

STATE OF MICHIGAN
COURT OF APPEALS

GLORIA ANN GILL,

Plaintiff-Appellee,

v

FLOYD JACE GILL, JR.,

Defendant-Appellant.

UNPUBLISHED

June 26, 2012

No. 301839

Wayne Circuit Court

LC No. 09-113972-DO

Before: MURRAY, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

In this divorce action between defendant-husband, Floyd Gill (Gill), and plaintiff-wife, Gloria Gill, Gill appeals as of right the trial court's judgment of divorce. Gill contends that the trial court erred in several respects, including distribution of the marital property and distribution of Gill's pension and retirement benefits. Gill also contends that the trial court's decision was against the great weight of the evidence. Finally, Gill asserts that the trial court erred in awarding attorney fees to Gloria Gill. We affirm.

I. FACTS

Gill and Gloria Gill married in October 1977. In September 2009, Gloria Gill filed a complaint for divorce, alleging that there had been a breakdown in the relationship. Gloria Gill also alleged that she was disabled, unable to work, and without sufficient means to support herself, while Gill was healthy, able-bodied, and working or capable of working. Gloria Gill additionally requested that the trial court enter an ex-parte mutual restraining order preventing both parties from disposing of assets. Gloria also requested that the trial court enter an ex-parte financial status quo order, requiring both parties to maintain the financial status quo. Finally, Gloria Gill requested that the trial court enter an ex-parte order to prevent Gill from allowing any insurance policy to lapse or change any beneficiary during the pendency of the proceedings.

In October 2009, the trial court granted Gloria Gill's requests and entered a mutual ex-parte restraining order against property transfer and for the preservation of the estate (mutual restraining order), as well as an ex-parte order for maintenance of financial status quo (financial status quo order). In February 2010, the trial court also entered an ex-parte personal protection order against Gill prohibiting him from contact with Gloria Gill.

In March 2010, Gloria Gill moved for an order to show cause, alleging that Gill had violated the mutual restraining order and the personal protection order by coming to Gloria Gill's home on two occasions and then forcefully taking a 1970 Pontiac GTO and other items from the premises, damaging Gloria Gill's car in the process. Gloria Gill alleged that she believed Gill took the GTO to get money for his gambling addiction. In May 2010, the trial court entered an order finding Gill in contempt for violating the mutual restraining order and the personal protection order. The trial court ordered that Gill either return the vehicle or pay to Gloria Gill its fair market value. The trial court also ordered that Gill pay \$1,184 for the damage done to Gloria Gill's car, \$250 in sanctions, and \$2,500 in attorney fees.

On June 3, 2010, Gill filed a motion for clarification of the mutual restraining order. Gill pointed out that the order restrained the parties from

[s]urrendering, redeeming, cashing in, withdrawing, assigning, modifying, transferring or encumbering his or her interest in any pension, retirement, profit-sharing, bonus, savings or stock purchase program in which he or she has any interest or in which he or she participates, or changing the beneficiary or beneficiaries of said programs or of any other benefit payable in the event of his or her death, disability retirement or termination.

Stating that he would like to retire in July 2010, Gill requested that the trial court "clarify that should [he] elect to retire, that he can commence receiving his pension benefits." But Gloria Gill responded, asserting that Gill was merely seeking to retire early "to punish [her] for divorcing him." Gloria Gill noted that if Gill continued to work until 2013, "his monthly pension benefit will increase from \$1[,]722.02 per month to \$3,184.00 per month at age 62."

In July 2010, Gloria Gill again moved for an order to show cause, alleging that Gill violated the trial court's May 2010 contempt order, the mutual restraining order, and the financial status quo order. With respect to the contempt order, Gloria Gill asserted that Gill had not yet complied with its terms. Turning to the financial status quo order, Gloria Gill asserted that Gill had stopped paying the property taxes and insurance on the marital home. Gloria Gill added that Gill also violated the order by failing to continue to provide for her daily expenses. And, with respect to the mutual restraining order, Gloria Gill asserted that Gill violated the order by enrolling for early retirement on June 1, 2010, leaving him with only \$836.30 in monthly pension benefits. Gloria Gill emphasized that Gill took this action *before* he filed his motion for clarification regarding retirement. Gloria Gill further alleged that in June 2010, Gill removed equipment from the family business.

In a September 2010 order, the trial court again ordered Gill to return the GTO or face sanctions. The trial court authorized Gloria Gill to cash and apply Gill's partial payment in the amount of \$1,713.28 to the damages, sanctions, and attorney fees ordered in the May 2010 contempt order. The trial court reserved for trial Gloria Gill's remaining allegations, including, but not limited to, her claims regarding Gill's failure to pay the insurance and taxes on the marital home and Gill's removal of equipment from the family business.

