

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN EDWARD YOUNG,

Plaintiff-Counter Defendant-
Appellant,

v

REBECCA ANN YOUNG,

Defendant-Counter Plaintiff-
Appellee.

UNPUBLISHED

June 16, 2009

No. 287162

Osceola Circuit Court

LC No. 07-011307-DO

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the provision in the parties’ judgment of divorce awarding defendant spousal support of \$8,400.08 annually. Because the trial court did not clearly err in its factual findings relative to spousal support, rendered an award that is just and reasonable under the circumstances, and the spousal support award does not fall outside the range of reasonable and principled outcomes, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff first contends that the trial court violated MRE 802 in permitting defendant to present hearsay testimony regarding a fracture in her back, and that the court further violated MRE 701 and 702 by allowing defendant, a lay witness, to testify regarding the alleged diagnosis, existence, nature, or extent of her medical condition. Plaintiff notes that the trial court relied heavily on its finding that defendant was in poor health and unable to work, yet defendant did not present any corroborating evidence or expert medical testimony to support her contention that she was able to perform only “very light work.” And plaintiff similarly did not present evidence on this issue for the trial court’s consideration.

Preserved evidentiary issues are reviewed for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 160; 693 NW2d 825 (2005). An abuse of discretion occurs when the result falls outside the range of principled and reasonable outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Further, even if the trial court errs in admitting or excluding evidence, reversal is warranted only if a substantial right of a party is affected and it affirmatively appears that failing to grant relief would be inconsistent with substantial justice. MCR 2.613(A); MRE 103(a); *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004); *Miller v Hensley*, 244 Mich App 528, 531; 624 NW2d 582 (2001).

Plaintiff raised a narrow hearsay objection to defendant's testimony regarding what defendant's chiropractor "suspected" concerning x-rays of her back. The trial court sustained this objection, and no further testimony was elicited concerning anything that the chiropractor told defendant regarding the x-rays of her back. Accordingly, plaintiff's substantial rights were not affected by the allegedly improper testimony. *Craig, supra* at 76.

Plaintiff did not object to defendant's "lay testimony" regarding her physical condition. Generally, to preserve an issue for appellate review, the issue must be raised before and decided by the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). A party opposing the admission of evidence must timely object at trial and specify the same ground for objection that is asserted on appeal. MRE 103(a)(1); see *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997). This Court reviews unpreserved evidentiary issues for plain error affecting a party's substantial rights. *Hilgendorf v St John Hosp & Medical Center Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001).

MRE 701 permits lay witnesses to testify about opinions and inferences that are rationally based on the perception of the witness and helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. *People v McLaughlin*, 258 Mich App 635, 657; 672 NW2d 860 (2003). A lay witness generally may testify to something he knows which does not require expert testimony to establish, such as the existence of a physical injury. *Gibson v Traver*, 328 Mich 698, 702; 44 NW2d 834 (1950).

Defendant testified that she fell down the stairs and hurt her back. She further testified that her back was "fragile" and that it "gets twisted" and "goes out of place" when she is in the car or when she lifts things. Additionally, defendant explained her treatment regimen; testified that she suffered back pain rating from a six to a nine on a scale of one to ten and that she was able to do only light work as a result; and, stated that her therapy had not been very successful, but that she intended to seek further treatment once she obtained medical insurance. All of this testimony is well within the range of opinions and inferences that are rationally based on defendant's perception of her condition and helpful to a clear understanding of her testimony and the determination whether she suffered any health problems. "Any witness is qualified to testify as to his or her physical observations and opinions formed as a result of them." *Lamson v Martin (After Remand)*, 216 Mich App 452, 459; 549 NW2d 878 (1996). Plaintiff has provided absolutely no authority for his assertion that corroborating expert testimony was required to support the trial court's inference that defendant was "in poor health" as a result of a painful back condition. A party may not leave it to this Court to search for authority to sustain or reject a position. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998); *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004).

Plaintiff next contends the trial court did not properly consider the criteria set forth in *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991), in determining that defendant was entitled to spousal support, and that the award of support is not supported by the evidence. This Court reviews 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 this Court, on all of the evidence, is left with a definite and firm conviction that a mistake has been made. *Id.* at 654-655; *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The trial court's findings are presumed to be correct and the challenging party bears the burden of showing clear error. *Olson v Olson*, 256 Mich App 619, 629; 671

NW2d 64 (2003). A trial court's award of spousal support is reviewed for an abuse of discretion. *Id.* at 631. An abuse of discretion occurs when the trial court's decision falls outside of the range of reasonable and principled outcomes. *Maldonado, supra* at 388.

The trial court has discretionary authority to award alimony as it considers "just and reasonable" in light of all the circumstances. MCL 552.23; see *Olson, supra* at 631. The objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. Support must be based on what is just and reasonable under the circumstances of the case. *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008); *Moore, supra* at 654. Among the factors that the trial court should consider are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay support; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties 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. *Berger, supra* at 726-727; *Thames, supra* at 308. The trial court's decision regarding spousal support must be affirmed unless this Court is firmly convinced that it was inequitable. *Gates v Gates*, 256 Mich App 420, 433; 664 NW2d 231 (2003).

The trial court thoroughly considered each of the relevant *Thames* factors and determined that equity mandated an award of support to defendant. The evidence established that defendant's primary responsibility—as desired by plaintiff—during the parties' 20-year marriage was raising their children. Defendant had no college education, and her job history during the marriage was sporadic, resulting in a maximum annual taxable income of only \$14,300. Although she had been operating a licensed home daycare during the last five years of the marriage, she garnered no taxable earnings from this enterprise during the years 2004 through 2006, and earned only approximately \$1,000 in 2007. Following the breakdown of the marriage, defendant lived with her sister in Tennessee and obtained a job there. But her earnings were not nearly enough to cover her expenses or to become self-sufficient. In contrast, plaintiff had an established career as a firefighter and first-responder and earned more than \$45,000 annually. Spousal support was certainly warranted to avoid a significant decline in defendant's standard of living following a lengthy marriage in which her contributions as primary care-giver for the parties' children enabled plaintiff to establish his career for the benefit of both parties. See *Demman v Demman*, 195 Mich App 109, 110-111; 489 NW2d 161 (1992).

Plaintiff asserts that the trial court clearly erred in finding that defendant was unable to work in more than a limited capacity. However, the uncontroverted evidence established that defendant was experiencing health problems including anxiety and back pain, both of which were left untreated at the time of trial due to defendant's unexpected loss of health insurance, and that she was unable to do more than light work as a result of her back condition. Furthermore, contrary to plaintiff's contention that defendant was not actively seeking full-time work in Tennessee, defendant testified that she had been seeking full-time employment and that she had received assurances by her current employer that she would be first in line for a full-time job when it became available. Although plaintiff has voiced some skepticism regarding defendant's medical condition and her inability to obtain full-time employment, special deference is accorded

to a trial court's factual findings when based on the credibility of the witnesses. *Draggoo, supra* at 429; see also MCR 2.613(C).

Plaintiff contends that defendant's voluntary termination of her postal and sewing-factory jobs demonstrated a poor worth ethic and a voluntary reduction in earnings. Although it is true, as plaintiff notes, that a court in determining spousal support may impute additional income to a party who has voluntarily reduced his income, *Moore, supra* at 655, defendant left her postal and factory jobs many years before the instant divorce proceedings were instituted, at a time when plaintiff was the primary bread-winner. In contrast, as the trial court pointed out, plaintiff voluntarily reduced his income—and forfeited his and defendant's health-care coverage—during the divorce proceedings, a factor that the trial court properly took into consideration in determining the amount of spousal support. *Moore, supra*.

Plaintiff further suggests that his support obligation was inequitable in light of his assumption of “the lion's share” of the marital debt and his inability to meet his monthly expenses. There is no record support for the assertion that plaintiff assumed a significantly larger portion of the marital debt than defendant. Indeed, the record reveals that defendant assumed a slightly larger share of the parties' credit-card debt; that defendant left plaintiff in possession of all of the household furnishings and most of the marital property, apart from her car, a computer, and a camera; and that, while plaintiff retained the marital home, defendant was left with no choice but to relocate to her sister's home.

Finally, although the trial court did not clarify how it calculated plaintiff's annual support obligation of \$8,400.08, it is apparent that the court took into consideration the parties' monthly earnings and expenses, as well as the expected cost to defendant of obtaining COBRA insurance. The testimony indicated that defendant's monthly expenses—not including groceries and rent—exceeded her monthly income by approximately \$150. The testimony further indicated that the cost of obtaining COBRA coverage would be an additional \$442.50 per month. Plaintiff's support obligation of roughly \$700 per month would defray these expenses and would include an additional \$100 per month, presumably for the purpose of assisting defendant in paying for her living arrangements and groceries—burdens that defendant's sister had apparently been shouldering. In light of plaintiff's history of significantly higher earnings, as well as the fact that his living expenses were being shared at least in part by his live-in girlfriend and his daughter, the trial court's spousal support award of \$8,400.08 per year is just and reasonable under the circumstances and does not fall outside the range of reasonable and principled outcomes. *Maldonado, supra* at 388; *Berger, supra* at 726; *Olson, supra* at 631.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio