

STATE OF MICHIGAN
COURT OF APPEALS

KATHRYN LIND,

Plaintiff-Appellant,

v

BRUCE LIND,

Defendant-Appellee.

UNPUBLISHED

June 26, 2001

No. 221614

Marquette Circuit Court

LC No. 98-034361-DM

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of divorce which awarded her the majority of the marital assets and four years' alimony. We affirm.

Plaintiff and defendant were married September 17, 1977, and separated on January 25, 1998. Defendant was the sole source of family income during the marriage. He worked at Northern Michigan University for seventeen years and earned approximately \$59,000 in 1999. Plaintiff had taken some college courses but never obtained a college degree. She worked sporadically during the marriage in various part-time, unskilled positions.

At trial, plaintiff requested that the trial court award her permanent alimony, based on her claim that various medical and psychological conditions render her totally disabled from working. The trial court rejected plaintiff's claim and found that she had the capacity to work and become self-supportive over time. This factual finding was influenced by the trial court's assessment of plaintiff's credibility, due to the questionable veracity of allegations plaintiff made to secure an ex-parte personal protection order early in the case. Based on the finding that plaintiff could become self-sufficient over time, the trial court held that rehabilitative alimony would be appropriate and equitable. The trial court therefore awarded plaintiff four years' alimony in the amount of \$1,100 each month.

The parties owned four main marital assets: equity in the marital home, an investment portfolio and two pensions. In its oral ruling after the one-day bench trial, the trial court announced its intention to award plaintiff a substantial portion of the marital assets. The trial court stated that such an award would compensate for the limited alimony award and would also help plaintiff become financially self-sufficient. Accordingly, the trial court stated that it intended to award plaintiff all the equity in the home, seventy-five percent of the investment

portfolio and fifty percent of the pensions. This asset division would have awarded plaintiff approximately ninety percent of the parties' liquid assets.

The trial court's oral ruling was never reduced to a written order. The very next day, the trial court realized that its oral ruling had not been consistent with its intent. The trial court informed the parties that it would award plaintiff only seventy-five percent of the equity in the home and would award defendant the entire interest in the smaller pension. The trial court did not alter the division of the parties' other assets, including the investment portfolio and the larger pension, and it did not alter plaintiff's alimony award. This revised asset division awarded plaintiff approximately seventy-five percent of the parties' liquid assets. The trial court entered a written order that included the revised asset allocation and incorporated those provisions into the judgment of divorce.

Plaintiff first argues that the trial court should have awarded her permanent alimony rather than four years of rehabilitative alimony. In *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992), our Supreme Court explained the proper standard of review over a trial court's dispositional rulings in divorce matters:

To alleviate any possible confusion stemming from our prior cases, we hold here that the appellate standard of review of dispositional rulings is not limited to clear error or to abuse of discretion. The appellate court must first review the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. But because we recognize that the dispositional ruling is an exercise of discretion and that appellate courts are often reluctant to reverse such rulings, we hold that the ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable. [Footnote and citations omitted.]

In the present case, the trial court based its alimony award on the factual finding that plaintiff has the capacity to work and become self-sufficient over time. We cannot say that this factual finding is clearly erroneous. *Id.* The trial court expressly stated that plaintiff's credibility regarding her claim of total disability had been damaged during the earlier proceedings. This Court gives special deference to the trial court's factual findings when they are based on the credibility of the witnesses. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). In light of the trial court's factual findings, we cannot conclude that the award of rehabilitative alimony, rather than permanent alimony, was either unfair or inequitable. *Sparks*, *supra* at 151-152.

Plaintiff next argues that the trial court's marital property division was inequitable. We first note that plaintiff does not attack the property division proposed by the trial court during its oral ruling from the bench. Rather, plaintiff claims that the trial court committed error requiring reversal when it changed the terms of that oral ruling and implemented a different property division through its written order. Plaintiff's argument is without merit, insofar as she argues that the trial court was bound by its oral ruling from the bench. "A court speaks through its orders, and the jurisdiction of this Court is confined to judgments and orders." *Lown v JJ Eaton*

Place, 235 Mich App 721, 726; 598 NW2d 633 (1999). Therefore, we only examine the equity of the property division contained in the trial court's written order.

Plaintiff argues that the property division contained in the trial court's written order was inequitable because it ignored the rationale for the trial court's award of rehabilitative alimony rather than permanent alimony. Plaintiff argues that the trial court limited the duration of the alimony award because it planned to award her a substantial portion of the marital assets. Plaintiff contends that the written order did not award her a substantial portion of the assets. Therefore, plaintiff argues that this Court should either increase the amount of assets awarded to her or increase the duration of the alimony award. We conclude that plaintiff's argument is without merit. The trial court did state that it planned to limit plaintiff's alimony award because it also planned to award plaintiff a substantial portion of the marital assets. However, the trial court also articulated a second reason for its award of rehabilitative alimony: its finding that plaintiff could become self-sufficient over time. That justification was not eliminated by the adjustment to the marital property division. Moreover, contrary to plaintiff's assertion, the property division contained in the court's written order did substantially favor plaintiff in terms of the parties' liquid assets.

Our review of the record convinces us that the trial court considered the totality of the circumstances, weighed various factors raised by the parties, and did not assign disproportionate weight to any one factor. We cannot say that the trial court's factual findings were clearly erroneous. Further, this Court is not left with the firm conviction that the award of alimony or the division of marital property was inequitable or unfair.

Affirmed.

/s/ David H. Sawyer
/s/ Michael R. Smolenski
/s/ William C. Whitbeck