In November 2010, the trial court entered its opinion and order regarding spousal support, division of assets, and award of attorney fees. In that opinion, the trial court stated that

on the basis of the trial, it determined that Gloria Gill had a permanent disability due to her multiple sclerosis. The trial court further found that Gill was emotionally abusive to Gloria Gill during the marriage and that the abuse worsened significantly after Gloria Gill was forced to retire due to her disability. The trial court also found that Gill abused alcohol throughout the parties' marriage. The trial court additionally determined that Gill's gambling addiction caused dissipation of the marital assets of the parties throughout their entire marriage. And although the trial court found that Gloria Gill failed to support her claim that Gill's gambling had resulted in losses of more than \$300,000, the trial court accepted Gill's admission that he had lost approximately \$40,000 at the casino in the last ten years. And the trial court also found that Gill admittedly shot his son, Floyd Gill, III. In sum, the trial court found Gill significantly at fault for the marital dissolution.

Looking to the spousal support factors from *Zecchin v Zecchin*,¹ the trial court determined that nine out of the 11 factors (past relations and conduct of the parties, length of the marriage, ability of the parties to work, ability of the parties to pay alimony, present situation of the parties, needs of the parties, health of the parties, prior standard of living, and general principles of equity) favored Gloria Gill. More specifically, regarding past relations and conduct of the parties, the trial court accepted the testimony regarding Gill's emotional abuse of Gloria Gill, "due in part to [Gill's] drinking[.]" With regard to the ability of the parties to work, the parties' present situation, the parties' needs, and the parties' health, the trial court found it significant that Gill, although retired, owned a commercial building and was capable of working, while Gloria Gill was disabled and collecting social security benefits. Turning to the parties' ability to pay alimony, the trial court found that this factor favored Gloria Gill because, although she was receiving monthly disability benefits in the amount of \$1,889, her retirement distributions would not be available without significant tax consequences until 2018, whereas Gill had a monthly retirement distribution of \$856.64 a month, 401(k) distributions beginning in October 2012, and an IRA with a summary balance of \$175,759.20 as of June 2010.

The trial court found that the factor regarding the source and amount of property awarded to the parties favored neither party because they both contributed to the acquisition of the assets at issue and each party selected which assets they wanted. The trial court did not specifically make a finding regarding the parties' ages. And with regard to general principles of equity, the trial court found that Gloria Gill's lifestyle should be maintained in light of her disability. Accordingly, the trial court ordered Gill to pay spousal support to Gloria Gill in the amount of \$500 a month until her retirement funds were available in 2018. Further, the trial court noted that it chose that monthly amount "to allow [Gill] to pay much of the award from income generated by his IRA, and limiting to the extent possible invasion of the principle."

Looking to the spousal support factors from *Sparks v Sparks*,² the trial court determined that eight out of the nine factors (contributions of the parties to the marital estate, age of the parties, health of the parties, life status of the parties, necessities and circumstances of the parties, earning abilities of the parties, past relations and conduct of the parties, and general principles of equity) favored Gloria Gill. Generally, with regard to all 8 of these factors, the trial

¹ *Zecchin v Zecchin*, 149 Mich App 723, 733; 386 NW2d 652 (1986).

² *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992).

court again found it significant that Gloria Gill was disabled and unable to work, while Gill was in good health and, although retired, was capable of continuing to work. With regard to the past-relations-and-conduct-of-the-parties factor, the trial court found that that factor favored Gloria Gill in light of Gill's emotional abuse, daily consumption of alcohol, and his admission that his gambling resulted in the loss of approximately \$40,000 in the last ten years. The trial court found that the factor regarding the duration of the marriage favored both parties. In sum, the trial court found that Gloria Gill was entitled to maintain the lifestyle which she had become accustomed over the parties' 33-year marriage. Applying the principle of equitable distribution,³ the trial court then specified each party's share of the assets.

Pursuant to the trial court's order, Gloria Gill received the following distribution of assets:

1. The marital home, which Gloria Gill testified was worth approximately \$15,000-\$20,000.
2. A parcel of residential property located in Detroit, which Gloria Gill testified was worth approximately \$7,500.
3. A parcel of inherited property located in Gainesville, Alabama, which Gloria Gill testified was worth approximately \$2,000.
4. Her IRA with MetLife with a balance of approximately \$220,000.
5. Her IRA (xxxx3775) with a balance of approximately \$50,000.
6. A 2010 Cadillac SRX.
7. A 1984 Buick Park Avenue.
8. The 1970 Pontiac GTO, the value of which the trial court determined to be \$12,441.50 and that amount was due to Gloria Gill.
9. Her personal jewelry, clothing, tools, and accessories.
10. Gloria Gill was to pay her own attorney fees.

