

STATE OF MICHIGAN
COURT OF APPEALS

COLLEEN CONROY MANSOUR,

Plaintiff-Appellee,

UNPUBLISHED
May 14, 2014

V

JOHN MICHAEL MANSOUR,

Defendant-Appellant.

No. 313362
Genesee Circuit Court
LC No. 07-275134-DM

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by right the order denying his motion for reconsideration of the trial court's factual findings and calculation of the awards for alimony in gross, child support, and attorney fees. We affirm.

In a prior appeal, we delineated the following basic facts:

Plaintiff and defendant were married on May 28, 1988. The marriage produced four children. During the course of the marriage, the parties agree that defendant earned a significant amount of money. While defendant's income was initially dependent on real estate development, he subsequently began to invest in a variety of business ventures. The parties experienced marital difficulties and plaintiff filed for divorce in October 2005 after learning that defendant had been having an affair. However, the case was dismissed when defendant agreed to end the affair and the parties decided to repair their marriage. Subsequently, defendant alleges that his income and the value of his various assets significantly decreased as a result of the crash of the real estate market, which resulted in defendant filing for bankruptcy. Plaintiff again filed for divorce on May 11, 2007 after discovering that defendant had not ended the affair.

The parties eventually proceeded to a bench trial. At the trial, plaintiff pursued the theory that defendant utilized the time between the two divorce filings to hide assets and engage in "divorce planning." Consequently, plaintiff urged the trial court to impute defendant with an annual income of \$350,000 and to conclude that defendant had hidden millions of dollars in assets. In contrast, defendant denied that he had any hidden assets. He further asserted that while he

made \$65,000 annually at the outset of the trial, he was given a raise to \$105,000 annually by the time the trial ended.

At the close of trial, the court issued a written opinion, in which it concluded that defendant had not been intentionally bypassing opportunities to increase his income. When referencing child support, the court stated that defendant made approximately \$65,000 per year. However, in addressing defendant's motion for new trial, the court stated that defendant actually made over \$100,000 per year and that the figure in the initial opinion was merely a number for the Friend of the Court to use in calculating child support. The court stated that it would not impute additional income to defendant, but further concluded that defendant exhibited bad faith that was perhaps indicative of an effort to hide assets. The court did not state an exact or general amount of assets to which it believed defendant had access. [*Mansour v Mansour*, unpublished opinion per curiam of the Court of Appeals, issued April 26, 2011 (Docket No. 295717), slip op pp 1-2.].

On appeal, this Court upheld the admission of expert testimony, the denial of the request for sanctions, and the preservation of support arrearages. *Id.* at slip op pp 2-3, 7-8. However, this Court remanded for further factual findings underlying claims for spousal support, alimony in gross, child support, and attorney fees. *Id.* at slip op p 8. Once the necessary factual findings were rendered, the trial court was required to recalculate the awards. *Id.*

Upon return to the trial court, additional evidentiary hearings did not occur. Rather, plaintiff submitted a brief on remand addressing the issues in light of our appellate decision. Defendant did not file a brief on remand, but re-submitted four briefs previously filed in the case. After the trial court rendered its findings of fact and monetary calculations, defendant filed a motion for reconsideration, and for the first time, alleged that the alimony in gross award was improper in light of the disposition of assets by the trustee in defendant's bankruptcy proceeding. The trial court denied defendant's motion for reconsideration, generally holding that defendant failed to demonstrate a palpable error, but did not address the merits of the claim regarding bankruptcy. From this ruling, defendant now appeals.

Defendant contends that the trial court erred in ruling regarding hidden assets in light of defendant's bankruptcy filing and discharge stay. We disagree. "Generally, an issue is not properly preserved if it is not raised before, addressed by, or decided by the lower court or administrative tribunal." *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386-387; 803 NW2d 698 (2010); see also *Michigan's Adventure, Inc v Dalton Twp*, 290 Mich App 328, 330 n 1; 802 NW2d 353 (2010). The purpose of the appellate preservation requirements is to prompt litigants to act in the trial court to prevent error and eliminate its prejudice, or to generate a record of the error and its prejudice. *Local Emergency Fin Assistance Loan Bd v Blackwell*, 299 Mich App 727, 737; 832 NW2d 401 (2013). Preservation requirements may be overlooked when the failure to address an issue would result in manifest injustice, if examination of the issue is necessary for a proper resolution of the case, or if the issue presents a question of law for which all necessary facts have been presented. *Gen Motors Corp*, 290 Mich App at 387. "It is unfair to harbor error and use it as an appellate parachute." *Loutts v Loutts*, 298 Mich App 21, 36; 826 NW2d 152 (2012).

Whether the lower court failed to follow proper procedure presents a question of law subject to review de novo. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2001). Generally, “an appellate court’s determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals.” *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). On remand, the trial court may not take any action that is inconsistent with the judgment of the appellate court. *Sumner v Gen Motors Corp*, 245 Mich App 653, 662; 633 NW2d 1 (2001). The trial court’s decision regarding a motion for reconsideration is reviewed for an abuse of discretion. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). However, an abuse of discretion does not occur when the motion is premised on facts and legal theory that could have been pled or argued before the trial court’s original ruling. *Id.* at 630.

A review of the procedural history of the case reveals that defendant’s bankruptcy was resolved before the judgment of divorce was entered. Despite the trial court’s factual findings regarding hidden assets, defendant did not object to the trial court’s determination in light of the bankruptcy. Further, in the initial appeal, defendant did not raise the issue of the bankruptcy. Despite our remand to the trial court for further factual findings and recalculation, defendant did not raise the issue of the inclusion of assets in light of the bankruptcy. Defendant raised the issue of the bankruptcy in a motion for reconsideration after the trial court rendered its factual findings and recalculated the awards. The trial court did not abuse its discretion by denying the motion for reconsideration because it was premised on facts and legal theory that could have been argued before the original ruling, initial appeal, and ruling on remand. *Id.* Further, a party may not harbor error as an appellate parachute. Defendant had ample opportunity to raise the issue of the inclusion of assets in the award calculations in light of the bankruptcy, but waited until after the case was resolved on remand before making this claim. *Loutts*, 298 Mich App at 36.¹

Next, defendant contends that the trial court made no correlation between the award of alimony in gross and defendant’s ability to pay. The trial court’s factual findings regarding ability to pay alimony and imputed income are reviewed for clear error. *Myland v Myland*, 290 Mich App 691, 694; 804 NW2d 124 (2010). “The appellant has the burden to persuade the reviewing court that a mistake has been committed, failing which the trial court’s findings may not be overturned.” *Ewald v Ewald*, 292 Mich App 706, 723; 810 NW2d 396 (2011). Defendant abandoned this issue by failing to cite authority and adequately brief the issue. *Woods*, 277 Mich App at 626-627. Nonetheless, we note that the trial court’s ruling considered not only

¹ We do not have the benefit of the full bankruptcy court file. In light of the limited materials presented, this issue is without merit. A bankruptcy discharge generally reverts unadministered property in the debtor. *In re Cundiff*, 227 BR 476, 478 (CA 6, 1998); 11 USC 554(c). Here, there is no indication in the evidence presented that the bankruptcy court administered the assets found to have been hidden by the trial court. Consequently, upon the bankruptcy discharge, those assets reverted in defendant and became available to be included in an equitable distribution of the marital estate. It is well established that a divorce court can include hidden or dissipated assets when making an equitable property distribution. *Sands v Sands*, 442 Mich 30, 36-37; 497 NW2d 493 (1993).

defendant's current income, but his hidden assets, and we cannot conclude that the trial court's factual findings were clearly erroneous. *Myland*, 290 Mich App at 694.²

Affirmed. Plaintiff, the prevailing party, may tax costs. MCR 7.219.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood

² Lastly, defendant requests that this Court alter the effective date for purposes of calculation of the arrearage. In the prior appeal, we affirmed the trial court's determination regarding the preservation of support arrearages. The trial court did not alter the ruling on remand or address it in its factual findings. Accordingly, this issue is not preserved for review in this appeal. *Gen Motors Corp*, 290 Mich App at 386-387.