

STATE OF MICHIGAN
COURT OF APPEALS

TAMMY ANN STEELMAN,
Plaintiff-Appellee,

UNPUBLISHED
July 14, 2005

v

JOHNIE DALTON STEELMAN,
Defendant-Appellant.

No. 250090
Wayne Circuit Court
LC No. 02-232008-DM

TAMMY ANN STEELMAN,
Plaintiff-Appellee,

v

JOHNIE DALTON STEELMAN,
Defendant-Appellant.

No. 252294
Wayne Circuit Court
LC No. 02-232008-DM

Before: Neff, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, defendant Johnie Steelman appeals as of right from the trial court's judgment of divorce and order terminating his parental rights to the minor children, Amber Steelman and Johnnie Steelman, under MCL 712A.19b(3)(h) and possibly (g).¹ We affirm the termination of parental rights and the divorce judgment except for the award of certain cemetery plots to plaintiff.

Plaintiff and defendant were married in 1995. In April 1999, when young Johnnie was less than one month old and Amber was 2½, defendant left the marital home. He returned only about four times to see the children. Defendant was later indicted and convicted on federal charges involving conspiracy to distribute marijuana and cocaine and to launder monetary

¹ Termination was also sought under subsection (g), and some of the court's findings could relate to that subsection.

instruments. In April 2001, defendant began serving a ten-year sentence in federal prison; his earliest release date is in 2008 or 2009. Plaintiff was also charged in the federal indictment, but pleaded guilty to drug conspiracy and received no prison time as the result of the plea bargain.

Plaintiff filed for divorce in September 2002. In March 2003, plaintiff filed an amended complaint for divorce and termination of defendant's parental rights. Defendant moved to have parenting time with the children at the Federal Correctional Institution at Milan. The trial court held this request in abeyance for defendant to establish a relationship with the children through letters, cards, and telephone calls. A three-day divorce trial was then held in May 2003, with defendant participating by speakerphone. The court's judgment granted most property and full legal and physical custody of the two minor children to plaintiff. The property distribution was based on the children's needs and to secure a future for them. The court cited defendant's abusive conduct towards plaintiff, lack of responsibility, failure to love and nurture the children, and illegal conduct as the major causes of the marital breakdown. The court found that plaintiff, through her conduct and support of defendant's illegal activities, also contributed to the marriage breakdown.

In awarding custody of the parties' minor children to plaintiff, the court found that plaintiff had been a good mother and the children were bonded to her. Amber was afraid of defendant and underwent counseling; Johnnie did not know defendant. Defendant had made no efforts to see the children until this action was filed and plaintiff sought termination of defendant's parental rights. Previously, defendant was addicted to drugs and Amber witnessed his violent behavior against plaintiff.

The divorce judgment of July 2003 reserved the issues of parenting time and termination of defendant's parental rights, but the parties apparently later waived additional proceedings. The court appointed a psychologist, Michael Brock, M.A., LLP, CSW, to interview and test the parties and children, view the proposed visiting facilities at the prison, consult with Amber's therapist, and review any other psychological or medical records deemed relevant. Mr. Brock filed his "Incomplete Evaluation and Report Without Recommendations" in September 2003. Mr. Brock interviewed and tested the plaintiff and her mother, with whom plaintiff resided, and also interviewed the children and defendant. However, Mr. Brock's efforts to further comply with the court's order by testing the defendant, viewing him with the children, and seeing the visiting facilities, were apparently frustrated by the federal prison. For this reason, Mr. Brock thought it unfair to offer conclusions about the case. He did note a serious concern with defendant's drug and alcohol addiction, and defendant's current denial.

In terminating defendant's parental rights, the trial court found that defendant had little contact with the children before his incarceration. He saw Amber very little and saw Johnnie only about four times. Further, defendant did not take responsibility for the children or spend time caring for them. Because of their young ages and little contact with defendant before his imprisonment, the telephone conversations did nothing to create a bond between defendant and the children. The court also found that prison visits would not effectuate meaningful parenting time because of the children's young ages.

On appeal, defendant contends that termination of his parental rights under MCL 712A.19b(3)(g) and (h) was clear error. We disagree. The record supports the trial court's findings regarding defendant's imprisonment and failure to establish a bond with the children.

Evidence established that defendant had a drug and alcohol problem and was often “high” while at home. He also engaged in domestic violence against plaintiff in front of Amber, failed to support the family after leaving in April 1999, and did not seek to resume contact with the children until plaintiff filed for termination of his parental rights. Because of his incarceration, defendant would be unable to have a normal parent-child relationship with Amber and Johnnie until at least 2008. The trial court did not clearly err in finding the statutory grounds for termination of defendant’s parental rights established by clear and convincing evidence. MCR 3.977(J); *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Only one statutory ground is required to terminate parental rights. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999).

We also find no clear error in the trial court’s determination that termination of defendant’s parental rights was not clearly against the children’s best interests. MCL 712A.19b(5); *Trejo*, *supra* at 356-357. Defendant failed to establish a bond with the children, did not support or visit for long periods of time, abused drugs, engaged in illegal activities, threatened plaintiff, and was violent with her. He is now incarcerated until at least 2008. The children need a safe, stable, loving home, which defendant cannot provide. We find no clear error in the trial court’s decision on the best interests issue.

Turning now to the property settlement, defendant’s main areas of concern are with valuation and award of Ambern Enterprises, d/b/a The Works Bar and Grill, and six cemetery plots to plaintiff. The trial court’s factual findings concerning property division are reviewed under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). If such findings are upheld, we must decide whether the court’s dispositive ruling was fair and equitable in light of the facts. *Id.* at 151-152. Factors to be considered when relevant include (1) duration of the marriage, (2) the parties’ contributions to the marital estate, (3) the parties’ ages, (4) the parties’ health, (5) the parties’ life status, (6) the parties’ necessities and circumstances, (7) the parties’ earning abilities, (8) past relations and conduct of the parties, and (9) general principles of equity. *Id.* at 159-160. Other factors may be relevant in a particular case, e.g., interruption of a party’s career or education. *Id.*

In the case at bar, the trial court’s factual findings are not clearly erroneous and its property division, with the exception of the cemetery plots, was fair and equitable in light of the facts. Plaintiff had small children to support and needed the income from The Works and other properties to support herself and the children. Plaintiff and the children lived with plaintiff’s parents because plaintiff could not afford her own home. Defendant was incarcerated until at least 2008. The testimony conflicted with regard to whether plaintiff contributed monetarily to acquisition of The Works; however, plaintiff did participate in managing the business after defendant was incarcerated. While defendant argues that the valuation of The Works was too low, there is no evidence in the record to support this claim. Assessed valuations and tax returns were apparently used for some property valuations to conserve the parties’ funds. Defendant argues that The Works is a highly profitable and valuable asset, and that his attorney failed to follow his instructions to get an appraisal. However, these claims are not supported by the record. We find no clear error in the court’s valuation of The Works or inequity or abuse of discretion in the award of The Works and other properties to plaintiff in light of the factors discussed above concerning defendant’s conduct and plaintiff’s needs and contributions.

We do, however, find clear error and an abuse of discretion in awarding six cemetery plots in Woodmere Cemetery to plaintiff. Defendant purchased these plots for \$6,075 in 1997. Apparently, the cemetery plots are near the burial places of members of the Steelman family, and no members of plaintiff's family are buried nearby. At trial, plaintiff represented that she claimed no interest in the cemetery plots and asked the court to award them to defendant. Consequently, and because the plots generate no income, have little monetary value, and are of much greater sentimental value to defendant, we find that the trial court's award of these cemetery plots to plaintiff was manifestly unfair and inequitable. We, therefore, reverse this portion of the trial court's judgment and direct that the cemetery plots be awarded to defendant.

Affirmed in part, reversed in part, and remanded for entry of a judgment in conformity with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Michael J. Talbot