Pursuant to the trial court's order, Gill received the following distribution of assets:

1. The commercial storefront property, which Gloria Gill testified was worth approximately \$50,000.
2. The property located in Carthage, Mississippi. The value was undetermined, but Gloria Gill agreed to Award the property to Gill.
3. His pension with U.S. Gypsum in the amount of \$836.30 a month.

³ MCL 552.401; *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003).

4. His 401(k) account with U.S. Gypsum with a balance of \$175,759.20 as of June 16, 2010.
5. A 2000 Chevrolet Silverado.
6. A 1999 Buick Century.
7. His personal jewelry, clothing, tools, and accessories with the exception of anything that was a fixture at the marital home.
8. Gill was to pay his own attorney fees.

The trial court acknowledged that its division of the assets was not equal, but, again noting the principle of *equitable* distribution, it explained that the distribution was supported by the “abusive nature of the parties’ relationship, coupled with [Gloria Gill’s] permanent disability and [Gill’s] ability and good health.”

In December 2010, the trial court entered a judgment of divorce, confirming the distribution allocated above. Gill now appeals.

II. THE TRIAL COURT’S JUDGMENT OF DIVORCE

A. STANDARD OF REVIEW

When reviewing a trial court’s divorce judgment, this Court must first review the court’s findings of fact.⁴ This Court gives special deference to a trial court’s findings when based on the credibility of the witnesses.⁵ This Court will not reverse findings of fact, such as a trial court’s valuations of particular marital assets, unless clearly erroneous.⁶ A finding is clearly erroneous if, after a review of the entire record, this Court “is left with a definite and firm conviction that a mistake has been committed.”⁷ If this Court upholds the trial court’s findings of fact, it “must decide whether the dispositive ruling was fair and equitable in light of those facts.”⁸ The trial court’s dispositional ruling is discretionary, and this Court should affirm that ruling unless it is “left with the firm conviction that the division was inequitable.”⁹ This Court reviews issues of law de novo.¹⁰

⁴ *Sparks v Sparks*, 440 at 151; *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008).

⁵ *Johnson v Johnson*, 276 Mich App 1, 11; 739 NW2d 877 (2007).

⁶ *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010); *Berger*, 277 Mich App at 717.

⁷ *Beason*, 435 Mich at 805.

⁸ *Gates*, 256 Mich App at 423.

⁹ *Id.*

¹⁰ *Cunningham v Cunningham*, 289 Mich App 195, 200; 795 NW2d 826 (2010).

B. GENERAL LEGAL PRINCIPLES

Using its sound discretion, a trial court's goal in distributing marital assets in a divorce proceeding is to reach a fair and equitable distribution of property in light of all of the circumstances.¹¹ There is no rigid rule or mathematical formula for the division of property, and there is no requirement that the trial court award the property equally to the parties.¹² But the award must be equitable.¹³

C. PROPERTY AND SPOUSAL SUPPORT DISTRIBUTION

Gill argues that the trial court erred in the property and spousal support award to Gloria Gill because the distribution of assets was not equitable and was, in fact, an attempt to punish Gill for his gambling. He contends that he always adequately provided for his family during the course of the marriage and that it was his prerogative to choose how to spend his disposable income. Gill contends that his admitted "vice" was no different than a husband who spent money on sporting events or hobbies. Gill asserts that the trial court improperly based its decision on its disapproval of Gill's behavior.

The trial court's determination regarding a fair and equitable property division in divorce cases requires that it consider many factors, including: (1) the length of the marriage; (2) the source of the property or the parties' contributions toward its acquisition; (3) the parties' ages; (4) the parties' health; (5) the parties' station in life; (6) the parties' needs and circumstances; (7) the parties' earning abilities; (8) the parties' past relations and conduct; and (9) any other equitable circumstances or general principles of equity.¹⁴ There may be additional factors that are relevant to a particular case.¹⁵ The trial court's determination of which factors are relevant will vary depending upon the facts and circumstances of each case.¹⁶ The trial court need not give each factor equal weight, unless the circumstances dictate otherwise.¹⁷ However, "the trial court must . . . not assign disproportionate weight to any one circumstance."¹⁸

Nevertheless, no mathematical formula exists for dividing the marital estate. This Court has held that "an equitable distribution need not be an equal distribution, as long as there is an adequate explanation for the chosen distribution."¹⁹ "[T]here is no Michigan statute or caselaw

¹¹ MCL 552.19; *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987).

¹² *Shaw v Shaw*, 364 Mich 560, 564; 111 NW2d 873 (1961); *Ackerman*, 163 Mich App at 807.

¹³ MCL 552.401.

¹⁴ *Sparks*, 440 Mich at 159-160.

¹⁵ *Id.* at 160.

¹⁶ *Id.*

¹⁷ *Welling v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999); *Byington v Byington*, 224 Mich App 103, 115; 568 NW2d 141 (1997).

¹⁸ *Sparks*, 440 Mich at 158.

¹⁹ *Washington v Washington*, 283 Mich App 667, 673; 770 NW2d 908 (2009).

that precludes outright a substantial deviation from numerical equality in a property distribution award.”²⁰ Moreover, “fault is clearly a proper factor to consider in the division of marital property.”²¹ However, that fault must be related to the parties’ assets and debt.²²

For example, in *Washington v Washington*, this Court upheld a property award that awarded the defendant 25 percent of the assets and 75 percent of the debt.²³ This Court confirmed that the unequal award was justified considering that the defendant had “dissipated assets both through credit card spending and the use of the home equity, at an unreasonable rate, and well beyond that at which [plaintiff] dissipated assets.”²⁴ This Court found it significant that the fault of the defendant was directly related to the parties’ assets and debt.²⁵ In contrast, this Court in *Berger v Berger*,²⁶ remanded that case to the trial court to achieve a fair and equitable distribution on the basis of its conclusion that the original division of 70 percent to the plaintiff and 30 percent to the defendant served only to punish the defendant by giving disproportionate weight to his extramarital affair, which was not related to the parties’ assets and debt.

Here, the trial court did articulate that its distribution was based, in part, on Gill’s conduct, that is, his emotional abuse, drinking, and gambling. However, we are not left with the definite and firm conviction that “the tenor” of the trial court’s award was intended to punish Gill.²⁷ The trial court repeatedly explained that its spousal support and property awards were based in large part on Gloria Gill’s disability as compared to Gill’s health and ability to continue working, and the trial court’s finding that Gloria Gill was entitled to maintain the lifestyle which she had become accustomed over the parties’ 33-year marriage. And to the extent that the trial court did take Gill’s gambling into account in the award, such consideration was proper where Gill’s fault in this respect did result in dissipation of the parties’ assets.²⁸

Further, Gill objects to the spousal support award, arguing that the \$500 a month payment was inequitable when he only received a monthly pension payment in the amount of \$800. However, this contention is without merit, as the trial court specifically explained that it chose that monthly amount “to allow [Gill] to pay much of the award from income generated by his IRA, and limiting to the extent possible invasion of the principle.”

²⁰ *Id.*

²¹ *Id.* at 675-676.

²² *Id.*

²³ *Id.* at 673-674.

²⁴ *Id.* at 674 (alteration in original).

²⁵ *Id.* at 676.

²⁶ *Berger*, 277 Mich App at 721-722.

²⁷ *Id.* at 722.

²⁸ See *Washington*, 283 Mich App at 676.

D. PENSION AND RETIREMENT BENEFIT DISTRIBUTION

Gill argues that the trial court erred in the distribution of his pension and retirement benefits to Gloria Gill. However, this argument is without merit because the judgment of divorce awarded each party their own pension plans, annuities, retirement plans, profit sharing plans, 401(k) plans and other benefits.

E. EVIDENCE

To the extent that Gill argues that the trial court's decision was not supported by the evidence, we disagree. Our review of the record supports the trial court's findings of fact, and other than resorting to speculation and hyperbole, Gill points to nothing concrete to support his claim of error.

III. ATTORNEY FEES

Gill argues that the trial court erred in awarding Gloria Gill attorney fees. We first note that Gill's argument is without merit to the extent that he is referring to the award of attorney fees in the judgment of divorce because, by the terms of the judgment, each party is responsible to pay his or her own attorney fees. To the extent that Gill is referring to the award of attorney fees in the May 2010 contempt order, that argument is also without merit. This Court has made clear that the remedy for a finding of contempt may include attorney fees incurred as a result of the contemptuous conduct.²⁹ And we find no abuse of discretion in the trial court's decision to award attorney fees under the circumstances presented here.³⁰

We affirm.

/s/ Christopher M. Murray
/s/ William C. Whitbeck
/s/ Michael J. Riordan

²⁹ *Taylor v Currie*, 277 Mich App 85, 100; 743 NW2d 571 (2007), citing MCL 600.1721.

³⁰ See *Taylor*, 277 Mich App at 99.