

STATE OF MICHIGAN
COURT OF APPEALS

MARTHA E. DELAIR,
Plaintiff-Appellee,

UNPUBLISHED
May 19, 2005

v

JONATHAN D. GRIFKA,
Defendant-Appellant.

No. 252459
Wayne Circuit Court
LC No. 02-235817-DM

Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

Defendant appeals a divorce judgment entered on October 31, 2003. We affirm.

A. Motion to Adjourn Trial

Defendant erroneously contends that the trial court erred by failing to grant his motion to adjourn the divorce trial. We review rulings on motions for a continuance or adjournment for an abuse of discretion. MCR 2.503(D)(1); *In re NEGP*, 245 Mich App 126, 134; 626 NW2d 921 (2001).¹

Though defendant retained at least three attorneys to assist him during the pendency of this case, he ultimately elected to proceed *in propria persona*. He claims that, when he appeared in court on October 8, 2003, he believed that the trial court was conducting a pretrial conference and not the actual divorce trial. Because of his claimed misunderstanding, defendant asserts that he requested an adjournment and that the denial of his request resulted in his inability to adequately cross-examine witnesses and present his case.

We reject defendant's position because (1) the trial court's scheduling order indicated that *trial* would commence on October 8, 2003, (2) at the beginning of the proceedings, the trial court clearly announced that it was "the date and time set for trial in this divorce matter," (3)

¹ An abuse of discretion exists when the result is so grossly violative of fact and logic that it evidences a perversity of will instead of the exercise of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

defendant presented an opening statement and actively participated in the examination of the first witness, and (4) defendant did not indicate that he thought the proceeding was merely a pretrial conference until the end of the first day of trial.

Further, after the trial judge corrected defendant's erroneous assertion regarding the nature of the proceedings, defendant acknowledged and agreed that the second day of trial would begin on the morning of October 15, 2003. On that date, defendant again appeared, cross-examined witnesses, and otherwise actively participated in the proceedings. Following the testimony of two plaintiff witnesses, the trial court asked defendant to tell the court about his evidence. Defendant merely responded, "I'd like to -- as far as postpone the evidence that I have." Contrary to defendant's erroneous assertion in his brief, he did not request an adjournment at the time he was advised that the trial would proceed on October 8, 2003; rather, defendant waited until after the second day of trial was nearly over to assert his intention to "postpone" his evidence.

Were we to read defendant's remark as a motion to adjourn the proceedings, the trial court's denial of defendant's request clearly did not constitute an abuse of discretion. This case, involving a marriage that lasted less than eight months, was pending for a year before trial began and defendant had ample time, and the assistance of three attorneys, to prepare his case. Further, defendant knew about his trial date, at the very latest, by October 8th, yet he chose not to bring an attorney to the next trial date, nor did he seek to "postpone" his proofs until after most of the evidence was presented. There is no indication in the record or in defendant's appeal brief that, had defendant obtained additional time, he would have sought the assistance of counsel at trial or that he would have presented more or different proofs.² Moreover, the record reflects that defendant assiduously cross-examined witnesses and presented his own evidence, with the assistance of the trial court. Accordingly, his allegation of error is without merit.

B. Property Division

Defendant asserts that the trial court's division of property with respect to the marital home was inequitable. We disagree. In reviewing a trial court's property division, we first examine the trial court's findings of fact for clear error. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003); *McNamara v Horner (After Rem)*, 255 Mich App 667, 669; 662 NW2d 436 (2003). A finding of fact is clearly erroneous if, after a review of the record, we are left with a definite and firm conviction that the trial court made a mistake. *McNamara, supra* at 669. If we uphold the trial court's findings of fact, we must decide whether the dispositive ruling was fair and equitable in light of those facts. *Gates, supra* at 423.³ The dispositional ruling is

² To the extent defendant suggests that the trial judge prejudiced his case through bias toward the plaintiff, he fails to point to any record evidence of judicial bias and our review reveals none. Thus, defendant has simply failed to overcome our heavy presumption of impartiality and, therefore, his claim must fail. *Cain v Michigan Dept of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996).

³ Property division need not be mathematically equal, but the trial court must clearly explain any significant departure from equality. *Gates, supra* at 423. If the value of an asset is in dispute,
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discretionary and will be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.*

The trial court awarded the marital home to plaintiff, plus \$4,000 to complete or repair projects defendant started, but left unfinished.⁴ In making the award, the trial court correctly found that plaintiff bought the home several years before the marriage and that the fair market value of the home either decreased or remained the same during the brief duration of the marriage. While defendant poured a foundation for the garage, plaintiff had to spend approximately \$26,000 to complete the project. The trial court determined the value of the house based on an appraisal, plus the amount plaintiff spent to complete the garage, and defendant offered no evidence to establish the value of the home. The court's findings of fact regarding the home's value were not clearly erroneous. Further, because the increased equity in the house was equivalent to what plaintiff had spent on the garage, the court fairly and equitably awarded plaintiff the full value of the house.

C. Attorney Fees

Defendant contends that the trial court erred by awarding \$10,000 in attorney fees to plaintiff. We disagree. A trial court's ruling on a motion for attorney fees is reviewed for abuse of discretion. *Olson, supra* at 634. Attorney fees in divorce actions are not recoverable as of right, but they may be awarded if the party requesting the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation. MCR 3.206(C)(2)(b); *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992).

The party requesting attorney fees bears the burden of proving they were incurred and were reasonable. MCR 3.206(C)(2); *Reed v Reed*, 265 Mich App 131, 164-165; 693 NW2d 125 (2005). When requested attorney fees are contested, it is incumbent on the trial court to determine what services were actually rendered and the reasonableness of those services. *Id.* The trial court may not award attorney fees solely on the basis of what it perceives to be fair or equitable. *Id.*

Here, plaintiff testified that she incurred \$16,205 in attorney fees and, as evidence, she submitted bills from her attorney. The trial court found that plaintiff incurred increased attorney fees because of defendant's unreasonable behavior and misconduct. The court opined:

And I believe the last issue that I haven't addressed yet is attorney fees. And while I normally think that attorney fees should be borne by the parties, and in

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the court must specifically determine its value. *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003).

⁴ Indeed, plaintiff presented photographs showing damage caused by defendant's incomplete renovations. The trial court's determination that these damages to the home were out of the ordinary was not clearly erroneous. The court's award to plaintiff of \$4,000 to complete the repairs was also fair and equitable.

this particular case, Ms. Delair has an ability to pay her attorney fees. There's no doubt about that. So that basis for seeking attorney fees would not be appropriate.

Mr. Grifka, I don't think that you defended this case in – in good faith at all. I think you did needlessly increase the costs of this case.

This could have been a very quick situation with an – a very – there wasn't very many assets to divide. The custody issue could have been quickly resolved. And I think the two of you could have moved on quite quickly. This should have been an inexpensive divorce. This should not have been a divorce that cost in the neighborhood of \$16,000 for her and \$9,000 for you.

And the reason that it cost so much is from the day this divorce was filed, you have fought it. You have tried to string it out. You haven't followed the court's orders. You didn't follow my order with respect to visitation with [the child]. You didn't follow – you didn't pay child support. There had to be show causes that were brought. There's a show cause pending right now against you for your non-payment of child support.

There is not – you didn't comply with discovery. You didn't show up at hearings.

[Y]ou called my court yesterday. You asked for an adjournment. They wouldn't give you an adjournment. So then you called today, and you said that your car had broken down. . . . You have – you have taken up the court's time . . . and there has been testimony that it was your intent to delay this case.

Because plaintiff submitted evidence of the fees that were actually incurred and because the court made specific findings of fact regarding defendant's misconduct, the trial court did not abuse its discretion when it awarded plaintiff \$10,000 in attorney fees. See *Reed, supra* at 164-166.

Affirmed.

/s/ Henry William Saad

/s/ Brian K. Zahra

/s/ Bill Schuette