

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN LENITA MCGREGOR,

Plaintiff/Counterdefendant-
Appellee,

v

MARK PINSON MCGREGOR,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED
September 30, 2004

No. 247257
Kent Circuit Court
LC No. 00-002732-DO

Before: Griffin, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm in part, reverse in part, and remand for further proceedings.

I. Facts and Procedure

The parties were married for thirty-four years before divorcing in 2002. During the marriage, defendant became part-owner of three related businesses: Panopoulos Salons, Inc., Salon Enterprises, Inc., d/b/a Haircuts Plus, and Dara Realty, L.L.C. At the time of trial, defendant was the chief operating officer for the three companies and was paid a base annual salary of \$128,000. Defendant also received significant bonuses at the end of each year, but he was required by Christos Panopoulos, the majority shareholder in the companies, to reinvest a portion of the bonus money (upon which defendant was taxed) into the businesses. Including the bonuses, defendant's total annual taxable compensation was approximately \$250,000.

Leslie N. Prangle III, a certified public accountant testifying on behalf of plaintiff, valued defendant's total interest in the companies at \$1,636,462 as of December 2000. He calculated this value by using the stipulated value of the businesses, which were set by Panopoulos. In reaching his conclusions, Prangle assumed that the companies would be sold as a whole, and the respective owners would receive a proportionate share of the value in accordance with their percentage of shares. Prangle also assumed that defendant was a

minority controlling shareholder despite his status as a non-controlling shareholder.¹ Prangley also did not consider the marketability of defendant's interest alone and did not factor in any minority discounts.²

James J. Gorman, a certified public accountant testifying on behalf of defendant, challenged Prangley's calculation of the value of defendant's interest in the companies, testifying that Prangley's methods of valuation were improper. Using the income approach to valuation, Gorman calculated that defendant's total interest in the three companies was \$305,000 as of December 2000. Gorman applied a minority interest discount, given defendant's status as a minority non-controlling shareholder. He also considered both that defendant could only sell his shares with the unanimous consent of the other shareholders (so it was highly unlikely that defendant could voluntarily sell his shares) and that no sale of any of the businesses was imminent.

In dividing the marital assets, the trial court found fault with both Prangley's and Gorman's valuations, and used a "hybrid" method of valuation. The court first accepted Gorman's calculation of the values as of December 2000, and awarded plaintiff fifty percent of that amount, or \$152,354. But the trial court also ruled that if and when defendant's shares in the companies were ever sold, transferred, assigned, or redeemed, defendant was to pay plaintiff forty percent of that amount, less the \$152,354 already paid. The trial court also awarded plaintiff fifty percent of the value of all of the other assets and spousal support in the amount of \$500 a week, plus forty percent of defendant's annual gross bonus. Finally, the trial court ordered defendant to pay plaintiff \$50,000, less \$5,000 already paid, toward her attorney and expert fees.

II. Analysis

A. Standard of Review

This Court reviews the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts." *Id.* at 151-152. Dispositional rulings should be affirmed unless the appellate court is left with a firm conviction that the decision was inequitable. *Id.* at 152. [*Korth v Korth*, 256 Mich App 286, 288; 662 NW2d 111 (2003).]

B. Property Distribution

¹ Prangley testified that a minority noncontrolling shareholder does not enjoy the same per-share value as a controlling shareholder.

² Prangley testified that a minority interest is worth substantially less if it is sold separately from the whole company.

Defendant first argues that the trial court erred by awarding plaintiff forty percent of the gross sale proceeds from any sale of defendant's interests in the companies. We agree. Before determining the property rights of the parties to be included in a judgment of divorce, a trial court must first make specific factual findings regarding the value of the property being awarded in the judgment. *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003). A trial court clearly errs when it fails to place a value on a disputed piece of marital property. *Id.* at 627-628.

Here, the court failed to place a set value on defendant's interests in the companies in the event that defendant were to sell, transfer, assign, or redeem his shares. By awarding plaintiff a percentage of any future sale of shares, rather than limiting the award to a set amount based on the value of the shares at the time of the divorce, the court neglected its duty to make a necessary finding of fact regarding the value of a disputed piece of marital property. *Id.*

