

STATE OF MICHIGAN  
COURT OF APPEALS

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SALLY RAE VANGEEST,

Plaintiff-Appellee,

v

DOUGLAS GENE VANGEEST,

Defendant-Appellant.

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UNPUBLISHED

March 1, 2011

No. 294427

Ottawa Circuit Court

LC No. 08-061707-DO

Before: MURPHY, C.J., and METER and GLEICHER, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right contesting the spousal support award in a judgment of divorce. We affirm, and decide this appeal without oral argument in conformity with MCR 7.214(E).

Defendant characterizes the trial court's award of \$1400 in monthly spousal support as "inequitable to the extent that it will impoverish . . . defendant." "It is well settled that spousal support is intended to balance the incomes and needs of the parties so that neither party will be impoverished as a result of the divorce." *Gates v Gates*, 256 Mich App 420, 436; 664 NW2d 231 (2003) (internal quotation omitted).

Whether to award spousal support is in the trial court's discretion, and we review the trial court's award for an abuse of discretion. On appeal, we review the trial court's findings of fact concerning spousal support for clear error. The findings are presumptively correct, and the burden is on the appellant to show clear error. A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. If the trial court's findings of fact are not clearly erroneous, (we) must then decide whether the dispositional ruling was fair and equitable in light of the facts. The trial court's decision regarding spousal support must be affirmed unless we are firmly convinced that it was inequitable. [*Id.* at 432-433 (internal quotation omitted).]

In deciding whether an award of spousal support would qualify as just and reasonable under the particular circumstances, a trial court should take into account a multitude of factors:

(1) [T]he 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. [*Berger v Berger*, 277 Mich App 700, 726-727; 747 NW2d 336 (2008) (internal quotation omitted).]

“[T]he trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance.” *Id.* at 721 (internal quotation omitted).

The trial court in this case carefully identified and made findings of fact concerning all the factors listed in *Berger*, 277 Mich App at 726-727. The court made brief introductory findings:

Mr. and Mrs. VanGeest have been married for thirty years, and have three sons who are now adults . . . . Mrs. VanGeest testified that the marriage broke down due to Mr. VanGeest's excessive drinking. Mr. VanGeest acknowledged this was one of the causes, but adds that his partially taking over the household finances and checkbook a few years ago was another cause. . . .

The parties were married July 8, 1978. Mr. VanGeest did not finish high school, and has been employed throughout the marriage (except for a couple of years at another employer) by Jenison Construction, doing underground construction work. He had worked his way to a foreman's position, but was demoted following a drunk driving conviction just after Thanksgiving 2008 involving the use of a company vehicle. He lost \$200 per week in gross pay as a result of that charge, and now earns \$975 per week gross income (\$50,700 per year). He is 53 years old, and in good health.

Mrs. VanGeest is a high school graduate, but left the work force when their children were born. She returned to work on a part-time basis when their youngest son was four years old, and has worked part-time for the last seventeen years as a maintenance assistant at Allendale Public Works. She's attempted to get full-time hours there, but has been unable to do so. She has no other work history. She earns \$12.13 per hour, and works . . . 24 hours per week. With occasional overtime, she testified that her gross income is \$1325.00 per month. she is 51 years old, and in good health.

The trial court next observed that “[t]here is little dispute over personal property,” and that although the parties did contest the extent of their responsibility for some credit card debts, the trial court opined that “the balances on [plaintiff's] accounts were incurred for household expenses.”

The trial court proceeded to address the spousal support factors and their applicability to this case:

1. The past relations and conduct of the parties. The parties have lived in a deteriorating marriage for a long time. They raised three sons, two of whom have moved back home and rely on their parents for at least part of their support. The hallmark of the parties' home life has been Mr. VanGeest's daily consumption of alcohol. As a result, according to Mrs. VanGeest, Mr. VanGeest has paid little attention to her, their children, or grandchildren.

2. The length of the marriage. Mr. and Mrs. VanGeest have been married for 30 years.

3. The ability of the parties to work. Both parties are able to work, and both are continuing to work.

4. The source and amount of property awarded to the parties. The parties are dividing the marital estate equally, providing each with a little over \$100,000 in net assets, almost all of which is in marital home equity and a retirement plan. There are not enough assets to provide a comfortable lifestyle for either of them, and both will have to continue working.

5. The parties' ages. Mrs. VanGeest is 51, and Mr. VanGeest is 53 years of age.

6. The abilities of the parties to pay alimony. Mrs. VanGeest has no ability to pay alimony. Mr. VanGeest does have that ability, but has incurred multiple debts, some as a result of co-signing loans for his adult sons, or borrowing from his retirement plan to loan money to them.

7. The present situation of the parties. Mrs. VanGeest is unable to provide a home for herself without some assistance from Mr. VanGeest. He suggests that she should live with her mother, overlooking the fact that he has a legal and moral obligation to provide for his wife; her mother does not.

8. The needs of the parties. Mrs. VanGeest's projected monthly budget states that she will need monthly net income of \$2,800 to meet her needs, and it appears reasonable; her gross income, however, is only \$1,325 per month. Her budget includes \$800 monthly for rent for the home she will be renting. The credit cards are all in her name, and she has been the party primarily responsible for paying them. She also projects having to pay for health insurance, at the rate of \$300 per month.

Mr. VanGeest has a gross income of \$4,241 per month. His mortgage payment is \$977 per month. He is currently repaying, through payroll deduction, two successive loans of \$7,000 each from his retirement plan, to help one of the adult sons pay his mortgage (on which he had co-signed). His son paid him \$75 per month, and later \$150 per month to re-pay the loan, and Mr. VanGeest told him to give the payments to his wife. There have apparently been other loans taken by Mr. VanGeest against his retirement plan, as the March 31, 2009

statement . . . shows a total loan balance of \$27,133.71. His payroll deductions for repayment of the loans are continuing at \$157.95 per week.

9. The parties' health. Both parties are in good health.

10. The prior standard of living of the parties and whether either is responsible for the support of others. Neither of the parties is responsible for the support of others, although Mr. VanGeest has assumed some financial responsibility by co-signing on a son's mortgage, and another son's car loan. As a result, he is repaying his retirement plan for the loan to a son, and intermittently paying another son's car payments.

11. Contributions of the parties to the joint estate. Both parties have contributed to the marital estate. Mr. VanGeest worked full-time throughout the marriage, and is the primary breadwinner. Mrs. VanGeest left the work force when the parties' children were young, and returned to work on a part-time basis. She was the primary caregiver for the parties' children. Mr. and Mrs. VanGeest had different roles during their marriage, but the court considers these equal contributions to the joint estate.

12. A party's fault in causing the divorce. Mr. VanGeest's daily consumption of alcohol is the primary factor in the breakdown of the marriage. It interfered with their communication and drained their financial resources. As a result of the Thanksgiving 2008 drunken driving offense, it also cost Mr. VanGeest over \$10,000 annually in income due to his demotion. Although he stopped drinking at that point, the marriage was already over, as Mrs. VanGeest filed this action in June 2008.

13. The effect of cohabitation on a party's financial status. Mr. VanGeest has two adult sons living with him who should be contributing to the household, but instead he is subsidizing them by paying some of their debts and living expenses. This has been a source of conflict between Mr. and Mrs. VanGeest. She believes that he is undermining their motivation to improve their own financial condition.

14. General principles of equity. The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300[;] 495 NW2d 173 (1992). The overriding concern of the courts is that the award be equitable. *Van Tine v Van Tine*, 348 Mich 189[;] 82 NW2d 486 (1957); *Wells v Wells*, 330 Mich 448[;] 47 NW2d 687 (1951).

After reviewing the record, we detect no clear error in any of the trial court's findings of fact. With respect to several of the trial court's findings, defendant lodges multiple complaints highlighting testimony or other evidence that the court allegedly ignored. But our reading of the trial court's findings, the evidentiary record, and defendant's complaints simply leaves us with no definite conviction that the trial court misconstrued the factual record in any respect.

Furthermore, unlike the trial court in *Stallworth v Stallworth*, 275 Mich App 282, 286-287; 738 NW2d 264 (2007), which improperly imputed income to a defendant on the basis of his reduced income capacity owing to past criminal activities, the trial court here did not impute income to defendant due to his recent alcohol-related driving offense; the court in this case merely emphasized in its examination of fault the expenses defendant incurred because of his November 2008 “drunken driving offense.”

Defendant also challenges as inequitable the trial court’s spousal support calculation. The court explained the manner in which it arrived at the spousal support amount as follows:

After thirty years of marriage, Mr. and Mrs. VanGeest find themselves with a combined gross income of \$66,600 per year (\$15,900 per year from Mrs. VanGeest, and \$50,700 per year from Mr. VanGeest). He has a mortgage payment of \$977 per month, and she will have a rent payment of \$800 per month. They will have similar basic overhead expenses for utilities and food. Mr. VanGeest has 401(k) loans to repay, along with recurring payments due to his co-signing loans for his sons, while Mrs. VanGeest has credit card debts in her name. She also has a car loan and car insurance expenses that Mr. VanGeest does not have (because he drives a company vehicle).

If no other changes are made, each party can expect his or her standard of living to decline, because they can’t maintain two households as effectively on the same income with which they formerly maintained one. Mr. VanGeest is already working full-time, and it seems inevitable that Mrs. VanGeest will . . . eventually have to obtain full-time employment. Because she has not worked full-time in many years, it would be unreasonable and unfair to expect her to do so immediately, or to impute potential income to her as though she were already working full-time.

According to the Marginsoft “Support 2009—Michigan” software, Mrs. VanGeest has a good case for permanent spousal support, and the non-binding guidelines suggest a payment of \$1,069 per month in spousal support for an indefinite period . . . . The same guidelines suggest that if Mrs. VanGeest were working forty hours per week (at her current hourly rate, with all other factors being equal), then the recommended spousal support would be for long-term alimony (with a recommended term of 13.8 years) at a rate of \$736 per month. Of course, the above calculations are not binding on the Court, but are used as a tool to assist the court in a consistent evaluation of spousal support claims. It is only a partial tool; these guidelines do not take into account all of the factors which case law requires the court to evaluate, as defined above.

The court concludes that an equitable balancing of the incomes and needs of the parties requires a spousal support award based upon the parties’ current circumstances. If the parties’ total gross income were divided equally between the parties, Mrs. VanGeest would be entitled to \$33,300 per year. Subtracting her current annual income would leave her with a shortfall of \$17,400 per year, or \$1,450 per month. She would then have a gross income of \$2,775 per month, not

enough to give her the net income of \$2,800 per month which her projected budget requires. Mr. VanGeest would likewise have a gross income of \$2,775 per month (\$4225 less \$1,450). His net income will then be closer to \$2,250 per month, from which he will have to pay a \$977 mortgage payment and a 401(k) loan repayment of \$687 per month. That hardly leaves him with enough to pay utilities and groceries.

The economic stress on both parties resulting from the breakdown of this marriage suggests that Mrs. VanGeest will be highly motivated to find full-time employment, and Mr. VanGeest will be highly motivated to increase his income by undoing the impact of his demotion at work, by increasing his son's contributions to household expenses at home, or both. Mr. VanGeest is ordered to pay spousal support in the amount of \$1,400 per month, payable by income withholding order pursuant to a Uniform Spousal Support Order. This is an award of permanent spousal support, modifiable upon any material change of circumstances, and one which will be reviewed in three years, regardless of circumstances, to determine whether potential income should be imputed to Mrs. VanGeest in the event that she is still working on a part-time basis.

The trial court's award of spousal support to plaintiff sought to equalize the parties' current incomes, an eminently proper purpose as this Court noted in *Gates*, 256 Mich App at 436: "It is well settled that spousal support is intended to balance the incomes and needs of the parties so that neither party will be impoverished as a result of the divorce." Defendant insists that the spousal support award impoverishes him. Although the trial court's order markedly reduces defendant's income, it does not completely impoverish him. In light of all the instant circumstances, especially including defendant's greater earning capacity, the court's willingness to revisit the spousal support amount in three years, and the court's strong suggestions that plaintiff find full-time employment, we cannot characterize the trial court's equalization of the parties' current incomes as unfair or inequitable. *Id.* at 433. Because we are not firmly convinced that the spousal support award qualifies as inequitable, we must uphold the award. *Id.*

Affirmed.

/s/ William B. Murphy  
/s/ Patrick M. Meter  
/s/ Elizabeth L. Gleicher