

STATE OF MICHIGAN
COURT OF APPEALS

LISA ANNE WIERINGA,
Plaintiff-Appellee,

UNPUBLISHED
June 16, 2009

v

STEVEN MARK WIERINGA,
Defendant-Appellant.

No. 288475
Kent Circuit Court
LC No. 07-001920-DM

Before: Beckering, P.J., and Wilder and Davis, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce entered in this action. In addition, defendant requests a different trial judge on remand and for any subsequent proceedings. We affirm.

Defendant first argues that the trial court abused its discretion by reducing his parenting time from what the parties had agreed to in an interim stipulation and order. Defendant does not explain how this constitutes an abuse of discretion, so this issue is abandoned for his failure to properly address its merits. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Our review of the record reveals no merits to this argument in any event. The trial court is required to determine parenting time in accordance with the best interests of the children and the child custody act, MCL 722.21 *et seq.* See *Harvey v Harvey*, 470 Mich 186, 189; 680 NW2d 835 (2004). The trial court considered defendant's request for specific parenting time, see generally *Pickering v Pickering*, 268 Mich App 1, 5-7; 706 NW2d 835 (2005), it considered the best interests of the children, and it attempted to establish a schedule that was "reasonably calculated to promote strong parent-child relationship." *Brown v Loveman*, 260 Mich App 576, 595; 680 NW2d 432 (2004). We find nothing in the record to suggest that the trial court's findings of fact were against the great weight of the evidence or that its parenting time ruling was an abuse of discretion or the product of a legal error.

Defendant next argues that the trial court's child support ruling must be reversed because the trial court erroneously failed to impute income to plaintiff. We disagree.

This Court reviews child-support orders for an abuse of discretion. *Holmes v Holmes*, 281 Mich App 575, 586; 760 NW2d 300 (2008). A trial court also has discretion in imputing income to a parent. *Stallworth v Stallworth*, 275 Mich App 282, 285; 738 NW2d 264 (2007). However, we review de novo whether a trial court properly operated within the statutory

framework regarding child support calculations and any deviation from the child support formula. *Holmes, supra* at 586-587. A trial court's factual findings underlying its determination of an award of child support is reviewed for clear error. *Stallworth v Stallworth*, 275 Mich App 282, 284; 738 NW2d 264 (2007). Imputation of income requires consideration of a number of factors pertinent to "an actual ability and likelihood of earning the imputed income." *Ghidotti v Barber*, 459 Mich 189, 199; 586 NW2d 883 (1998).

The trial court did, in fact, consider all of the factors enumerated in *Ghidotti* when it decided not to impute income to plaintiff. While defendant takes exception to some of those findings, he has done nothing more than make self-serving assertions that mistakes were made, which is insufficient to carry his burden in proving that the trial court's findings were clearly erroneous. *Stallworth, supra* at 284. Our own review of the record reveals no indication that plaintiff has the actual ability and likelihood of earning the imputed income given her duties as mother and home-school teacher to the parties' four children, two of whom have special needs. See *Ghidotti, supra* at 199. We conclude that those findings were not clearly erroneous, and the trial court's decision not to impute income to plaintiff did not constitute an abuse of discretion. *Stallworth, supra* at 284-285.

Defendant next challenges the trial court's spousal support order of \$810 a month for eight years or until the death, remarriage, or cohabitation of plaintiff. We find no error or abuse of discretion.

The trial court's award of spousal support is discretionary, *Korth v Korth*, 256 Mich App 286, 288; 662 NW2d 111 (2003), but we review for clear error its underlying factual findings. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). A trial court's decision regarding spousal support must be affirmed unless we are firmly convinced that it was inequitable. *Id.* at 433. "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." *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

The trial court clearly set forth its reasoning for the eight-year term for spousal support, and we find no fault with it. The parties agreed early in their relationship that plaintiff would be a stay-at-home parent once they had children, and she would home-school the children. Plaintiff's testimony suggested that the children would be home schooled until they reached the age for middle school. By the time of trial, the youngest child was five years old, so the trial court determined that plaintiff would be home-schooling the children for another seven years. The trial court allowed an additional year in order for plaintiff to obtain employment when she finished home schooling the children. The eight-year term for the spousal support award was therefore supported by the record. The trial court briefly referenced defendant's fault in causing the divorce, finding that defendant engaged in multiple affairs, and that he had been controlling; the record supports these observations, but far from constituting what defendant characterizes as "insistence of punishing Defendant for any perceived misconduct and shortcoming," it appears that the trial court gave no undue weight to them. The trial court's findings are supported by the record and are not clearly erroneous, and the trial court's award of spousal support was fair and equitable in light of the facts. *Olson, supra* at 629-630.

Next, defendant challenges two specific rulings regarding the trial court's division of property. We review de novo a division of marital property. *Reeves v Reeves*, 226 Mich App 490, 501; 575 NW2d 1 (1997). A trial court's dispositional ruling should be affirmed unless this Court is left with the firm conviction that the property division was inequitable. *Pickering, supra* at 7.

Defendant first claims that the trial court erroneously found that a \$10,000 gift from defendant's parents was marital property, and split it equally between the parties. Although the limited evidence regarding the \$10,000 gift indicates that it was given during the marriage, it was apparently given after defendant moved out of the marital residence. We agree with defendant that there exists at least a strong inference that it was not, in fact, a marital asset. However, defendant's testimony also suggests that the gift was a continuation of an annual event. Furthermore, and more importantly, the trial court may invade a spouse's separate property when, after the division of the marital assets, "the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party" MCL 552.23(1), *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005). The trial court found, among other things, that plaintiff "is a stay-at-home mother who is home schooling the children and has very little income," an arrangement that defendant contributed to setting up; that plaintiff "is in great need of financial assistance with her everyday bills;" and that "[d]efendant has the ability to pay spousal support." Even if the \$10,000 gift was not a marital asset, dividing it between the parties was not inequitable, *Pickering, supra* at 7, nor was it a mistake.

Next, defendant argues that the trial court erroneously ordered the sale of the marital residence, while allowing plaintiff to reside in that residence and ordering defendant to pay that residence's mortgage, insurance, and taxes during the pendency of the sale. Defendant essentially complains that the trial court provided no guidance in the event that the parties could not reach a decision regarding the sales price, so allegedly "the marital property will remain in limbo with Plaintiff continuing to withhold her consent to the sale of the marital home." We perceive no indication that the parties are unable to reach an agreement regarding the sales price. This allegation of error is not ripe for adjudication, where defendant alleges a conditional future event that may either not occur as anticipated or not occur at all. See *Mich Chiropractic Council v Comm'r of the Office of Financial & Ins Services*, 475 Mich 363, 371 n 14; 716 NW2d 561 (2006). In the event the parties did reach an impasse regarding an appropriate sale price, the trial court has ample capacity to resolve the issue. It would serve no constructive purpose and would work an actual hardship, particularly on the children, to order plaintiff and the children out of the house simply because it is on the market for sale.

Finally, defendant asserts that the trial court is biased and asks this Court to remand this case to a different judge or to assign this case to a different trial judge for any subsequent proceedings. We have thoroughly reviewed the record, and conclude that defendant has not overcome the "heavy presumption of judicial impartiality" to warrant a different trial judge in any subsequent proceedings. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640

NW2d 321 (2001).

Affirmed.

/s/ Jane M. Beckering

/s/ Kurtis T. Wilder

/s/ Alton T. Davis