

STATE OF MICHIGAN
COURT OF APPEALS

LILLY THEODOROFF,

Plaintiff-Appellee,

v

RICHARD JOSEPH THEODOROFF,

Defendant-Appellant.

UNPUBLISHED

August 3, 1999

No. 206600

Oakland Circuit Court

LC No. 95-494121 DO

Before: Doctoroff, P.J., Markman and J.B.Sullivan*, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm

Defendant contends that the trial court erred in considering specific assets as part of the marital estate where defendant allegedly transferred assets in order to comply with spousal support and status quo orders. We disagree. "In a divorce case, this Court must first review the trial court's findings of fact regarding the valuation of particular marital assets under the clearly erroneous standard." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the findings of fact are upheld, this Court must determine if the dispositive ruling is fair and equitable in light of the factual findings. *Id.*

Despite the fact that there was an order precluding transfer of assets, defendant testified that he had to transfer assets to comply with the trial court's orders of continued support for plaintiff. However, defendant failed to present documentary evidence that he could not comply with those orders based on his extensive income. Additionally, while defendant testified that he had exorbitant living and food expenses, he failed to present documentary evidence to corroborate his assertions. The trial court found that defendant's version of events was not credible and that his violation of the restraining of assets order was blatant. Deference is to be accorded the trial court's assessment of witness credibility. *In re Halmaghi*, 184 Mich App 263, 269; 457 NW2d 356 (1990). Accordingly, defendant's contention that the trial court's evaluation was erroneous is without merit. The trial court was entitled to consider defendant's conduct in assessing a penalty for the transfer of assets without court consent. *Sands v Sands*, 442 Mich 30, 31; 497 NW2d 493 (1993).

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

Defendant also contends that the trial court erred in failing to award all monies paid to plaintiff as spousal support for purposes of the tax deduction and that the judgment entered does not comport with the trial court's intent. Defendant requests this Court to correct that failure pursuant to the relief obtainable in this Court under MCR 7.216(A). Defendant's request is without merit. The trial court issued its Order for Temporary Spousal Support on June 7, 1995, and its Order to Maintain Status Quo (relating to mortgage, taxes, insurance and utilities) on July 3, 1995. Our review of the record reveals that the trial court was aware of defendant's request that an additional \$73,000 be declared a tax deduction for him. However, in its Opinion and Order dated June 27, 1997, the trial court awarded defendant a tax deduction for monies paid as spousal support, but did not include monies paid pursuant to the status quo order (the final page of the order states, "Regarding tax liability for temporary spousal support, the court finds that it is fair and equitable to allow Defendant the tax deduction for 1995 and 1996..."). This decision was included in the September 10, 1997 Judgment of Divorce as follows:

TAX LIABILITY FOR TEMPORARY ALIMONY

IT IS ORDERED that Defendant, Richard Joseph Theodoroff, shall be allowed the tax deduction for temporary spousal support made in 1995, 1996 and 1997 pursuant to the Temporary Spousal Support Order entered June 7, 1995 . . .

The judgment of divorce thus comports with the trial court's opinion and order. *Bush v Beemer*, 224 Mich App 457, 466; 569 NW2d 636 (1997). As there is no evidence that the judgment either does not comply with the trial court's intent or presents a clerical error, defendant's request is without merit. The trial court determined the tax award, *Mitchell v Mitchell*, 198 Mich App 393, 396; 499 NW2d 386 (1993), and there is no evidence of clerical error on the face of the opinion and order. We note that defendant did not file a motion in the trial court for relief from judgment pursuant to MCR 2.612, which would have been the appropriate recourse for his allegation that the judgment did not comport with the trial court's intent. While the relief obtainable in this Court pursuant to MCR 7.216(A) is broad, the record before us provides no support for the relief here requested.

Defendant also asserts that the trial court erred in its award of alimony to plaintiff. We disagree. In *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996), this Court discussed the propriety of an alimony award:

A divorce court has the discretion to award alimony as it considers just and reasonable. Relevant factors for the court to consider include the length of the marriage, the parties' ability to pay, their past relations and conduct, their ages, needs, ability to work, health and fault, if any, and all other circumstances of the case. The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party.

The parties were married for thirty-three years. At the time of divorce, plaintiff was fifty-six years of age, while defendant was sixty years of age. She had previously been employed as a flight attendant in 1963. However, she gave up her occupation in order to raise the parties' children. While plaintiff had obtained employment, her 1996 income of \$18,500 was sparse in comparison to

defendant's income of \$155,900. Plaintiff's ability to advance her career was limited, while defendant had obtained a master's degree during the course of the marriage and had steady employment with Chrysler. Additionally, plaintiff's health was hampered by high blood pressure, a hiatal hernia and restless leg syndrome. Defendant did have a heart catheterization procedure in 1993, but the trial court found that defendant had fully recovered from the procedure.

The trial court found that the facts evidenced that defendant had the ability to pay alimony and plaintiff was in need of substantial assistance in order to meet her budget. The trial court also found that defendant was at fault for the breakdown of the marriage by his physical and verbal abuse. The findings of the trial court were based on facts and determinations of credibility and is a fair and equitable award under the circumstances.

Lastly, defendant contends that the trial court's distribution was inappropriate because it assessed a penalty for fault and failed to separate assets which belonged solely to defendant, considered an asset no longer in existence, "double counted" another asset and failed to consider the parties' desire to sell the marital home. We disagree. The trial court was entitled to consider fault in its division of assets. Additionally, the assessment did not serve to punish as there was only a five percent departure from an equal division. *McDougal v McDougal*, 451 Mich 80, 90; 545 NW2d 357 (1996). This Court has concluded that the factual findings of the trial court were appropriate. The dispositional ruling is fair and equitable in light of the factual findings. *Draggo*, *supra*, 223 Mich App 429.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Stephen J. Markman
/s/ Joseph B. Sullivan