

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

JOAN EARLE HALL,

Plaintiff-Appellant,

v

JOHN D. HALL,

Defendant-Appellee.

---

UNPUBLISHED

July 11, 2000

No. 211806

Wayne Circuit Court

Family Division

LC No. 97-701924

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Defendant, John Hall, appeals as of right from a judgment of divorce. We remand for modification of the trial court's order and affirm in all other respects.

Defendant first claims that the trial court erred in awarding plaintiff permanent alimony in the amount of \$6,250 per month, non-modifiable until the year 2006. The award of alimony is within the trial court's discretion and is based on what is just and reasonable under the circumstances. *Thames v Thames*, 191 Mich App 299, 307; 477 NW2d 496 (1991). This Court will not modify an alimony award unless it is convinced that it would have reached a different result sitting in the position of the trial court. *Parrish v Parrish*, 138 Mich App 546, 553; 361 NW2d 366 (1984). Although this Court's review of the alimony award is de novo, it must accept the trial court's factual findings unless they are clearly erroneous. *Thames, supra* at 308.

Alimony is provided for in divorce judgments pursuant to statutory law. MCL 552.23; MSA 25.103. The factors that a trial court should consider when determining whether to award alimony include: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the ability of the parties to work; (4) the source and amount of property awarded to the parties; (5) the age of the parties; (6) the ability of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the health of the parties; (10) the prior standard of living of the parties and whether either is responsible for the support of others; and (11) general principles of equity. *Demman v Demman*, 195 Mich App 109, 110-111; 489 NW2d 161 (1992); *Ianitelli v Ianitelli*, 199 Mich App 641, 642-643; 502 NW2d 691 (1993). In addition, a party's fault in causing the divorce is a valid consideration in awarding alimony. *Demman, supra* at 111. The main objective of alimony is to

balance the incomes and needs of the parties in a way that will not impoverish either party. *Hanaway v Hanaway*, 208 Mich App 278, 295; 527 NW2d 792 (1995).

The record in this case reveals that: (1) the parties had been married for almost twenty-nine years; (2) defendant, fifty-one-years old, had the ability to work as a medical doctor earning in excess of \$225,000 per year and that plaintiff, fifty-six years old, was, at the time of the divorce hearing, unemployed and unable to work full-time because of ill health; (3) defendant, who admittedly earned at least \$225,000 per year, had the ability to pay alimony; (4) plaintiff, an unemployed homemaker, needed alimony; (5) plaintiff made attempts to maintain the marriage and those attempts were rebuffed by defendant; (6) each of the parties was awarded substantial assets in the divorce; (7) the parties were used to a high standard of living; and (8) plaintiff worked as a registered nurse throughout defendant's time in medical school and into his residency; when defendant began his medical practice, plaintiff put her career on hold to stay at home with the children and then worked for defendant in his medical practice. We conclude that the trial court's spousal support award was fair and equitable in light of the circumstances of this case, and find that the trial court did not abuse its discretion in awarding plaintiff permanent alimony in the amount of \$6,250 per month. *Thames, supra* at 307.

We agree with defendant, however, that the court abused its discretion in making the award of alimony non-modifiable until the year 2006. In *McCallister v McCallister*, 101 Mich App 543; 300 NW2d 629 (1980), this Court held that an alimony award without any mechanism for modification due to changed circumstances constitutes an abuse of discretion. See also *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). While the trial court's order allows for modification upon a showing of changed circumstances *after* the year 2006, and it allows for modification for insurance at the termination of the thirty-six month COBRA provision, it does not provide any mechanism for modification prior to 2006 in the event of a change in circumstances and, in fact, precludes modification prior to that date, without regard for the parties' circumstances. Accordingly, we remand for amendment of the trial court's order to provide that the award of alimony is modifiable upon a showing of changed circumstances. In all other respects, we affirm the award.

Next, defendant claims that the property division was inequitable. We disagree. A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3); *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). Absent a binding agreement, the goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997); *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 v Sparks*, 440 Mich 141, 162-163; 485 NW2d 893 (1992); *Byington, supra* at 115. "The significance of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise." *Id.* The trial court must make specific findings regarding the factors it

determines to be relevant. *Sparks, supra* at 159. The ultimate dispositional ruling must be fair and equitable in light of the facts. *Byington, supra* at 109. This Court will reverse only if left with the firm conviction that the distribution was inequitable. *Id.*

The property division in this case was fair and equitable in light of the facts and circumstances involved. Plaintiff's share of the marital estate, fifty-eight percent, is only eight percent more than defendant requested that she receive. Additionally, plaintiff made significant contributions to the acquisition of the marital assets and to the acquisition of defendant's medical degree. She put defendant through medical school and was the sole breadwinner in the family for more than ten years while defendant worked towards becoming an obstetrician/gynecologist. Thereafter, she assisted defendant in the day-to-day operation of his medical practice for over ten years, putting her career on hold to further defendant's career. Moreover, plaintiff was unemployed at the time of the divorce, in poor health, and without prospects for any kind of substantial income in the future. Defendant, on the other hand, was awarded his medical practice, as well as other substantial assets, and could expect to continue earning in excess of \$225,000 per year. Although defendant would continue to enjoy a substantial income, the fruits of which even defendant admitted was the result of the parties' joint efforts, plaintiff was no longer going to be allowed to share in the fruits of the parties' concerted efforts to lead a secure, financially stable lifestyle. Under these circumstances, the property division is not inequitable.

Plaintiff admits that she withdrew her claim under *Postema v Postema*, 189 Mich App 89; 471 NW2d 912 (1991). The trial court acknowledged that plaintiff had withdrawn this claim, but considered the substantial efforts that plaintiff made in assisting defendant to become a doctor under the *Sparks* factors. Specifically, plaintiff's conduct was considered under the factor involving the contribution of each party to the marital estate and under the factor involving equitable circumstances. *Sparks, supra* at 158-160. There was nothing improper in the trial court's consideration of plaintiff's contributions to the family and to the marital estate. Clearly, this is a proper consideration under *Sparks*. Plaintiff was not awarded any independent compensation for her withdrawn *Postema* claim. The trial court simply took into account plaintiff's contributions to the marital estate when dividing the marital property.

Defendant also claims that the trial court erred in finding that defendant was at fault for the divorce and contends that it gave disproportionate weight to defendant's responsibility for the divorce in dividing the marital estate. We disagree. The record supports the court's finding that defendant was responsible for the divorce. Moreover, the court did not give disproportionate weight to its finding of fault, but examined a number of factors when dividing the marital estate. For instance, the trial court considered, among other things, the age of the parties, the health of the parties, the parties' lifestyle, the necessities and circumstances of the parties, the earning ability of each party, and the contributions to the marital estate. The trial court made nothing more than a passing reference to the issue of fault when dividing the marital property. Since many factors were considered by the trial court and there was nothing more than a passing reference to fault, it does not appear that fault was given disproportionate consideration in dividing the marital estate. *Welling v Welling*, 233 Mich App 708, 711; 592 NW2d 822 (1999).

Remanded for modification of the trial court's order consistent with this opinion. In all other respects, we affirm. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Jeffrey G. Collins

/s/ Donald S. Owens