims that the trial court abused its discretion in awarding plaintiff alimony in the amount of \$100 per week for a period of six months. We disagree. The record reveals that (1) the parties had been married for over ten years, (2) that defendant worked full-time throughout the marriage while plaintiff, in the last several years of the marriage, was a stay-at-home mother, (3) that defendant was an engineer/draftsman and plaintiff was a nail technician, (4) that defendant's net income was

approximately \$700 per week while plaintiff's net income was approximately \$300 per week, (5) that plaintiff, having been awarded the sole physical custody of the children, was responsible for caring for the children, and (6) that defendant was more responsible than plaintiff for the breakdown of the marital relationship. In sum, defendant had the ability to pay alimony and plaintiff was in need of short-term assistance. Under these circumstances, the record supports the trial court's award of alimony to plaintiff in the amount of \$100 per week for a period of six months. *Demman v Demman*, 195 Mich App 109, 110-111; 489 NW2d 161 (1992). The trial court did not abuse its discretion in awarding plaintiff alimony. *Thames v Thames*, 191 Mich App 299, 310; 477 NW2d 496 (1991).

Affirmed.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ Jane E. Markey