

STATE OF MICHIGAN  
COURT OF APPEALS

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MARSHALL W. BOIKE,

Plaintiff-Counterdefendant-  
Appellant,

v

HEATHER E. BOIKE,

Defendant-Counterplaintiff-  
Appellee.

UNPUBLISHED  
February 21, 2003

No. 236572  
Lenewee Circuit Court  
LC No. 99-21201-DO

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Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

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

Plaintiff first challenges the trial court's disposition of the marital property. In reviewing a trial court's property division in a divorce case, we must first review the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

If the trial court's findings of fact are upheld, we must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless we are left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks, supra* at 151-152.

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). To reach an equitable division, the trial court should consider the duration of the marriage, contributions of the parties to the marital estate, age of the parties, health of the parties, life status of the parties, necessities and circumstances of the parties, earning abilities of the parties, past relations and conduct of the parties, and general principles of equity. *Sparks, supra* at 159-160. The determination of relevant factors will vary depending on the facts and circumstances of each case, and no one factor should be given undue weight. *Id.* at 160.

The trial court's factual findings are as follows: the parties were married for approximately ten years, and at the time of the marriage, plaintiff was earning \$50,000 to

\$55,000 per year at Ford Motor Company, and defendant was earning \$13,000 per year as a receptionist at a dental office. Of the total assets brought into the marriage, plaintiff brought \$303,000 (57.5%), and defendant brought \$224,000 (42.5%). At the time of divorce, plaintiff was sixty-three years old, and defendant was sixty years old. Plaintiff had retired, and defendant's serious health problems only allow her to work part-time, two days per week. Money and control are very important to plaintiff. At the time of trial, plaintiff had assets valued at \$737,000 (65%), and defendant had assets valued at \$389,000 (35%), for a total of \$1,126,000. Plaintiff does not contest the trial court's factual findings; his challenge is to the court's dispositional ruling.

Based on principles of equity, the trial court ruled that because plaintiff brought 57.5% of the assets into the marriage and because defendant brought 42.5% of the assets into the marriage, it was proper to divide up the parties' assets in the same proportion. We have held that in general, the marital estate is divided between the parties, and each party takes away from the marriage their own separate estate with no invasion by the other party. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). However, a spouse's separate estate can be invaded when one party demonstrates additional need or when the other spouse contributed to the acquisition, improvement, or accumulation of the property. *Id.* at 490-491; MCL 552.23; MCL 552.401.

We conclude that both statutory exceptions are present, justifying the invasion of plaintiff's separate assets. The trial court found that defendant was earning only \$100 per week and her health care costs were rapidly increasing. The trial court also found that defendant's monetary contribution to the marital estate was used largely to benefit plaintiff. Plaintiff admitted that \$75,000 of the money defendant contributed was spent on a Ford Thunderbird for defendant, a new Ford pick-up truck for himself, putting a \$20,000 deck on their home, paying \$25,000 to settle a divorce case with his ex-wife, and \$6,700 on a vehicle for his son. Plaintiff also testified he invested the remainder of defendant's contribution to the marital estate in certificates of deposit, then in 3,000 shares of Ford stock that tripled in value over the course of the marriage. Based on these facts, the trial court properly invaded plaintiff's separate assets in distributing the marital property. The trial court's property division was fair and equitable in light of the facts of the case. *Sparks, supra* at 151-152.

Plaintiff next argues that the trial court erred in awarding alimony to defendant. The award of alimony is in the trial court's discretion. *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). If the trial court's findings are not clearly erroneous, we must then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks, supra* at 151-152; *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000). The trial court's decision regarding alimony must be affirmed unless we are firmly convinced that it was inequitable. *Sparks, supra* at 152. Again, defendant challenges the trial court's dispositional ruling rather than its factual findings.

The main objective of alimony is to balance the incomes and needs of the parties in a way which will not impoverish either party. *Moore, supra*, 654. Alimony is to be based on what is just and reasonable under the circumstances of the case. *Id.* In determining whether the award of alimony is proper, factors to be considered include the past relations and conduct of the parties, the length of the marriage, the abilities of the parties to work, the source and amount of property awarded to the parties, the parties' ages, the abilities of the parties to pay alimony, the

present situation of the parties, the needs of the parties, the parties' health, the prior standard of living of the parties and whether either is responsible for the support of others, contributions of the parties to the joint estate, and general principles of equity. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). The trial court's findings of fact were essentially the same as those made concerning property division and were not clearly erroneous. Based on defendant's health problems and inability to work more than two days per week, the trial court's award of modifiable alimony in the amount of \$175 per week was fair and equitable in light of the facts and is affirmed. *Sparks, supra* at 151-152; *Moore, supra* at 655.

Plaintiff next challenges the trial court's award of lifetime medical expenses to defendant, with the cost to be shared equally between the parties. The trial court specifically stated that this award was not to be construed as alimony. Therefore, the award is properly analyzed under the property framework as set out in *Sparks, supra* at 151. We have held that health insurance premiums may be part of the property division. *Voukatidis v Voukatidis*, 195 Mich App 338, 339; 489 NW2d 512 (1992). As noted above, the trial court took into consideration all of the relevant factors set out in *Sparks*, and its findings are not clearly erroneous. In light of defendant's health problems, coupled with her inability to obtain adequate insurance, the trial court's award of lifetime medical expenses to be shared equally by the parties was fair and equitable in light of the facts of the case and is affirmed. *Draggoo, supra* at 429.

Plaintiff next challenges the trial court's award of \$15,000 of attorney fees to defendant. We review a trial court's decision to award attorney fees for an abuse of discretion. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999). An abuse of discretion occurs only where the result is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. *Spaulding v Spaulding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). During the pendency of the divorce proceedings, plaintiff failed to comply with the trial court's order three separate times. Plaintiff also increased the expert witness' fee, because of his failure to turn over requested financial documents.

Based on plaintiff's conduct during the pendency of the proceedings, the trial court properly awarded \$15,000 in attorney fees to defendant. We have held that attorney fees are authorized when the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation. *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992). We have also held that a party may not be required to invade her assets to satisfy attorney fees when she is relying on the same assets for her support. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). Therefore, the trial court's award of attorney fees was appropriate in light of plaintiff's conduct during the course of the proceedings and cannot be considered an abuse of discretion. As such, the award of attorney fees to defendant is affirmed.

Affirmed.

/s/ William C. Whitbeck  
/s/ Richard Allen Griffin  
/s/ Donald S. Owens