

STATE OF MICHIGAN
COURT OF APPEALS

JANICE C. HAMILL,

Plaintiff-Appellee,

v

BRUCE A. HAMILL,

Defendant-Appellant.

UNPUBLISHED

June 16, 2011

Nos. 295653

Luce Circuit Court

LC No. 08-004993-DM

JANICE C. HAMILL,

Plaintiff-Appellant,

v

BRUCE A. HAMILL,

Defendant-Appellee.

No. 296845

Luce Circuit Court

LC No. 08-004993-DM

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

These consolidated appeals arise from the parties' divorce. In Docket No. 295653, defendant Bruce Hamill appeals as of right from a judgment of divorce entered by the trial court on the ground that the court neglected to take into account evidence that plaintiff Janice Hamill had embezzled over \$400,000 from his business during the marriage. In Docket No. 296845, plaintiff appeals as of right a trial court order denying her motion for attorney fees. We affirm.

The parties married on September 2, 1995, and plaintiff filed for divorce in September 2008.¹ Defendant owned and operated a trucking business, Hamill Trucking. Until April 2007

¹ The parties adopted two children in the course of the marriage. The trial court awarded plaintiff primary physical custody of the children, a ruling not disputed in these appeals.

or May 2007, plaintiff performed bookkeeping tasks for Hamill Trucking, such as making bank deposits and paying bills. The trial testimony revealed that neither of the parties drew a salary from the trucking company, and that they paid a significant amount of their household expenses with business-generated funds that they transferred into a personal account.

Defendant's mother accused plaintiff of having taken \$439,000 from Hamill Trucking by writing checks to herself. Defendant also testified that plaintiff had taken "lots . . . and lots" of money from the business. When plaintiff objected to the proposed testimony of defendant's mother, the court overruled the objection, but stated "I think that [plaintiff's] argument is phenomenal in terms of the credibility of all of this," and added, "I don't get . . . so what? I mean, she testified that that's how they paid their bills. . . . That's what you would do in a business if not drawing a salary."

Ultimately, the trial court divided the marital property among the parties in a manner that did not account for defendant's allegations of embezzlement by plaintiff. The court refused plaintiff's request for an award of attorney fees.

In Docket No. 296845, defendant challenges as clearly erroneous the trial court's opinion and order concerning marital property, given the court's lack of reference to his embezzlement allegations. This Court reviews for clear error a trial court's findings of fact. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). "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 committed." *Id.* We give regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C).

The Michigan Court Rules envision that, "[i]n actions tried on the facts without a jury . . . the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." MCR 2.517(A)(1). Factual findings suffice when "'(b)rief, definite, and pertinent,' and it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation." *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995), quoting MCR 2.517(A)(2). "[O]ver elaboration of detail or particularization of facts" is not necessary. MCR 2.517(A)(2).

The bench trial record plainly establishes that the trial court possessed awareness of defendant's assertions, and evidence purporting to show, that plaintiff embezzled. The record also reveals that the court remained deeply skeptical and expressed doubt that plaintiff had stolen money from the business, as opposed to having engaged in a routine procedure of paying family expenses with business funds. Once the court deemed insupportable defendant's embezzlement claim, this matter became irrelevant to the court's final disposition of marital property. Because the trial court stated on the record its disbelief of the asserted embezzlement and referenced evidence in the record supporting the court's position, we find no basis for remanding this case for further findings of fact. *Triple E Produce Corp*, 209 Mich App at 177 ("Because we have concluded that the trial court was aware of the issues and correctly applied the law, and because the award was within the range of the evidence, we find no clear error in the award. Accordingly, remand is unnecessary because any further explanation by the trial court would not facilitate appellate review.").

In Docket No. 296845, plaintiff urges that the trial court should have awarded her attorney fees in light of her inability to pay her own attorney and defendant's greater resources. We review for an abuse of discretion a trial court's decision whether to award attorney fees. *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 231 (2003). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Plaintiff cites *Gates* to support her position that she does not have the capability to pay her attorney, while defendant does. In *Gates*, the trial court awarded the defendant \$5,500 in attorney fees, despite her request of \$70,900. 256 Mich App at 437. This Court held that the trial court abused its discretion, on the grounds that the defendant lacked enough income to pay her attorney fees, and that she would have to pay the fees with assets intended for her support. *Id.* at 438. The Court further held that, although attorney fees in a divorce action should be awarded only to the extent necessary "to enable a party to prosecute or defend a suit," the facts of that case presented just such a situation. *Id.*; see also MCL 552.13(1); *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001).

Plaintiff submits that she will be forced to invade the \$28,509.50 cash adjustment that the trial court awarded her to equalize the marital property distribution. Plaintiff additionally suggests that defendant has deliberately delayed the proceedings. The trial court ruled that plaintiff did not make an adequate showing that defendant had conducted himself in bad faith during the divorce in a manner that would justify fee shifting. And some significant factual distinctions exist between this case and *Gates*, 256 Mich App 420, including that plaintiff has employment and receives benefits for sources of income, and she sought less than \$10,000 in attorney fees, whereas more than \$70,000 in attorney fees was at issue in *Gates*. Moreover, defendant testified that his income had dropped sharply as the result of the recession. Taking into account all the pertinent details presented in this case, we cannot conclude that the trial court selected an outcome beyond the range of reasonable and principled outcomes when it opted to deny plaintiff's request for attorney fees.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Deborah A. Servitto

/s/ Elizabeth L. Gleicher