

STATE OF MICHIGAN
COURT OF APPEALS

HELEN J. KEIDEL,

Plaintiff/Counter-Defendant-
Appellee,

v

SANDY R. KEIDEL,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
November 16, 2004

No. 250413
Saginaw Circuit Court
LC No. 01-041540-DO

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendant Sandy R. Keidel appeals as of right from a judgment of divorce entered by the circuit court on July 28, 2003. We affirm.

I. Facts and Procedural History

On November 9, 2001, plaintiff Helen J. Keidel filed for divorce from her husband. At the time of the proceedings, the Keidels had been married thirty-two years and had three grown children, one from the marriage and one each from earlier relationships. Although each made various allegations regarding the other's fault, the trial court determined that neither party had sufficiently proved their claims to warrant an inequitable property division.

The couple owned a ranch home in Saginaw county with two pole barns, which sat on ten acres of land.¹ As the value of this home could not be ascertained with certainty, the court ordered the home to be sold and the proceeds divided equally. Plaintiff was awarded her personal IRA with Merrill Lynch valued at \$2,858, and two life insurance policies totaling \$4,980. Defendant had a sizable pension earned during his nearly forty years of service with General Motors, which was divided according to a qualified domestic relations order (QDRO). The parties engaged in an acrimonious contest over the value of their personal property and the

¹ The mortgage on this home had been paid off. However, the value of the home was in dispute. One expert appraised the home at \$130,000, while another at \$104,164.

location of many items.² Following a weekend of review, the trial court determined which assets represented nonmarital property and divided the remaining assets according to a private appraisal conducted on behalf of both parties. The parties had two joint bank accounts. Each withdrew large sums just prior to plaintiff filing for divorce, and the court determined that these assets were adequately divided. As plaintiff purchased her current residence with this money, she was awarded its full value. Each party was also awarded their own vehicle.³

At the time of the proceedings, defendant was fifty-six years old and had worked for many years with many hours of overtime. Although he sought to have his hours restricted to forty per week during the divorce proceedings, the court determined that he failed to establish any reason for this restriction other than to reduce his spousal support requirements. Defendant would have earned \$76,161 in 2003, and had a six-year earned income average of \$80,571. Plaintiff was fifty-two years old and had only worked outside of the home for a short time during the marriage. Plaintiff ceased work due to an injury obtained on the job. She collects \$123.98 per week from workers compensation, but did not accumulate enough service hours to qualify for social security, Medicaid or Medicare. Plaintiff suffers from back pain and has had numerous surgeries that prevent her from working outside of the home. She also suffers from emotional difficulties requiring the care of a psychiatrist and medication. Due to her health and lack of skills and education, plaintiff has no opportunity to earn an income.

At the conclusion of the trial, the trial court awarded plaintiff \$385 per week in spousal support, nonmodifiable for six years. After that time, the amount could be modified based on the needs of the parties. The court also ordered defendant to make COBRA payments on behalf of plaintiff for thirty-six months. This appeal followed.

II. Award of Alimony

Defendant challenges the trial court's award of spousal support in favor of plaintiff. We must first review factual findings made by the trial court with respect to an alimony award for clear error.⁴ "A finding is clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made."⁵ We will not reverse a trial court's disposition based on proper factual findings unless we are left with the firm conviction that the result was

² An appraiser valued almost every item in each parties' possession, including tools, farm equipment, sewing machines, a talking Christmas tree and wreath, and VHS tapes of Star Trek episodes personally taped from the television. The values of these various items and the testimony regarding the location of all assets is too extensive to cover in this opinion.

³ Plaintiff presented evidence that her vehicle was valued at \$10,635, which defendant contested. Defendant testified that he withdrew \$8,539 from a joint bank account just prior to the filing of the divorce complaint to place a down payment on his vehicle. Defendant has made and continues to be responsible for the remaining payments.

⁴ *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

⁵ *Id.* at 654-655.

inequitable.⁶ Furthermore, we review a trial court's decision to award spousal support for an abuse of discretion.⁷

Defendant's first contention, that the trial court erred by failing to make specific findings of fact with respect to plaintiff's needs and the effect of the alimony award on defendant, is without merit.

Pursuant to statute, a trial court has the authority to award alimony only if the marital property distribution is insufficient to cover the needs of the parties.

Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage as are committed to the care and custody of either party, the court may further award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.^[8]

In determining "whether an award of spousal support is just and reasonable," the trial court should consider the following factors:

(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 alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the health of the parties, (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, and (12) general principles of equity.^[9]

Before determining that plaintiff was entitled to receive spousal support, the trial court considered that she would receive half of the value of the marital home as a source of future income. The trial court then considered the needs and abilities of both parties in great detail. The trial court considered the parties' health concerns, ages, earning capacities, skills and sources of income. The trial court found, based on these determinations, that plaintiff would never be able to work to support herself, was unable to afford necessary health insurance given her physical and emotional health concerns and that defendant was capable of earning over

⁶ *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

⁷ *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003).

⁸ MCL 552.23(1).

⁹ *Gates*, *supra* at 435-436, quoting *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

\$80,000 a year with overtime pay. The trial court acknowledged that this award would reduce both parties below their former standard of living, but recognized that this was a necessary hardship. As the trial court did in fact make specific findings of fact regarding the needs and abilities of the parties, we reject defendant's contention.

However, defendant also contends that the award of \$385 per week in spousal support and thirty-six months of COBRA coverage was inequitable and, therefore, the trial court abused its discretion. We again disagree. As the trial court carefully considered the needs and abilities of the parties, we find that the trial court properly reached this award.

Defendant also argues that the trial court erred when it made part of the alimony award nonmodifiable for a period of six years.¹⁰ This Court has held that, in cases where the divorcing parties have not reached a negotiated settlement, a periodic alimony award that is fixed despite future changes in circumstances constitutes a clear abuse of discretion.¹¹ However, spousal support characterized as "alimony in gross" is an exception to this rule and "cannot be modified absent a showing of fraud."¹² "Alimony in gross is a sum certain and is payable either in one lump sum or in periodic payments of a definite amount over a specific period of time."¹³ This Court should focus on the intent of the trial court in determining whether an award is modifiable or nonmodifiable.¹⁴

It is clear that the trial court intended the first part of the spousal support award to be alimony in gross. The amount is for a sum certain and is payable in payments of a definite amount (\$385 per week) over a specific period of time (six years). Furthermore, the trial court expressly stated its intent to make the award nonmodifiable for a period of six years. As such an award is the trial court's discretion and there has been no showing of fraud, we affirm the trial court's award of spousal support.

¹⁰ The award in issue reads as follows:

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff is awarded spousal support from the Defendant in the following amount: \$385.00 per week for six years, nonmodifiable, and \$385.00 per month thereafter, modifiable.

¹¹ *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988) (observing that "an alimony award without any mechanism for modification due to a change of circumstances constitute[s] an abuse of discretion.").

¹² *Tomblinson v Tomblinson*, 183 Mich App 589, 593; 455 NW2d 346 (1990).

¹³ *Bonfiglio v Pring*, 202 Mich App 61, 63; 507 NW2d 759 (1993).

¹⁴ *Id.* at 65.

III. Division of Marital Property

Defendant argues that the trial court's division of the marital property was inequitable. We disagree. When dividing marital assets, a trial court should look at the following factors:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity.^[15]

The court may also consider additional factors that may vary with the case.¹⁶ An equitable division need not be exactly equal, only roughly congruent.¹⁷

The trial court awarded defendant approximately forty-eight percent of the marital property and plaintiff approximately fifty-two percent. While not precisely equal, this property division is roughly congruent. Furthermore, it is clear from the record that the trial court based its award on its consideration of the *Sparks* factors. Therefore, we reject defendant's argument that the division was inequitable.

Defendant also asserts that the trial court erred by failing to place value on specific items of personal property that plaintiff admitted were in her possession, but were not valued during the appraisal. "[A] trial court clearly errs when it fails to place a value on a disputed piece of marital property."¹⁸ The trial court did fail to place value on various personal items which plaintiff admitted to removing from the marital home.¹⁹ However, these items are of minimal value and defendant was also awarded various items of personal property that had not been properly appraised, such as the proceeds for the sale of unvalued gold coins to private individuals and numerous firearms. It would be a waste of judicial resources to remand to the trial court for further factual findings regarding the value of any of these items.

Defendant further argues that the trial court committed error requiring reversal when it failed to place a value on the marital home. We disagree. Because of the disparity in the valuations of the home's value presented at trial, the trial court ordered the home sold to

¹⁵ *Sparks, supra* at 159-160.

¹⁶ *Id.* at 160.

¹⁷ *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

¹⁸ *Olson v Olson*, 256 Mich App 619, 627-628; 671 NW2d 64 (2003).

¹⁹ Specifically, the trial court failed to value one of the couple's two coffee pots, one of the couple's two barbeque grills, an old love seat, a folding table, pans, a wheel barrow, ladders, extension cords and a bell. The fact that one party may have gotten the newer and one received the older coffee pot and grill is insignificant.

determine its true value. A trial court may order the marital home sold and the proceeds divided between the parties to a divorce.²⁰ Therefore, defendant's argument lacks merit.

Finally, defendant argues that a money judgment from a civil suit, which the trial court awarded to him at his *own* request, is a "worthless judgment against a defunct builder." However, defendant valued the judgment himself at \$3,665 in his schedule of marital assets and asked at trial that he be allowed to attempt to collect it. "A party cannot stipulate a matter and then argue on appeal that the resultant action was error."²¹ Defendant stipulated to the value of the judgment and specifically requested that the trial court award it to him. Therefore, he may not now claim error with this award.

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

²⁰ See *Olson, supra* at 627 n 5.

²¹ *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001).