

STATE OF MICHIGAN
COURT OF APPEALS

EUGENE S. OLSOWKA,

Plaintiff-Appellee/Cross-Appellant,

v

SUGENDRINI PONNAMPALAM f/k/a
SUGENDRINI OLSOWKA,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED
November 20, 2008

No. 279694
Saginaw Circuit Court
LC No. 05-058191-DO

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant appeals as of right, and plaintiff cross-appeals, the judgment of divorce entered July 23, 2007. Defendant argues that the trial court abused its discretion in awarding her temporary spousal support of \$3,500 a month and denying her motion to reopen proofs. On cross-appeal, plaintiff argues that the trial court abused its discretion in awarding defendant spousal support and \$20,000 in attorney fees. We affirm in part and remand for an evaluation of the award of attorney fees.

I. Facts and Procedural History

The parties were married on February 14, 1998. Each of the parties had been previously married and had a child from their prior marriage. Plaintiff filed for divorce on October 17, 2005, and moved out of the marital home the following week. The trial court issued its judgment of divorce almost two years later, in July of 2007.

Both parties are licensed pathologists. When they first met in July of 1994, they were both practicing pathology full time. Sometime in 1996, defendant began suffering from severe migraine headaches. By December of that year, each migraine lasted up to three days, with almost no time between migraines. Defendant was forced to stop working and began receiving \$7,000 a month, or \$84,000 a year, in private disability insurance payments. She also started treatment at the Michigan Headache and Neurological Institute (MHNI). Defendant testified that after several months, she began suffering fewer migraines. She had an average of three migraines per week, and two or three days each week without a migraine. Defendant admitted that MHNI found no physical abnormalities accounting for her migraines. After the parties

married in 1998, defendant continued treatment, did not return to work, and continued to receive disability insurance payments.

In 2000 and 2001, defendant had several appointments with neurologist Barbara Jahnke. Dr. Jahnke's notes reflect that at her first appointment, defendant reported suffering a migraine every 12 to 14 days, and at a later visit, reported that her migraines were a little better. During the same time period, defendant's disability insurance carrier arranged for her to have an independent medical exam. The doctor who conducted the exam and reviewed defendant's treatment history determined that she was capable of working. As a result, defendant's insurance payments were terminated. Defendant filed suit against her insurance carrier, but agreed to settle the case in June of 2001 for a gross sum of \$240,000. Later in 2001, defendant began receiving Social Security disability benefits.

Defendant continued treatment at MHNI in 2001 and 2002. Her last appointment was in October of 2002. From September of 2003 through the time of trial in February of 2007, defendant received treatment from Dr. Louis Constan. The doctor's notes reflect that in July of 2004, defendant reported having migraines fairly regularly; in August of 2004, she reported having three migraines over the previous month; in September of 2004, she reported having one or two migraines a week, but that her medications "helped a lot;" in January of 2005, she reported that her migraines had improved; in January and February of 2006, she reported that her migraines had increased to three times a week due to the stress of divorcing plaintiff; and, in April of 2006, she again reported that her migraines had improved.

Defendant testified that she continues to have migraines and that each migraine lasts approximately three hours. In an attempt to avoid migraines, defendant takes medication, does several therapies, and does not participate in a number of activities. But, defendant is able to do some cooking, cleaning, laundry, shopping, and traveling. Defendant also managed five rental properties during the parties' marriage. Before the parties married, defendant purchased a Florida condominium and in the beginning of their marriage, they purchased a Florida timeshare. Defendant rented out both properties. In 2002, defendant purchased two rental properties in Saginaw, Michigan. In 2003, she purchased a third Saginaw property, and put it in her daughter's trust. She financed the purchase by taking out a loan on the Florida condominium. In 2005, after plaintiff filed for divorce, defendant paid off the loan by taking out a loan on the marital home. Both parties testified that although plaintiff co-signed for the loan, they agreed that he would not be held responsible for the payments. Defendant testified that she has managed all three Saginaw properties and that she plans to manage properties in the future.

Defendant further testified that although she is able to manage rental properties, she does not believe that she is able to work as a pathologist. According to defendant, concentrating for a lengthy period of time, the smell of chemicals, and looking through a microscope would probably give her a migraine. In 2004, defendant attempted to work with pathologist Frederick Wreford on a temporary basis. Dr. Wreford testified that defendant attempted to do the work, but was unable to finish the temporary assignment because of a migraine. He testified that in his opinion, it would be difficult for defendant to work as a pathologist. He admitted, however, that he based his opinion on defendant's representations about the severity of her migraines.

Plaintiff testified that he believes defendant suffers from migraines. As a pathologist, plaintiff is able to prescribe medications and he admitted to calling in refills of defendant's

prescriptions, or allowing her to call in refills under his name. Plaintiff repeatedly testified, however, that he does not believe defendant's migraines are as severe as she represents. Over the course of the marriage, defendant almost always attended pre-planned events with friends, went on vacations, and managed rental properties. Plaintiff believes that defendant is able to work as a pathologist.

After plaintiff filed for divorce in October of 2005, the parties participated in a referee hearing to determine defendant's reasonable expenses and her ability to pay those expenses during the divorce proceedings. Defendant submitted a list of expenses totaling \$8,497 a month. The referee determined that a number of defendant's expenses were unreasonable and recommended that plaintiff pay \$6,000 a month in temporary spousal support. The trial court issued an order implementing the referee's recommendations. In August and September of 2006, the parties participated in mediation and ultimately reached a property settlement pursuant to the terms of their prenuptial agreement.

At trial, the parties testified at length about their property settlement, income, and expenses. Defendant requested \$6,000 a month in permanent spousal support, as well as attorney fees. The trial court issued an oral opinion on March 20, 2007. The court acknowledged that defendant suffers from migraines, but concluded that she is capable of working and can find work as a pathologist. Ultimately, the court awarded defendant spousal support of \$3,500 a month for a period of three years, and \$20,000 in attorney fees.

On June 18, 2007, defendant filed a motion to reopen proofs or, alternatively, for a new trial to present additional evidence of her disability. Defendant's trial counsel indicated that he did not present the additional evidence at trial based on the trial court's statement in chambers that plaintiff could not deny that defendant was disabled. Defense counsel interpreted the court's statement to mean that the court had found defendant disabled, that no further proofs were required on that issue, and that defendant was entitled to spousal support.

At the hearing on defendant's motion, the trial court judge indicated that he did not recall all of the statements made in chambers, but that he never instructed counsel not to present additional proofs at trial. The judge stated that he based his conclusions about defendant's ability to work on all of the evidence presented at trial, and that presentation of additional proofs, even the testimony of defendant's treating physicians, would not change his mind in that regard. At a subsequent hearing, the judge stated: "I recall the testimony . . . and as I indicate again with all due respect to her, I was firmly convinced, and still am, that [defendant] could work, and in particular in her profession, . . . and I guess I don't know what anymore testimony . . . would have added." The trial court issued an order denying defendant's motion to reopen proofs on June 3, 2007, and issued the judgment of divorce on July 23, 2007. Defendant now appeals as of right. Plaintiff cross-appeals.

II. Spousal Support

Defendant argues that the trial court abused its discretion in awarding her spousal support in the amount of only \$3,500 a month for a period of only three years. Defendant asserts that she is entitled to permanent spousal support of \$6,000 a month. We disagree.

We review a trial court's award of spousal support for an abuse of discretion. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003). An abuse of discretion occurs when the trial court's decision falls outside of the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). We review a trial court's findings of fact related to spousal support for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). "A finding is clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.* at 654-655.

The main objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Id.* at 654. Support is to be based on what is just and reasonable under all of the circumstances. *Id.* In awarding spousal support, the trial court should consider: (1) the relations and conduct of the parties during the marriage; (2) the length of the marriage; (3) the parties' ability to work; (4) the distribution of property awarded to the parties; (5) the parties' ages; (6) the parties' abilities to pay support; (7) the present situation of the parties; (8) the parties' needs; (9) the parties' health; (10) the parties' prior standard of living and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Olson, supra* at 631.

In this case, the trial court specifically addressed all of the factors relevant to an award of spousal support. See *Id.* The court found that the parties had a relatively short marriage, lasting only 7.5 years before plaintiff filed for divorce, and that they had no children together. The court found the parties to be equally at fault for the breakdown of the marriage, and the parties do not directly dispute that finding on appeal. Further, as the trial court indicated, both parties have substantial assets. Defendant entered the marriage with \$364,000 in assets, and left the marriage with between \$982,012 and \$994,407 in assets, including the marital home, personal property, rental properties, and several investment accounts. Plaintiff entered the marriage with \$153,000 in assets, and left the marriage with approximately \$395,000 in assets, not including his share of his pathology practice.

At the time of trial, plaintiff was 52 years old and in good health. Defendant was 49 years old and suffered from migraines. Both parties are licensed pathologists. When the parties married in 1998, plaintiff was practicing pathology and his annual income was \$140,000. During the marriage, plaintiff became a partner in his pathology practice and his salary increased accordingly. When the parties separated in 2005, his annual income was \$373,788. Plaintiff admits that he is able to pay spousal support. Defendant, on the other hand, has not worked full time since 1996. Defendant testified that she stopped working because of her migraines. When the parties married in 1998, she was collecting \$84,000 a year in private disability insurance payments. In 2001, however, defendant settled her insurance claim for \$240,000, and began collecting Social Security disability benefits. At the time of trial, defendant received \$16,968 a year, or \$1,414 a month, from Social Security, and approximately \$100 a month in rental income. She received additional monthly payments for her daughter's care.

Although defendant has not worked full-time since 1996 and receives Social Security benefits, the trial court determined that she is able to work as a pathologist. Defendant asserts that she is unable to work because of her migraines, and that the trial court erred in finding otherwise. But, the evidence presented at trial supports the court's finding. Defendant testified at length about her medical history and symptoms. The trial court acknowledged her testimony

that she continues to suffer from migraines, is undergoing treatment for migraines, has adjusted her lifestyle in an attempt to avoid migraines, and was unable to complete a temporary assignment as a pathologist because of a migraine. Defendant further testified, however, that her migraines have improved over the years. She testified that in 1996, each migraine lasted up to three days, whereas, at the time of trial, each migraine lasted only three hours. Medical records indicated that at times, defendant suffered only two migraines a month. The trial court also noted that during the marriage, defendant traveled abroad, managed five rental properties, and expressed interest in managing more properties. Additionally, plaintiff testified that defendant almost always attended pre-planned events with friends, and that he could not recall a single occasion when she was unable to do something that she wanted to do because of a migraine. Plaintiff testified that in his opinion, defendant is able to work as a pathologist, especially considering that pathologists work regular business hours, or even shortened hours, and current technology allows them to avoid excessive microscope use. Considering this evidence, and that the trial court is in the best position to judge the credibility of the witnesses, see MCR 2.613(C); *Fletcher v Fletcher*, 447 Mich 871, 890; 526 NW2d 889 (1994), we cannot conclude that the trial court clearly erred in finding that defendant is able to work as a pathologist.

Defendant further argues that plaintiff “should be estopped from disputing [her] disability.” According to defendant, plaintiff essentially conceded her inability to work by accepting her Social Security benefits as marital income, listing her occupation as “disabled” on income tax returns for 2005, and allowing her to call-in refills of her prescriptions using his name. Initially, we note that defendant has failed to present any authority to support her equitable estoppel argument. A party may not leave it to this Court to search for authority to sustain or reject a position. *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004). Moreover, even were we to consider defendant’s argument, she has not established that plaintiff conceded her alleged inability to work. First, there is no evidence that plaintiff had any control over defendant’s Social Security payments. To the contrary, defendant testified that she spent most, if not all, of her payments on purchases for herself, her daughter, and her daughter’s trust. Nor is there evidence that plaintiff received any benefit by labeling defendant’s occupation as “disabled” on their income tax returns. Finally, by allowing defendant to call in refills of her prescriptions using his name, plaintiff simply acknowledged that defendant suffered from migraines requiring medication, not that she was unable to work. We additionally note that defendant has failed to present any evidence of detrimental reliance, an essential element of equitable estoppel. *Frank v Equitable Life Assurance Society*, 136 Mich App 616, 621; 358 NW2d 21 (1984).

