

STATE OF MICHIGAN
COURT OF APPEALS

ADAM TROY TURNER,

Plaintiff-Appellant,

v

MICHELLE KAY TURNER,

Defendant-Appellee.

UNPUBLISHED

July 16, 2002

No. 229931

Branch Circuit Court

LC No. 99-002118-DM

Before: Wilder, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, challenging the sufficiency of the trial court’s findings, as well as certain aspects of the court’s property division and award of attorney fees to defendant. We affirm.

In reviewing a trial court’s dispositional ruling in a divorce case, this Court first reviews “the trial court’s findings of fact for clear error and then decide[s] whether the dispositional ruling was fair and equitable in light of the facts.” *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). This Court will not disturb a trial court’s property disposition rulings “unless we are left with the firm conviction that the distribution was inequitable.” *Id.*

In challenging the trial court’s division of property, plaintiff first argues that the trial court erred in adopting defendant’s “last best offer” as a basis for its decision.¹ Plaintiff suggests that in doing so, the trial court failed to carry out its duty to render findings of fact on the record, as required by MCR 2.517. We disagree. With some exceptions, the trial court adopted defendant’s findings of fact as set forth in her offer. Plaintiff has not provided, and we are not aware of, any authority for the proposition that a court cannot validly adopt a party’s proposed findings of fact. Cf. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176-177; 530 NW2d 772 (1995). Furthermore, although plaintiff contends that he was denied

¹ Although plaintiff also submitted a “last best offer,” the trial found this submission to be untimely and, therefore, declined to consider it. On appeal, plaintiff assigns error to the trial court’s failure to consider both parties’ offers. However, because we find the overall distribution here to be both fair and equitable, *Hanaway, supra*, we conclude that any such error, if it exists, is harmless. See MCR 2.613(A).

the opportunity to cross-examine defendant concerning the reasonableness of her “last best offer,” we note that that plaintiff raised no objection to the proposed judgment, which was drafted by defendant on the basis of that offer, before the judgment was entered. Additionally, while plaintiff complains that he was denied his opportunity to supply his own proofs relating to the proposed settlement, the record indicates that plaintiff produced several witnesses and also testified himself over the course of the proceedings held in this action. Considering the three evidentiary hearings and four motions that constituted the trial in this matter, as well as the various written documents submitted by the parties, we conclude that ample proofs were taken.

Plaintiff also asserts that the trial court’s order requiring plaintiff to pay \$6,000 to defendant and \$1,500 to defendant’s attorneys was not supported by the evidence. Again, we disagree.

As previously noted the trial court adopted, “for the most part,” defendant’s findings of fact. Those findings properly took into account the contribution of each party to the marital estate, each party’s station in life, and each party’s earning ability, as shown by the evidence at trial. See *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). Moreover, with respect to the \$6,000 awarded to defendant, we note that at the hearing on plaintiff’s motion for new trial, the trial court indicated that this amount was “an offset for the disparity in property retained by the plaintiff, as opposed to the defendant.” In this regard, we note that plaintiff was permitted to retain, in addition to this entire 401(k), all rights to his business, and both income tax returns, the house and all its furnishings. Given these facts, and considering the income disparity between parties, the court’s award of a one-time \$6,000 payment was fair and equitable.

Regarding the trial court’s award of attorney fees, we note that such fees may be awarded in a divorce action when necessary to enable a party to prosecute or defend the suit. *Hanaway*, *supra* at 298. Moreover, whether such necessity exists under the facts of a particular case is a determination within the discretion of the trial court. *Id.* Here, given the protracted nature of the proceedings below, as well as the disparity in income between the parties, we conclude that the court did not abuse its discretion by awarding defendant \$1,500 in attorney fees. We decline, however, to honor defendant’s request that she also be awarded reasonable costs and attorney fees associated with this appeal. After review of the record, we conclude that this is not a case in which a party requesting payment, namely defendant, has been forced to incur expenses as a result of the other party’s unreasonable conduct in the course of the litigation. See *Hawkins v Murphy*, 222 Mich App 664, 669-670; 565 NW2d 674 (1997). Moreover, plaintiff’s appeal, although ultimately meritless, cannot be said to be vexatious. See MCR 7.216(C). Plaintiff’s appeal of the property division was reasonable in light of the debt plaintiff assumed that resulted from the marriage, as well as the fact that defendant contributed to the drawn-out nature of the proceedings below at least as much as plaintiff.

We affirm.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra