

STATE OF MICHIGAN  
COURT OF APPEALS

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RICHARD JONES,

Plaintiff-Appellant,

v

CAROLINE JONES,

Defendant-Appellee.

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UNPUBLISHED

May 21, 1999

No. 205072

Ionia Circuit Court

LC No. 96-017921

Before: Hoekstra, P.J., and Saad and R.B. Burns,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. Plaintiff challenges the trial court's valuation of the marital property, the distribution of the assets, and the award of alimony. We affirm.

We review the factual findings of a trial court in a divorce case for clear error. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). "A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been committed." *Id.* As a dispositional ruling, *id.* at 798, we review the division of property between the parties for fairness and equity in light of the factual findings. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992). It will be affirmed unless we are left with the firm conviction that the division was inequitable. *Id.*

Plaintiff first argues that the trial court erred in declining to subtract a \$9,000 debt from the value of the property. We disagree. Plaintiff presented no proof of the current debt nor did he produce any evidence of the original cost of the work that was performed on the marital residence. Defendant maintained that the contractor had been paid in full. Thus, the existence of this allegedly outstanding debt was a question of fact that turned primarily on the credibility of the parties. "This Court gives special deference to a trial court's findings when they are based on the credibility of the witnesses." *Dragoo v Dragoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997), quoting *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991). "There are many aids possessed by the judge who hears the oral testimony in deciding who of the witnesses are truthful that do not get upon the printed

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

page.” *Beason, supra* at 800. In general, defendant submitted far more documentary support for her claims than did plaintiff. There was little or no evidence that any part of this debt remained outstanding at the time of trial. Considering the relative credibility of the parties, it was not error for the trial court to conclude that this alleged debt was insufficiently substantiated. In light of all the evidence available on this issue, we are not left with a firm conviction that any mistake was made.

For similar reasons, the court’s inclusion of the Kawasaki all-terrain vehicle (ATV) among the marital assets was not clearly erroneous. Plaintiff maintains that the ATV should not have been included in the marital property because it belonged to his children. However, there is no substantiation in the record of this claim. Plaintiff testified that the ATV was purchased with insurance funds as a replacement for one that was stolen. He characterized the purchase as a joint decision made during the marriage. Regarding the value of the Kawasaki, defendant produced a consumer loan agreement as evidence that plaintiff had paid \$3,450 for it. Defendant also submitted evidence of plaintiff’s use of the vehicle. When the court questioned plaintiff regarding the value of the ATV, plaintiff did not claim that it belonged to another family member. Plaintiff’s argument is without merit because the court’s finding regarding this piece of marital property is not clearly erroneous.

Plaintiff contends that the trial court erroneously awarded defendant \$8,000 worth of personal property that should have been included in the valuation of the marital assets. We disagree. The court first placed a value on the major property on hand, assigning the following values: \$34,000 (real estate), \$3,000 (back hoe), \$2,300 (earth mover), \$300 (junk cars), and \$1,500 (Kawasaki), which totaled \$41,100. The court divided this amount in half, awarding a \$20,500 mortgage on the property to defendant. The court then divided the remaining items of personal property. The personal property awarded to defendant included all items titled in his name, plus major appliances (a gas stove, a refrigerator, a washer and a dryer), a garage furnace, a tractor, power tools, various household necessities, gifts, miscellaneous electronics, furniture, and tools that were obtained during the marriage and that defendant agreed to leave with plaintiff. No values were assigned to these items, although the court implicitly found that they were equivalent in value to the personal property that was awarded to defendant: cassette tapes, tools, various decorative items, the items that she had removed from the home, a twenty-three-year-old motor home, a 1988 Caprice, a Mustang (that plaintiff had valued at between \$50 and \$100), a lawn mower, a vacuum cleaner and flower bulbs. This factual finding is not clearly erroneous. The trial court painstakingly considered each item of property that the parties brought to its attention. Defendant presented thirty-five exhibits, consisting of pay stubs, photographs, sales receipts, an appraisal, tax bills, tax returns, and itemizations of monthly expenses. Plaintiff presented only the three deeds to the property and some unsigned and undated bills that were excluded. Under these circumstances, we find the court’s factual determination regarding the marital assets to be quite accurate and to contain no error whatsoever.

With regard to the trial court’s dispositional ruling distributing the assets, the distribution must be fair and equitable, but the court is given broad discretion. *Sparks, supra* at 158-159. Generally,

[t]he goal of the court when apportioning a marital estate is to reach an equitable division in light of all the circumstances. *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). Each spouse need not receive a mathematically equal

share, but significant departures from congruence must be explained clearly by the court. *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990). When dividing the estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct and any other equitable circumstance. [*Sparks, supra*, 440 Mich 158-160.] The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. *Id.*, p 159. [*Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997).]

The trial court considered the relevant factors enumerated in *Sparks* without assigning great weight to the duration of the marriage, the age of the parties, their life status or their necessities and circumstances, except as they related to their health and earning ability. That approach was appropriate to the circumstances. Because a seven-year marriage is neither unusually short nor unusually long, the length of the marriage was not a weighty consideration when dividing these marital assets. Similarly, the age of the parties was also not an important factor. At the time of trial, plaintiff was forty-six years old and defendant was fifty-three years old and there were no minor children from the marriage.

The court considered the contributions of the parties to the marital estate, finding that

this is a marriage that started out with \$60,000 and now it's \$30,000. The assets that [plaintiff] had are traceable assets, real estate, and what [defendant] had are not such traceable assets. But I think the amount of money that each of them had is roughly even when they started the divorce and based on that – the testimony is not 100% clear on where all this money went but what the Court is going to do is just divide this up, what they have on hand, equally between the parties.

This conclusion is supported by the record. Although plaintiff owned the real property prior to the marriage, defendant sold her previous home to pay off the mobile home that the parties shared on the property and to pay overdue and current taxes on that property. Defendant had bank statements to substantiate that she had brought savings to the marriage, whereas plaintiff produced no documentation of his claim that he had had \$5,000 in cash at the time of the marriage.

The health of the parties is relevant to defendant's need for alimony to pay health insurance and to defendant's ability to work. Defendant produced receipts for the prescription drugs that she takes for a thyroid and hormone condition and for glaucoma; she estimated the total cost of these medicines to be \$70 per month. Plaintiff claimed to be unable to work because of an injury the week before trial and because of arthritis. He admitted that the arthritis was controllable with medication. Regarding the relative earning abilities of the parties, the court found that plaintiff "is earning – when he gets back to work about \$1500.00 a month. [Defendant] is earning about \$667.00 a month, so I think there is a vast disparity of income there . . . ." This conclusion is supported by the record.

The court took into account the past relations and conduct of the parties but concluded that "as in most divorces there is probably enough fault on both sides to justify evening that out so the Court will

not make any evaluation to differences for fault.” The record supports this conclusion; there was testimony regarding domestic violence, but there was no clear evidence of fault. Regarding general principles of equity, the trial court’s division of the marital property focused on the current assets and attempted to divide them equally between the parties. The court considered the *Sparks* factors – the relevance and significance of each factor being dependent on the facts and circumstances of each case, *Sparks, supra* at 160; *Byington, supra* at 115 – and it utilized the evidence available to split the available assets as evenly as possible. Mathematical equality is not required, *id.*, 114, nor would it have been possible in this case given that only one party produced any tangible evidence of the marital estate. We conclude that the trial court’s distribution of the assets was fair and equitable.

Plaintiff avers that the trial court erred in granting alimony to defendant in the amount of \$150 per month until defendant reaches the age of sixty-two or until the death of either party. We disagree. An award of alimony is within the trial court’s discretion, MCL 552.23; MSA 25.103; *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). Alimony should be based on what is just and reasonable under the circumstances, *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993), taking into account the length of the marriage, contributions of the parties to the marital estate, the parties’ earning abilities, the parties’ past relations and conduct, their ages, needs, ability to work, health, and fault, if any. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993); *Sparks, supra* at 159-160. “The determination of relevant factors will vary depending on the facts and circumstances of the case.” *Id.* at 160.

The trial court’s proffered rationale for the alimony ruling was the parties’ disparate earning ability, taking into account their needs and their ages. We find that the trial court carefully considered each of the *Sparks* factors that are relevant to this case. Defendant’s medical conditions were well established by the record, as were her prescription drug-related expenses and the cost of her health insurance. Her salary was documented at \$180 per week (or about \$677 per month) and did not include health insurance or medical benefits. Her medicines cost \$70 per month and health insurance, \$230 per month. Defendant’s estimate of her total monthly expenses was \$1,308.54. Given defendant’s age, the court concluded that it would be unlikely for her to find substantially higher-paying employment. Thus, defendant’s need for alimony was well established. During the marriage, she had received health insurance through her husband’s policies; the \$150 in monthly alimony would help to defray this additional cost. The trial court’s conclusion with regard to defendant’s need for alimony was not clearly erroneous.

“The main objective of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party[,]” *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). One factor considered in awarding alimony is the ability of the party to pay. *Id.* at 303. Moreover, this Court has stated in the past that the “ability to pay” factor is not limited to a consideration of the party’s income at the time the divorce is granted. *Healy v Healy*, 175 Mich App 187, 191; 437 NW2d 355 (1989). This Court must uphold the award of spousal support unless it is left with the firm conviction that the determination was inequitable. *Sparks, supra* at 152. Here, there was ample support for the court’s conclusion that plaintiff’s earning ability was approximately \$1,500

per month. Defendant's need and income were unquestioned. Therefore, we are left with the firm conviction that the alimony award was equitable.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Henry William Saad  
/s/ Robert B. Burns