In awarding defendant temporary spousal support, the trial court also considered the parties’ standard of living during the marriage, defendant’s needs, and general principles of equity. See *Olson, supra* at 631. Before trial, the parties participated in a referee hearing. The referee determined that a number of defendant’s expenses were unreasonable and recommended temporary support of \$6,000 a month. The trial court took note of the referee’s findings and the court’s corresponding order for temporary support, but specifically stated that it was not bound by the referee’s recommendations. See *Duperon v Duperon*, 175 Mich App 77, 79; 437 NW2d 318 (1989) (stating that a trial court may, but is not required to, consider the report and recommendations made by a referee).

At trial, defendant requested \$6,000 a month in spousal support. She submitted an updated list of monthly expenses, including \$835 for the loan she took out on the marital home, \$345.93 for private medical insurance, \$100 for gifts, \$417 for her IRA, as well as funds for both a landline and cell phone, eating out, dry cleaning, maintaining the marital home and grounds, long-term care insurance, life insurance for which her daughter was the beneficiary, and club membership fees. During her testimony, defendant claimed additional monthly expenses of \$500 for her daughter's college fund, \$210 for maintaining her medical license, and \$415 for vacations, which increased her monthly expenses to more than \$6,000. The trial court found that plaintiff was not liable for the loan on the marital home pursuant to the prior agreement between the parties, and noted that as a Social Security recipient, defendant was entitled to Medicare benefits. The court further found that many of the items on defendant's expense list were excessive, including funds for both cell phones and landlines, eating out, and over \$18,000 a year for maintaining the marital home and grounds. With regard to the marital home and the parties' prior standard of living, the court stated:

The Court would believe that it's going to be inappropriate to try and maintain [the marital] home, and it's a little disingenuous to expect the former spouse to maintain that home and that the . . . defendant may very well have to move into a smaller residence which would significantly reduce expenses for the home

* * *

The Court has commented on the income earning potential of – of the parties as well as income potential based on the assets. It understands that the [parties] may not be – be forced to sell assets to survive, but it's – certainly principles of equity and common sense would dictate that someone who lived in a \$385,000 home . . . cannot be expected to continue in that area and expect the spouse to pay the other spouse to maintain that lifestyle.

After considering all of the factors relevant to an award of spousal support, and paying particular attention to defendant's needs and ability to work, the trial court awarded defendant temporary spousal support of \$3,500 a month. Defendant asserts that the trial court's award will force her to drastically reduce her standard of living. But, as the trial court indicated, the parties' standard of living during the marriage is only one of the factors to be considered in awarding spousal support. See *Olson, supra* at 631. Defendant cannot legitimately argue that the trial court's award will leave her impoverished. See *Moore, supra* at 654.

On cross-appeal, plaintiff argues that the trial court abused its discretion in awarding defendant any spousal support. In so arguing, plaintiff emphasizes that defendant voluntarily settled her disability insurance claim, that she received nearly \$1,000,000 in assets in the parties' property settlement, that some of those assets have high income-earning potential, and that she is capable of supporting herself as a pathologist. We are unpersuaded by plaintiff's argument. Plaintiff cannot establish that defendant would have continued receiving her disability insurance benefits had she refused to settle her claim, especially considering that the doctor who examined her at the time determined that she was able to work. Further, while some of defendant's assets may have high income-earning "potential," her assets produced only \$100 a month in income at the time of trial. Although the trial court determined that defendant is able to work as a

pathologist, the court awarded her temporary spousal support so that she could “get back on her feet.” Considering that defendant last worked as a pathologist in 1996, granting her three years to obtain employment and begin supporting herself was both fair and equitable. See *Id.*

Accordingly, we find that the trial court did not abuse its discretion in awarding defendant spousal support of \$3,500 a month for a period of three years.

III. Defendant’s Motion to Reopen Proofs

Next, defendant argues that the trial court abused its discretion in denying her motion to reopen proofs to present additional evidence of her alleged disability. Again, we disagree.

