

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA JEAN WHITMAN,
Plaintiff-Appellee,

UNPUBLISHED
May 12, 2005

v

DAVID CHARLE WHITMAN,
Defendant-Appellant.

No. 253288
Genesee Circuit Court
LC No. 02-242649-DO

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm in part and remand for further proceedings.

Defendant first argues that the trial court erred by not awarding him spousal support. We disagree. An award of alimony is in the trial court's discretion and is to be based on what is just and reasonable under the circumstances of the case. *Thames v Thames*, 191 Mich App 299, 307; 477 NW2d 496 (1991). This Court reviews an award of alimony de novo, but must accept the trial court's factual findings unless they are clearly erroneous. *Id.* at 308. The burden is on the appellant to persuade this Court that a mistake was made. *Id.*

The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is just and reasonable under the circumstances of the case. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Among the factors that should be considered 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. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

The record discloses that the trial court considered the relevant factors, and its findings are supported by the record and, therefore, are not clearly erroneous. Considering that defendant has a long history of past employment and is still at an age where he can work if he chooses,

along with evidence that defendant was receiving income through a used car business, the trial court did not abuse its discretion in determining that spousal support was not warranted.

Next, defendant challenges various aspects of the trial court's property division. In reviewing a trial court's property division in a divorce, this Court must first consider the trial court's findings of fact and must then decide whether the dispositional ruling was fair and equitable in light of those facts. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.* at 429-430.

Defendant first complains that the trial court failed to make any findings concerning the value of the property awarded. But because defendant does not contend that any of the values of the property were in dispute, no error resulted when the trial court failed to explicitly determine the value of each item of property. *Olson, supra* at 627-628.

Defendant also contends that the division was inequitable because the trial court refused to award him any of plaintiff's retirement funds. We disagree. The testimony established that plaintiff diligently worked throughout the marriage and sought to increase her pension, while defendant, over plaintiff's objection, opted to retire at a relatively young age, which necessarily decreased the value of his pension. Moreover, the evidence indicated that defendant was at fault in the breakdown of the marriage and that he was receiving unreported income. In light of these circumstances, the trial court's decision not to award defendant a portion of plaintiff's retirement funds was not inequitable.

Defendant also complains that the trial court's property division was inequitable, given that he was liable for an approximate \$400 balance for a veterinarian bill and because plaintiff allegedly caused approximately \$700 in damage to the marital residence. Given the limited testimony presented concerning these matters, defendant has not established any basis for concluding that the trial court's property division was inequitable or that any adjustments are necessary.

Defendant also argues that he should have been credited with \$8,000 that plaintiff allegedly removed from a joint account. We disagree. The limited testimony that was provided on this issue indicated that plaintiff removed \$6,000 from the account, which she used to make a down payment on another home. The court reasonably addressed this matter by ordering the sale of that property and directing that defendant receive half of the proceeds.

However, we conclude that a remand is warranted to determine whether an adjustment to the trial court's property division is warranted because of substantial payments that defendant allegedly made toward a signature loan with the Security Federal Credit Union. At trial, defendant testified that the parties obtained a \$26,000 signature loan, which was used to make various purchases for the marital home. He claimed that, after the parties separated, he personally repaid approximately \$14,000. Contrary to her claim on appeal, plaintiff did not testify below that the loan was defendant's sole debt, incurred after the parties' separation. Nor did plaintiff deny that the parties had a \$26,000 signature loan used for joint purchases or that defendant made a \$14,000 payment on it after she left the marital home. Because the record is unclear concerning the purpose of the loan, the amount that was repaid, the outstanding balance at the time of trial, and who was assigned that debt, and the trial court did not address this matter

in its findings, we remand for further consideration of this matter and a determination whether any adjustment to the property division is warranted.

Finally, defendant argues that the trial court erred in refusing to award him attorney fees. A party to a divorce action may be ordered to pay the other party's reasonable attorney fees if necessary to enable the other party to defend or prosecute the action. *Stackhouse v Stackhouse*, 193 Mich App 437, 446; 484 NW2d 723 (1992); MCL 552.13(1). Here, defendant requested that the trial court award him \$10,000 in attorney fees to enable him to defend the action. The trial court denied defendant's request, but failed to make any findings regarding the necessity of a fee award, as it was required to do, *Stackhouse, supra*, and it is not clear from the record that an award of attorney fees was unnecessary. Accordingly, on remand, the trial court shall reconsider this issue and make specific findings regarding the necessity of a fee award.

Affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Mark J. Cavanagh

/s/ Richard Allen Griffin