Additionally, by awarding plaintiff forty percent of the value of the shares at the time defendant sells or otherwise divests himself of the shares, the trial court essentially awarded plaintiff the benefit of any increases in the value of the shares that accrue after the divorce. Assets earned by a spouse *during the marriage* are part of the marital estate. *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). A trial court's valuation of marital assets cannot be dependant upon the happening of future events that take place after the divorce. *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 76; 471 NW2d 631 (1991). The trial court erred in both failing to make the necessary factual findings regarding the value of marital property and awarding plaintiff an unspecified amount based on the post-divorce accrual or depreciation of the value of plaintiff's interests in the companies. Therefore, we remand for the trial court to (1) amend the judgment of divorce to remove the provision awarding plaintiff forty percent of the gross sale proceeds from any sale, transfer, assignation, or redemption of defendant's interests in the three companies, (2) recalculate the value of defendant's interest in the companies using the evidence already on the record, and (3) give plaintiff a cash award based on an appropriate percentage of the value of defendant's interests in the companies.

C. Spousal Support

Defendant additionally challenges the trial court's award of spousal support. He contends that the amount of the spousal support award was inequitable because the trial court gave undue emphasis to the type of lifestyle plaintiff became accustomed to during the marriage and disregarded the amount of property plaintiff received in the judgment of divorce. Defendant also argues that plaintiff's conduct should have worked against her, as she intentionally tried to emotionally damage defendant. Defendant further points out that plaintiff only works part time and is capable of earning a larger income.

In deciding whether to award spousal support, factors the trial court should consider include "the length of the marriage, the parties' ability to pay, their past relations and conduct, their ages, needs, ability to work, health and fault, if any, and all other circumstances of the case." *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996). The trial court should make specific factual findings regarding the factors that are relevant to the particular case. *Ianitelli [v Ianitelli]*, 199 Mich App 641, 643; 502 NW2d 691 (1993)]. The primary purpose of spousal support "is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d

723 (2000). Spousal support is to be based on what is just and reasonable under the circumstances of the case. *Id.* [*Korth, supra* at 289.]

Here, the trial court properly considered and made findings of fact on the factors relevant to spousal support, including the past relations and conduct of the parties, the length of the marriage, the ability of the parties to work, the source of and amount of property awarded to the parties, the ages of the parties, the ability of the parties to pay support, the present situation of the parties, the needs of the parties, the health of the parties, the prior standard of living of the parties, and general principles of equity. The court determined that spousal support was appropriate given the length of the marriage, defendant's significantly superior income potential, and plaintiff's need for financial assistance to maintain the standard of living to which she was accustomed. The court awarded plaintiff \$500 a week (\$26,000 a year), plus forty percent of defendant's bonuses or additional compensation.³

We are not left with a firm conviction that the trial court's award of spousal support was inequitable. *Korth, supra* at 288.⁴ Plaintiff raised the couple's two children to adulthood, ran the household, sought an education, and later, financially contributed to the household after becoming a nurse. We disagree with defendant's argument that that the trial court placed undue emphasis on the prior standard of living of the parties. This consideration was especially relevant in this case where plaintiff was married to defendant for thirty-four years and maintained a luxurious lifestyle made possible by defendant's substantial income for much of her adult life. In the year before trial, plaintiff earned only \$29,000.⁵ She was working part time, accepting all of the hours that her employer would provide, but apparently could not find full-time employment. The evidence established that even if she worked full time, she would earn only an additional \$5,000 to \$7,000 a year.⁶ The evidence also demonstrated that because of the divorce, plaintiff went from a lavish lifestyle with a home, vacation condominium, and sailboat to a much more modest lifestyle. There is no evidence that the award of spousal support will

³ Defendant argues that it is inequitable for plaintiff to receive forty percent of the portion of defendant's bonus income that Panopoulos requires defendant to reinvest in the companies. However, in a motion hearing, counsel for plaintiff agreed that "any income that Mr. McGregor got by way of bonus that was earmarked by all the partners to reinvest in new enterprises or new real estate would not be a bonus that would be considered under the provision of the 40 percent." On appeal, plaintiff again concedes that plaintiff is only to receive forty percent of bonuses or additional compensation that is actually paid out and received by defendant.

⁴ Whether and how much alimony to award is a dispositional ruling that should be affirmed "unless the appellate court is left with a firm conviction that the decision was inequitable." *Korth, supra* at 288 n 3.

⁵ Plaintiff was awarded a substantial cash award as her share of the property division. While this sum may produce interest income for plaintiff, there is no evidence to support defendant's suggestion that plaintiff is capable of annually generating \$16,000 in interest income by investing these assets.

⁶ There is no evidence supporting defendant's statement that plaintiff is capable of earning an annual salary of between \$40,000 and \$50,000.

impoverish defendant.⁷ We also reject defendant's contention that the trial court should have weighed against plaintiff her conduct during the marriage. Although plaintiff deliberately tried to emotionally hurt defendant by making him believe that she was having an extra-marital affair, defendant also acted inappropriately by actually having two extra-marital affairs earlier in the marriage.

Defendant also argues that the trial court's award of spousal support to plaintiff amounted to a "double dip" of defendant's assets, where the amount of spousal support was based on defendant's income from his interests in the three companies, and the trial court had also awarded plaintiff fifty percent of the cash value of these interests. Defendant claims that the value of his business interests was calculated based on his potential future income and that the same potential future income provided the basis for the award of spousal support. Defendant's argument of this issue is cursory, and he cites no case law or other authority to support it. A party may not give cursory treatment to an issue with little or no citation to authority. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). Therefore, this issue is not properly presented and we deem it abandoned. *Id.*⁸

We conclude that the trial court balanced the needs and incomes of the parties and awarded spousal support that was just and reasonable under the circumstances. *Korth, supra* at 289. We will not disturb the trial court's award.

D. Attorney Fees and Costs

Finally, defendant argues that the trial court abused its discretion by ordering him to pay \$50,000 toward plaintiff's attorney and expert witness fees. "We review a trial court's decision to award attorney fees for an abuse of discretion." *Gates v Gates*, 256 Mich App 420, 437-438;

⁷ The trial court noted that defendant managed to maintain his lavish lifestyle while paying support under the temporary order.

⁸ In his reply brief, defendant argues, "To avoid the double dip in spousal support computation, the trial court should have deducted that part of Mr. McGregor's income that provided the basis of the business value before it computed spousal support because she already received 50% of that income in the property settlement." But defendant goes on to state, "Gorman used every dime of [defendant's] income in attributing value to the three business enterprises." Thus, according to defendant, he has no income upon which the trial court could base an award of spousal support. This position is contrary to the position defendant took at the close of trial. In his written closing argument, defendant advocated that plaintiff should receive \$1,250 a month plus \$10,000 a year in spousal support for eight years. Additionally, he argued that plaintiff should receive one-half of the value of his shares in the three businesses, which he valued at \$284,000. Thus, defendant was advocating for a split of the value of the business shares and an award of spousal support. He did not argue that this constituted a "double dip" or that the award of spousal support should not be based on the portion of defendant's income that provides the basis for the value of his interests in the three companies. While we note that defendant raised this issue in his post-judgment motion for a new trial, a party is not allowed to assign error on appeal to something that he or his counsel deemed proper at trial. *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989).

664 NW2d 231 (2003). “Attorney fees in a divorce action are awarded only as necessary to enable a party to prosecute or defend a suit. It is well settled that a party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support.” *Id.* at 438 (citations omitted). In determining the reasonableness of attorney fees, the trial court may consider relevant factors such as: “(1) the professional standing and experience of the attorney; (2) the skill, time, and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.” *Joerger v Gordon Food Service, Inc.*, 224 Mich App 167, 181; 568 NW2d 365 (1997) (emphasis omitted).

In considering the reasonableness of plaintiff’s fees, the court considered the length of the trial and that “the complexity of defendant’s business interests and unusual method of compensation presented unique challenges.” The court found that plaintiff needed assistance to bear the expense of the litigation, but did not award plaintiff the full amount she had incurred or requested.⁹ Instead, the court arrived at an award of \$50,000 by considering the issues, expert reports, activities of counsel, attorney rates, and the experience of the experts and attorneys.

Defendant argues that plaintiff’s expert, Prangley, was incompetent and overcharged plaintiff, and that defendant should not be responsible for paying his fees. However, the trial court found that the professionals retained by plaintiff were experienced and had good reputations. There is no indication that the trial court abused its discretion in reaching this conclusion. We also reject defendant’s claim that plaintiff’s litigation strategy caused the high expenses in this case. The record reveals that both parties engaged in gamesmanship, which prolonged the litigation and increased expenses. We conclude that the trial court’s award of \$50,000 in legal and professional fees was not an abuse of discretion. Plaintiff owed a substantial amount in fees and could not pay those fees out of her income, even with the assistance of the spousal support award. Further, the trial court did not award plaintiff the full amount of the professional fees she incurred, but only a reasonable portion thereof.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

⁹ According to plaintiff’s trial counsel on January 24, 2003, plaintiff owed \$133,000 in professional fees at that point, and was expected to incur approximately another \$100,000 in fees.