We review a trial court’s decision on a motion to reopen proofs for an abuse of discretion. *People v Herndon*, 246 Mich App 371, 419; 633 NW2d 376 (2001). In determining whether proofs should be reopened, the trial court must consider “whether any undue advantage would be taken by the moving party and whether there is any showing of surprise or prejudice to the nonmoving party.” *Id.* at 420. Other relevant factors include “whether newly discovered and material evidence is sought to be admitted, . . . and the timing of the motion.” *People v Oscar Moore*, 164 Mich App 378, 383; 417 NW2d 508 (1987), mod in part and remanded on other grounds 433 Mich 851 (1989). Additionally, the trial court retains “the discretion to determine the admissibility of the proposed [evidence] as a threshold issue.” *Herndon, supra* at 420 and n 109.

The trial court issued its opinion in this case on March 20, 2007. On June 18, 2007, almost three months after the court issued its opinion and after the parties had filed several motions and proposed judgments, defendant filed a motion to reopen proofs. Defendant sought to present additional evidence that she is disabled and unable to work. At the hearing on the motion, defense counsel asserted that he did not present the additional evidence at trial based on unrecorded statements made by the trial court in chambers. According to defense counsel, on the fourth day of trial, the court stated that plaintiff could not deny that defendant was disabled. Defense counsel interpreted the court’s statement to mean that the court had found defendant disabled, that no further proofs were required on that issue, and that defendant was entitled to spousal support. Defense counsel indicated that he was shocked when the court found that defendant was able to work and awarded her only temporary spousal support.

We find, however, that there is little support in the record for defense counsel’s assertions. Plaintiff’s counsel recalled having a general discussion in chambers, without any findings of fact or of law, and emphasized that no such findings were placed on the record. In response to the parties’ arguments, the trial court stated that it did not recall making any findings regarding defendant’s alleged disability in chambers, and would never have instructed defense counsel not to present additional proofs. Even defense counsel asked during closing arguments at trial that the court consider all of the evidence and find defendant unable to work. Additionally, defendant has made no attempt to explain why, if she and her attorney were so surprised by the trial court’s opinion in this case, she waited nearly three months to file a motion to reopen proofs. Because defendant has presented no reasonable excuse for failing to present the additional evidence at trial, or even moving to reopen proofs immediately after trial, we find that the trial court properly denied her motion.

Moreover, even if defense counsel reasonably relied on the trial court's statements in chambers in failing to present the additional evidence at trial, the additional evidence is cumulative to that presented at trial and would not affect the outcome of the case. In deciding a motion to reopen proofs, the trial court must consider whether the evidence sought to be presented is material and otherwise admissible. *Oscar Moore, supra* at 383; *Herndon, supra* at 420 and n 109. Even relevant evidence may be excluded "on the basis of needless presentation of cumulative evidence." *Id.* at 420 n 110, quoting MRE 403. In support of her motion, defendant filed the affidavit of her friend Deborah Huntley, the affidavit of her daughter Christine Ponnampalam, an offer of proof regarding Dr. Constan's proposed testimony about his treatment of defendant, and records showing that she is entitled to Social Security disability benefits. Both Huntley and Christine would have testified that defendant suffers severe migraine headaches that limit her. At trial, both parties testified about the severity of defendant's migraines, how she has adjusted her lifestyle to avoid migraines, and the activities she participates in. Defendant also testified at length about her treatment history, including references to Dr. Jahnke and Dr. Constan's notes, and indicated that she receives Social Security disability payments. The trial court judge repeatedly stated that he was convinced defendant is able to work based on the evidence presented at trial, and that the proposed proofs would not change his mind. Because the trial court did not clearly err in finding that defendant is able to work and the additional evidence defendant seeks to present is merely cumulative of evidence at trial, we find that the trial court properly exercised its discretion in denying her motion to reopen proofs.

IV. Attorney Fees

Plaintiff argues on cross-appeal that the trial court abused its discretion in ordering plaintiff to pay \$20,000 of defendant's attorney fees. "Because this issue was addressed and decided by the trial court, no further action was necessary to preserve it for appellate review." *Reed v Reed*, 265 Mich App 131, 163; 693 NW2d 825 (2005), citing MCR 2.517(A)(7). We review a trial court's decision on a request for attorney fees for an abuse of discretion, and any findings of fact on which the trial court relied for clear error. *Id.* at 164. In this case, the conclusory nature of the trial court's decision does not allow for meaningful appellate review. Therefore, we must remand this issue to the trial court for further proceedings.

