

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

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JEANNINE MARIE STEFANKO,  
  
Plaintiff-Appellee,

UNPUBLISHED  
January 30, 2001

v

CHARLES ROBERT STEFANKO,  
  
Defendant-Appellant.

No. 215452  
Oakland Circuit Court  
LC No. 97-542628-DM

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Before: Hoekstra, P.J., and Whitbeck and Meter, JJ.

PER CURIAM.

Defendant Charles Stefanko appeals as of right from an order awarding spousal support in the amount of \$5,654 per month to his former wife, plaintiff Jeannine Stefanko. We affirm.

I. Basic Facts And Procedural History

In April 1997, Jeannine Stefanko filed a complaint for separate maintenance. She alleged that her marriage to Charles Stefanko, her husband since September 1976, had broken down and that he had impaired the objects of their marriage by being unfaithful. She claimed that she and the parties' two children needed financial support. The trial court subsequently issued an ex parte order for maintenance of status quo and restraining order, requiring Charles Stefanko to continue paying household bills and expenses. The order also prevented him from removing financial information from the marital residence and transferring or disposing of property.

In May 1997, Charles Stefanko filed a counter-complaint for divorce. The case proceeded to trial in May 1998, at which time, after hearing opening statements, the trial court noted that "there is a lot of agreement with respect to the issues." The trial court then adjourned the proceedings so that the parties could meet with their accountants and return with a basic agreement. The parties agreed that the trial court would determine the amount of spousal support, but otherwise resolved the value and division of assets. Both parties testified that they heard the agreement stated in court and were satisfied with the settlement. The trial court stated:

So if we can get in writing the total property settlement, then if you want to – once you have that, if you want to come in and offer any additional testimony or if you can stipulate to the facts that would allow me to make a judgment on the alimony, I'll do that.

The settlement was finalized in a consent divorce judgment, which provided: (1) the marriage was dissolved, (2) the parties were awarded joint legal custody of their minor child, and Jeannine Stefanko was awarded physical custody, (3) Charles Stefanko would pay child support in the amount of \$695 per week, based on his annual salary of \$557,500, (4) he would financially contribute to the couple's eighteen-year-old daughter's college education, (5) he would continue to provide health insurance for the couple's minor child until she was eighteen and for the couple's eighteen-year-old daughter until she graduated from college or otherwise became ineligible for coverage as a dependent child, and (6) the parties would divide the marital estate, valued at \$3,416,832, equally. This asset division included an immediate sale of the marital home, the proceeds of which were to be awarded half to each party except that Charles Stefanko would pay Jeannine Stefanko approximately \$520,200 from his share of the house proceeds to offset an unequal division of other assets. Under the terms of the consent judgment of divorce, the issue of spousal support was reserved.

In June 1998, the trial court held a hearing "on the very narrow issue of alimony." The trial court considered the following factors: (1) Jeannine Stefanko had taken care of the children on a day-to-day basis, including the additional care required to meet the special needs of the parties' oldest daughter, (2) Charles Stefanko's conduct played a role in the marriage's breakdown, (3) Jeannine Stefanko lacked job skills and had been out of the work force since giving birth to the couple's first child, (4) there was a "reasonable expectation" that Jeannine Stefanko could return to the work force, earning at least minimum wage, (5) Jeannine Stefanko had \$600,000 available for her immediate investment, which would yield approximately \$36,000 annually, (6) Jeannine Stefanko anticipated that her expenses would amount to more than \$70,000 year, exceeding the income she could expect from her investment. The trial court also noted that the length of the marriage "clearly calls for some period of spousal support," and so ordered Charles Stefanko to pay support.

As for the amount of support the trial court awarded, it considered the parties' arguments concerning Charles Stefanko's income following the divorce. Counsel stated on the record that the parties had agreed that, because Jeannine Stefanko received the monetary equivalent of one-half the family business in the divorce judgment, Charles Stefanko's income used to calculate any spousal support would be significantly less than the \$557,000 annual income used to calculate child support. Counsel disagreed regarding the exact amount of income that would be used to calculate spousal support. However, Joseph Cunningham, a financial expert, testified that the \$257,500 Jeannine Stefanko claimed was this reduced income amount was actually only \$220,000; the higher number simply was a mistake.

The trial court calculated the spousal support based on the parties' stipulation that Charles Stefanko would have an annual income of \$220,000 following the divorce. This \$220,000 figure represented approximately forty percent of Charles Stefanko's annual income of \$557,000. Evidently, the parties agreed to this percentage reduction to account for the amount Jeannine Stefanko would receive for her share of the family asphalt business. Additionally, the \$220,000 stipulated income was reduced by another \$14,400, which constituted forty percent of the \$36,000 the court ordered Charles Stefanko to pay as child support for his youngest daughter. This additional reduction reflected the same percentage that accounted for the share of the business Jeannine Stefanko took in the settlement. In the end, the trial court used a base income

of \$205,600 when ordering Charles Stefanko to pay his former wife \$5,654 per month for a period of eight years.

This amounted to \$67,848 per year in spousal support to Jeannine Stefanko, equivalent to thirty-three percent of Charles Stefanko's adjusted base salary. Added to the \$36,000 she would earn if she invested the \$600,000 she received as part of the settlement at six percent interest, she could expect to have an annual income of about \$103,848 per year for the eight years the trial court ordered Charles Stefanko to pay spousal support. If, instead, Jeannine Stefanko used \$300,000 of those funds to purchase a new house that was adapted to meet the parties' oldest daughter's special needs, she could anticipate \$18,000 investment income, added to spousal support, for a total of approximately \$85,848 per year in income, only slightly more than the \$70,000 she had budgeted for her expenses.<sup>1</sup>

On appeal, Charles Stefanko challenges the amount the trial court awarded Jeannine Stefanko in spousal support, contending that she is entitled only to \$5,056 per month, not \$5,654. His arguments challenge the trial court's findings supporting the spousal support award, as well as its equity.

## II. Standard Of Review

We review a trial court's factual findings in a divorce case for clear error.<sup>2</sup> "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."<sup>3</sup> If the trial court's findings are not clearly erroneous, we must decide whether the trial court's dispositional ruling was fair and equitable in light of all the facts of the case.<sup>4</sup> We must affirm the trial court's decision unless we are firmly convinced that the award of alimony is inequitable.<sup>5</sup>

## III. Spousal Support

### A. Other Assets

By its plain language, MCL 552.23; MSA 25.103 permits a trial court to award spousal support it deems "just and reasonable." Spousal support is intended "to balance the incomes and needs of the parties" so that neither will be impoverished as a result of the divorce.<sup>6</sup> The evidence indicated that the parties had a fairly stable income in the years preceding this divorce

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<sup>1</sup> The \$70,000 figure she arrived at did not include certain expenses. As a result, the trial court considered this an approximation.

<sup>2</sup> *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

<sup>3</sup> *Id.*

<sup>4</sup> *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

<sup>5</sup> *Id.* at 152; see, generally, *Jansen v Jansen*, 205 Mich App 169, 172; 517 NW2d 275 (1994) (alimony is subject to equitable considerations that apply to the division of property as a whole).

<sup>6</sup> *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992).

action, albeit one that was perhaps more generous than might be considered typical. During that time, the parties grew accustomed to the lifestyle made available by that income. There is no dispute that Jeannine Stefanko's earning power does not match the income she would have had available for her support and maintenance had she stayed married to Charles Stefanko. Nor is there any dispute that she would have a variety of expenses associated with establishing an independent household and engaging a lifestyle at least roughly commensurate with her married home and life. Again, there is no question that the cost of creating this independent life would exceed the income she could generate from the assets awarded to her in the divorce. Indeed, Charles Stefanko does not challenge the trial court's conclusion that Jeannine Stefanko is entitled to some amount of spousal support. Thus, we agree with the trial court's initial conclusions, based on its explicit findings, that spousal support was necessary and just in this case.

Of course, the parties dispute the extent to which Jeannine Stefanko's needs exceed her income. Charles Stefanko's argument is that her needs are much closer to her means than the trial court found because the trial court did not consider two assets she had. The first asset at issue is the proceeds from the sale of the marital home. At the time of the proceedings in the trial court, the home had been on the market for only a short period. While there were differing estimates of what the home would bring as a selling price, there were no offers to purchase the home before the trial court rendered its decision. Thus, confronted with only speculation concerning the price at which the home would sell, the trial court ordered the proceeds divided evenly, only offset in Jeannine Stefanko's favor by an amount that would make up for a shortfall in the distribution of other marital assets. Although the net effect of this offset is that Charles Stefanko would not receive any of the proceeds from the home if it sold for less than \$1 million, this was a reasonable approach. The trial court was able to balance the unequal division of the other assets while allowing for an even division of any proceeds that exceeded the parties' expectations.

Charles Stefanko's challenge to the way this asset was handled when the trial court calculated spousal support focuses on the way Jeannine Stefanko's share of the proceeds were not included in the amount she would have to invest, from which she could earn income. The amount of proceeds generated by a sale was completely speculative and the trial court had no way of knowing how soon the house would sell given its special adaptations for the parties' daughter's needs. To have imputed income to Jeannine Stefanko based on proceeds she may not have had for quite some time, and in an amount the trial court could not yet determine, would have been unfounded. Whether Jeannine Stefanko could have earned more than the six percent interest she used to calculate her potential income is irrelevant when there is no money to invest. We see no clear error in the trial court's findings on this matter, nor any inequity in excluding it when calculating the income Jeannine Stefanko would earn for the purpose of determining an appropriate amount of spousal support.

Also at issue is whether the trial court erred in excluding \$50,000 in an account that Jeannine Stefanko kept separate from the marital assets.<sup>7</sup> Even assuming that this \$50,000

<sup>7</sup> Although this savings account was within the restraining order preventing defendant from transferring his assets, the account balance somehow dwindled from more than \$200,000 in April 1997, to \$52,000 when plaintiff "took it."

should have been included in the amount of money Jeannine Stefanko had to invest, the net effect on her income would be negligible. She would earn only an additional \$3,000 to \$4,000 per year depending on whether the investments earned six or eight percent interest. This is certainly not such a large difference in income, given the size of the marital estate and Charles Stefanko's salary, that we can say that the trial court's decision to exclude this amount was clear error and that the amount of spousal support it ordered was inequitable.

#### B. Child Support Payments

Charles Stefanko also contends that the trial court erred by calculating spousal support based on his salary reduced only by forty percent of the amount he was ordered to pay for child support. He claims that the parties agreed to a lower base salary for the purpose of the calculating spousal support so that he could distinguish between the salary he drew from his business and the amount he received "as a kind of dividend." He only agreed to have the trial court use the higher \$557,000 salary figure when calculating child support because his children were not sharing in the division of the family business. But, according to Charles Stefanko, because Jeannine Stefanko was receiving a portion of that business, not deducting the full amount of child support allowed her to "double dip."

While the parties may have agreed to use two different figures when calculating the different forms of support in this case, Charles Stefanko has provided no authority whatsoever supporting his proposition that he is entitled to a deduction for the child support he was paying. This constitutes abandonment of the argument.<sup>8</sup>

In any event, we conclude that the argument is without merit. Spousal support does not follow a strict formula as does child support. There are no specific factors that must be added or deducted to determine the proper amount of spousal support. Rather, the spousal support statute<sup>9</sup> makes clear that need for support, the ability to pay, and the circumstances of the parties determine what is "just and reasonable support." The amount that Charles Stefanko pays in child support likely affects his ability to pay. However, child support is precisely that – support for his minor daughter. Child support does not inure to Jeannine Stefanko's benefit in any way except to alleviate what might otherwise be her burden of supporting her minor child alone. Child support is not intended to reward her financially.<sup>10</sup> That the parties agreed to reduce the amount of spousal support that could be awarded from Charles Stefanko's already reduced salary benefited him. We see no clear error in the trial court's findings related to this reduced amount of salary or the equity of the resulting spousal award.

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<sup>8</sup> See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

<sup>9</sup> MCL 552.23; MSA 25.103.

<sup>10</sup> See *Haefner v Bayman*, 165 Mich App 437, 444; 419 NW2d 29 (1988) ("Child support payments are not considered the property of the custodial parent and are solely for the benefit of the child.").

### C. Overall Equity

So that the parties are clear on this factor, we think it prudent to comment on the overall equity of the spousal support order in this case. Under the terms of the divorce judgment and order for spousal support, Jeannine Stefanko will earn between \$18,000 and \$36,000 per year, depending on whether and how much cash she uses to purchase a new home, until she is able to earn additional interest income when she finally receives the proceeds from selling the marital home. After paying child support, Charles Stefanko will earn approximately \$521,360 per year.<sup>11</sup> Considering the awarded spousal support, Jeannine Stefanko will earn between \$85,848 and \$103,848 per year while Charles Stefanko will earn \$453,512 per year, not considering any income he can earn from assets he received in the divorce. Charles Stefanko's projected income will be more than four times Jeannine Stefanko's income for the eight years that the trial court awarded support. He has not made any persuasive argument that she neither needs this money to live, nor that he is unable to pay the amount of spousal support awarded. In fact, the difference between the amount the trial court ordered and the amount he says he should pay is only about \$598 per month, equal to \$7,176 per year, and a total of \$57,408 for the entire eight-year period. The evidence in the record leads us to believe that not only can he afford this amount, but that Jeannine Stefanko is entitled to it, making the award equitable.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ William C. Whitbeck  
/s/ Patrick M. Meter

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<sup>11</sup> Whatever share of the business Jeannine Stefanko received may not affect his income.