

STATE OF MICHIGAN  
COURT OF APPEALS

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ALAN L. SNOOK,

Plaintiff/Counter-Defendant-  
Appellant,

v

CHRISTINE T. SNOOK,

Defendant/Counter-Plaintiff-  
Appellee.

UNPUBLISHED

November 18, 2003

No. 242193

Saginaw Circuit Court

LC No. 99-029958-DM

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Before: O’Connell, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s property and alimony award in the parties’ judgment of divorce. We affirm in part and vacate in part.

Plaintiff first argues that the court erred by not considering the tax consequences that he will face when he sells some of his stock. We disagree. In reviewing a trial court’s property distribution, we first determine whether the trial court’s factual findings were clearly erroneous. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). “If the findings of fact are upheld, [we] must next decide whether the dispositive ruling was fair and equitable in light of those facts.” *Id.* at 151-152. However, a dispositional ruling also requires a measure of discretion, so we affirm it unless we have the firm conviction that the property division was inequitable. *Id.* at 152.

Plaintiff’s expert witness testified that when plaintiff’s personal stock savings plan (PSSP) is withdrawn and the value realized, the asset will “lose anywhere from 15 to possibly 36 percent because it would be taxed at a capital gains rate.” Plaintiff offered no evidence that he had a need or interest in withdrawing from his PSSP. Because plaintiff offers no evidence that a sale or other taxable event was planned or contemplated, the trial court did not err by failing to consider tax consequences in its division of the property. *Hanaway v Hanaway*, 208 Mich App 278, 300-301; 527 NW2d 792 (1995).

Plaintiff next argues that the trial court failed to credit plaintiff’s distributional amount by premarital contributions to his PSSP’s predecessor stock plan. We disagree. Plaintiff himself offered conflicting evidence of whether he liquidated the predecessor plan’s stock or rolled all or some portion of it into the current PSSP. “This Court gives special deference to the trial court’s

findings when they are based on the credibility of witnesses.” *Stanton v Datchille*, 186 Mich App 247, 255; 463 NW2d 479 (1990). So the trial court did not clearly err in failing to credit plaintiff with the value of premarital stock that may no longer exist.

Next, plaintiff argues that the trial court failed to account for alimony and payments plaintiff made to preserve marital assets during the pendency of the proceedings. Although the trial court did not conduct an accounting to ascertain the specific amount defendant spent during the pendency of the divorce, the court stated that it considered the amount plaintiff paid and credited his award accordingly. Plaintiff fails to demonstrate clear error in the amount of the credit, so we affirm it.

Plaintiff next argues that the trial court failed to further reduce defendant’s property award based on defendant’s respective fault for the relationship’s dissolution. Fault remains a factor in the determination of a property settlement in Michigan, but “none of [our] cases has held that it is the *only* factor.” *Sparks, supra* at 158. “Marital misconduct is only one factor among many and should not be dispositive.” *Id.* at 163. The court awarded plaintiff fifty-four percent of the marital assets, and plaintiff points to no evidence to persuade us that defendant’s infidelity entitled plaintiff to an even greater share of those assets. Therefore, the trial court did not err by failing to further reduce defendant’s portion of the property based on fault.

Plaintiff next argues that the trial court erred when it awarded defendant alimony without first making specific factual findings concerning her actual needs or the effect of the payments on his standard of living. We agree. Conspicuously absent from the trial court’s reasoning are the factual underpinnings for its finding that the property settlement itself is “insufficient for the suitable support and maintenance of” defendant, and that the alimony is “just and reasonable under the circumstances.” MCL 552.23. We vacate the award of alimony and remand this issue to the trial court. On remand, the trial court must make specific factual findings regarding the actual needs of defendant and the award’s affect on plaintiff. We affirm the trial court’s order in all other respects. In the trial court’s discretion, it may conduct additional hearings on the issue of alimony.

Plaintiff finally argues that the trial court erred when it granted non-modifiable alimony for seven years without explaining why it precluded modification. In light of our disposition of this case, we do not reach this issue.

Affirmed in part, vacated in part and remanded. We do not retain jurisdiction.

/s/ Peter D. O’Connell

/s/ Kathleen Jansen