"In domestic relations cases, attorney fees are authorized by both statute, MCL 552.13, and court rule, MCR 3.206(C)." *Id.* Attorney fees may be awarded "when a party needs financial assistance to prosecute or defend the suit." *Id.* That is, "a party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support." *Gates v Gates*, 256 Mich App 420, 438; 664 NW2d 231 (2003). Pursuant to MCR 3.206(C)(2)(a), the party requesting the fees must allege facts sufficient to show that he or she is "unable to bear the expense of the action, and that the other party is able to pay."

A determination that a party is entitled to attorney fees does not decide the amount of the award. *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982). In determining the reasonableness of attorney fees, a trial court should consider the professional standing and experience of the attorney, the skill and labor involved, the amount in question and the results achieved, the difficulty of the case, the expenses incurred, and the nature and length of the professional relationship with the client. *Smith v Khouri*, 481 Mich 519, 529-530; 751 NW2d 472 (2008), citing *Wood, supra* at 588. Generally, if the reasonableness of a fee is challenged,

the court should conduct an evidentiary hearing. *Miller v Meijer, Inc*, 219 Mich App 476, 479; 556 NW2d 890 (1996). No hearing is necessary when there is an otherwise-sufficient record to support a finding of reasonableness. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). Even if no hearing is held, the trial court should briefly discuss its view of the factors on the record. *Smith, supra* at 529 n 14, 531.

When the parties separated in October of 2005, plaintiff provided defendant with \$3,500 to retain an attorney. Defendant first hired attorney Craig Dill, but he was discharged shortly thereafter. Defendant then hired attorney John Picard who filed a motion for temporary spousal support and attorney fees of \$20,000. Pursuant to that motion, the parties agreed to refer the issues of spousal support and attorney fees to a referee for a hearing. Picard moved to withdraw as counsel in March of 2006. Thereafter, defendant hired attorney Christopher Swartz who represented her throughout the trial court proceedings. After the referee hearing in May of 2006, the referee recommended that plaintiff pay \$3,000 of defendant's attorney fees. The trial court then issued an order implementing the recommendation. At trial, defendant testified that she had already paid \$3,500 to Dill and \$10,000 to Picard. She presented a document indicating that as of February 14, 2007, she had paid Swartz \$500 and owed him a balance of \$22,078.35. Plaintiff's counsel stipulated that the document listed Swartz's billing and the balance owed him. He specifically stated, however, that he was not stipulating that defendant was entitled to the amount of attorney fees listed on the document. During closing arguments, plaintiff objected to paying any of defendant's attorney fees in light of the assets awarded her in the parties' property settlement. Defendant requested \$27,000 in attorney fees and expert witness fees, arguing that she should not be required to invade her assets in order to pay the fees.

In issuing its oral opinion, the trial court awarded defendant \$20,000 in attorney fees without providing any reasoning for its decision. In requesting attorney fees, defendant made no showing that she was "unable to bear the expense of the action," as required by MCR 3.206(C)(2)(a), and the trial court made no such finding. We cannot simply assume from the trial court's award of spousal support to defendant that she is unable to pay her attorney fees. Pursuant to the parties' property settlement, defendant left the marriage with between \$982,012 and \$994,407 in assets and, while "a party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support," *Gates, supra* at 438, there is no evidence that defendant is relying on any of her assets for support. Additionally, the trial court made no determination as to the reasonableness of the fees. *Smith, supra* at 529 n 14, 531.

Given the conclusory nature of the trial court's decision, it is impossible to determine whether the court abused its discretion in awarding defendant attorney fees. Therefore, this issue must be remanded to the trial court for further proceedings. On remand, the trial court should determine whether defendant is "unable to bear the expense of the action, and that the other party is able to pay," pursuant to MCR 3.206(C)(2)(a). If the court determines that an award of attorney fees was appropriate in this case, it should either award a reasonable amount of fees based on the evidence defendant presented and articulate the reasons for its award on the record or, if the evidence is insufficient to support a finding of reasonableness, hold an evidentiary hearing on the matter. See *Smith, supra* at 529 n 14, 531; *Head, supra* at 113; *Miller, supra* at 479.

Affirmed in part and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis