

STATE OF MICHIGAN  
COURT OF APPEALS

---

DEBORAH K. COLEMAN,  
Plaintiff-Appellee,

UNPUBLISHED  
August 26, 2003

v

JOHNNIE L. COLEMAN, JR.,  
Defendant-Appellant.

No. 236228  
Genesee Circuit Court  
LC No. 99-215968-DO

---

Before: Meter, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from an amended judgment of divorce. We affirm.

Defendant argues that the trial court abused its discretion by awarding plaintiff a \$2,500 attorney fee. We disagree. The decision whether to award attorney fees in a divorce action is within the trial court's discretion and will be reviewed on appeal for an abuse of discretion. *Milligan v Milligan*, 197 Mich App 665, 670; 496 NW 394 (1992).

MCR 3.206(C)(2) provides:

A party who requests attorney fees and expenses must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999).

Plaintiff's testimony shows that she was unable to bear the expense of the action and that defendant is able to pay. Plaintiff worked a second job at Rite Aid making \$7 an hour because she could not cover all of her expenses at home.<sup>1</sup> The evidence shows that defendant received a promotion as a senior manufacturing engineer and made \$71,400 a year. Plaintiff was unable to make ends meet, and the trial court found that defendant's income and earning ability was greater than plaintiff's. Although the trial court did not specifically state why it awarded attorney fees to plaintiff, the court found that defendant had a far greater earning power than plaintiff.

---

<sup>1</sup> Plaintiff's primary occupation was as a telecommunications specialist with SBC Ameritech, making \$750 per week.

Findings and conclusions of the trial court are sufficient if brief, definite and pertinent, without overelaboration of detail or particularization of facts. MCR 2.517(A)(2). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). The trial court found that defendant had a far greater earning power than plaintiff, and it is clear that plaintiff struggled to make ends meet. Therefore, we conclude that the trial court did not abuse its discretion in awarding plaintiff attorney fees.

Defendant next argues that the trial court did not address the issue of fraud by plaintiff in obtaining a temporary order. We disagree. The trial court's factual findings are to be reviewed for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The findings are presumptively correct and the burden is on the appellant to show clear error. A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been made. *Moore, supra*, 242 Mich App 654-655.

Prior to trial, plaintiff obtained a temporary order awarding her spousal support in the amount of \$100 per week and ordering defendant to pay the mortgage, taxes, and insurance on the marital residence. Defendant argues that plaintiff committed fraud because she was not working when the court entered the temporary order but then went back to work a month later. Defendant contends the trial court erred in not addressing that issue in its findings.

At trial, plaintiff stated that she notified her attorney when she returned to work, and she did not tell defendant because they were not on speaking terms because he had moved in with another woman. The trial court stated in its findings that plaintiff needed economic support even with her two jobs, and that is why it entered the temporary support order. Defendant was economically much better situated than plaintiff. The trial court also noted that plaintiff was capable of working and had been working two jobs, and it determined that plaintiff's needs exceeded defendant's needs.

Pursuant to MCR 2.517(A)(2), "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." It is clear from its findings that the trial court fashioned the temporary order because plaintiff was unable to pay the expenses for the marital residence on her own, and defendant's earning power substantially exceeded plaintiff's. Plaintiff's testimony shows that she did not commit fraud when she went back to work and was not purposely concealing the fact that she returned to work from defendant. Therefore, we conclude that the trial court's findings of fact are not clearly erroneous.

Defendant next argues that the trial court erred in awarding plaintiff alimony to support her grandson. We disagree. The trial court's factual findings are to be reviewed for clear error. *Moore, supra*, 242 Mich App 654. The findings are presumptively correct and the burden is on the appellant to show clear error. A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been made. *Moore, supra*, 242 Mich App 654-655. If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). The trial court's decision as to alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Id.*

The award of alimony is in the trial court's discretion. *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988). Among the factors that should be considered in awarding alimony 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 alimony; (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. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993), *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

The trial court weighed all of the factors to determine if alimony was appropriate and reiterated that defendant had a far greater earning power than plaintiff. The trial court also found that plaintiff's needs exceeded defendant's needs because her income and her potential earning ability were substantially less than defendant's. The trial court noted that plaintiff was taking care of her grandchild, and after dividing up the marital estate, the trial court awarded plaintiff alimony in the amount of \$250 per week for a three year period. The court specifically stated: "and on the spousal support having, uh, gone and considered the factors that I must consider and having considered the property awarded to the plaintiff, uh, considering her – the fact that her earning ability is much less then that of Mr. Coleman, considering the fact that she is giving up the second job, uh, in order to take care of their grandchild, which I think is a – not only a legitimate action, but a commendable action on her part, I'm going to award, uh, her alimony in the amount of \$250.00 a week for three years."

We conclude that the trial court did not err in awarding plaintiff alimony. The trial court did not award alimony simply because plaintiff was providing for her grandson. Rather, the court provided alimony because plaintiff's earning ability was less than defendant's, due in part to the time required to care for her grandson. Therefore, we find that the trial court's alimony award was not inequitable, nor did it constitute an award of support for the care of plaintiff's grandson.

Defendant also argues that it was clear error for the trial court to find defendant's conduct "far worse" than that of plaintiff. We disagree.

A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3); *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996).

The testimony indicates that defendant was seeing another woman before the parties were separated. Plaintiff met defendant after work at a casino and saw defendant with another woman. The next day defendant removed his belongings from the parties' house and moved in with the other woman in Battle Creek, Michigan, and then ultimately moved to Georgia. The trial court also found that plaintiff had an affair about twenty-seven years ago, but defendant forgave her, and she had not engaged in any marital infidelity since that time. The trial court

found that defendant engaged in hurtful conduct given his recent extramarital affair. It is important to note that plaintiff's conduct occurred early in the marriage and was forgiven, while defendant's conduct was very recent and led, in part, to the parties' divorce. Therefore, we conclude that the trial court's finding that defendant's conduct was worse than plaintiff's did not lead to a "disproportionate" property settlement and was properly considered in determining the property division.

In his last issue on appeal, defendant argues the trial court erred in granting plaintiff a disproportionate share of the assets. We disagree.

As stated above, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance to reach an equitable distribution of the property. *McDougal, supra*, 451 Mich 89. The division need not be mathematically equal, but any significant departure from congruence should be supported by a clear exposition of the court's rationale. *McNamara v Horner*, 249 Mich App 177, 188 ; 647 NW2d 385 (2002).

The trial court considered the duration of the marriage, each party's situation in life, each party's earning ability, each party's health and needs, and fault and misconduct. The trial court concluded that defendant's earning potential and current salary exceeded plaintiff's and that plaintiff was also caring for their grandson, which caused her to cut back on her work hours. The trial court also found that plaintiff was suffering from depression and insomnia and that defendant's conduct was more egregious than plaintiff's.

In dividing the assets, the trial court awarded each party half of the other party's pension. The marital residence was awarded to plaintiff, plaintiff was responsible for \$10,000 of the \$30,000 second mortgage, and defendant was responsible for the remainder of the second mortgage because most of the second mortgage went to satisfying his obligations. Plaintiff was awarded her 401K, and defendant was awarded his PSP and SSPP. Plaintiff had \$32,602.73 in her 401K, and defendant had \$10,700 in his SSPP. Defendant was responsible for the mortgage payments and taxes under the temporary order and was awarded the Georgia home. Plaintiff's home was appraised at \$138,000, with a mortgage of \$46,070.15. Defendant's Georgia home cost \$184,000, with a mortgage of \$154,000. Additionally, the trial court awarded plaintiff spousal support in the amount of \$250 per week for three years because her earning ability was much less than defendant's and because she gave up her second job in order to take care of her grandson.

Although the trial court's property division was not mathematically equal, it was equitable. As stated above, defendant had a far greater earning power than plaintiff, and plaintiff had to get a second job to make ends meet, which she subsequently had to quit to raise her grandson. Based on the factors necessary to determine property division, we conclude that the trial court's findings of fact were not clearly erroneous, and the disposition was fair and equitable in the light of those circumstances.

Affirmed.

/s/ Patrick M. Meter  
/s/ Mark J. Cavanagh  
/s/ Jessica R. Cooper