

STATE OF MICHIGAN  
COURT OF APPEALS

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KIMBERLY SUE MYLAND,

Plaintiff/Counter-defendant-  
Appellant,

v

THOMAS EDWARD MYLAND,

Defendant/Counter-Plaintiff-  
Appellee.

UNPUBLISHED  
May 15, 2012

No. 304770  
Kalamazoo Circuit Court  
LC No. 2008-006024-DM

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Before: WHITBECK, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

This is the second time this matter is before us. In a previous appeal, this Court remanded to the trial court with instructions to reconsider the alimony and attorney fees issues. *Myland v Myland*, 290 Mich App 691; 804 NW2d 124 (2010). On remand, the trial court did increase both the alimony award (from \$13,872 per year to \$21,000 per year) and the attorney fees award (from zero to \$7,200, payable at the rate of \$200 per month for three years). Plaintiff again appeals and this time we affirm.

Plaintiff first argues that the trial court erred in awarding only approximately 13% of the requested of \$55,327 in attorney fees and costs because it would require her to invade the spousal support award in order to pay the remaining fees of over \$48,000. We disagree. But plaintiff's argument is based upon two false assumptions. First, plaintiff would not necessarily have to use her spousal support award to pay the attorney fees. She was awarded approximately \$70,000 in marital assets (approximately \$18,000 more than what was awarded to defendant). Furthermore, this Court's direction on remand was not that the trial court could not consider the spousal support award itself in considering the attorney fees issue, but rather whether plaintiff would have to invade assets upon which she needed to rely in order to live in paying her attorney fees. Specifically, this Court's directives, *Myland*, 290 Mich App at 703, were as follows:

It was incumbent upon the trial court to consider whether attorney fees were necessary for plaintiff to defend her suit, including whether, under the circumstances, plaintiff would have to invade the same spousal support assets she is relying on to live in order to pay her attorney fees and whether, under the specific circumstances, defendant has the ability to pay or contribute to plaintiff's

fees. . . . Thus, on remand, the trial court must apply the correct legal analysis, giving special consideration to the specific financial situations of the parties and the equities involved.

We are satisfied the trial court complied with this Court's directives and did not abuse its discretion on remand in determining the attorney fees award issue. *Myland*, 290 Mich App at 701.

Next, plaintiff argues that the trial court committed clear error on remand when, having previously found that defendant's pre-tax income was \$62,500, it found on remand that defendant's income was only \$32,000. We agree with defendant that the trial court merely misspoke in describing defendant's income as "pre-tax" rather than "after tax." When read in context, it is clear that the trial court was attempting to describe the parties' relative financial situation after accounting for the alimony award and taxes. More importantly, it is clear to us that the trial court understood the parties' relative financial situation and did not suddenly believe that defendant only earned \$32,000 per year in pre-tax income. Indeed, if that had been the case, it would seem extremely unlikely that the trial court would have ordered \$21,000 in annual alimony payments and any attorney fees award at all. We are satisfied that the trial court based its decision on the actual income figures, not the misstated figure.

Plaintiff next argues that the trial court abused its discretion when it refused to explain why it only awarded 13% of the requested attorney fees and limited the payment time to three years. In reality, the trial court fully explained its reasoning, though perhaps not in a detailed summary. But the trial court made findings on the parties' relative income, on the assets awarded to each party, the amount of the fees and the ability to pay. And ultimately the trial court summarized its conclusion as follows: "I did not believe in light of everything he's obligated to pay in this case, that he could pay any more." This Court will reverse an attorney fees award in a divorce case only if there is a manifest abuse of discretion. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). We see no such abuse in this case.

Next, plaintiff argues that the trial court erred in considering defendant's success on appeal in determining the award of appellate attorney fees pursuant to MCR 3.206(C). We agree that the award of attorney fees under MCR 3.206(C) in a domestic relations matter is materially different than the award of costs to the prevailing party in an appeal under MCR 7.219. But that does not mean that consideration of who prevails is completely out of bounds. Our directive on remand directed the trial court to, among other things, consider "the equities involved." *Myland*, 290 Mich App at 703. And if a party raises frivolous issues, needlessly increasing the attorney fees incurred by both parties, that would certainly affect "the equities involved." That is, it hardly seems equitable to require a party to pay the attorney fees of the opposing party to enable them to raise frivolous issues. For example, the equities would weigh against plaintiff now seeking in the trial court an increase in the attorney fees award based upon the fees incurred in pursuing this unsuccessful appeal.

But, in any event, it appears that the trial court was merely noting that defendant did prevail on appeal on the issue of the award of the vintage car pursuant to the parties' earlier stipulation. It does not appear that this in any manner affected the ultimate award made by the

trial court. Rather, it seems that the trial court awarded the maximum amount of attorney fees that the trial court concluded that defendant had the ability to pay.

Plaintiff's final issue is to raise the question of to what extent is a parties' receipt of alimony to be weighed in determining the ability to pay attorney fees. As defendant points out in his brief, that would seem to be a topic more suited for a law review article than an opinion of this Court.

Finally, defendant requests an award of fees and costs under MCR 7.216(C) as a sanction for a vexatious appeal. We would agree with what seems to be defendant's underlying premise that, given that the combined attorney fees in this matter are now approaching, if not exceeding, the entire value of the marital estate, the time has long since passed for this litigation to be over. But, despite that fact, and the fact that defendant has prevailed on this appeal, we are not persuaded that the matter has quite reached the vexatious level. Therefore, we decline to award sanctions on this basis.

Affirmed. Defendant may tax costs.

/s/ William C. Whitbeck  
/s/ David H. Sawyer  
/s/ Joel P. Hoekstra