

STATE OF MICHIGAN
COURT OF APPEALS

KRISTA M. WELCH,

Plaintiff-Appellee,

v

ERIC D. WELCH,

Defendant-Appellant.

UNPUBLISHED

June 18, 2015

No. 321957

Tuscola Circuit Court

Family Division

LC No. 13-027958-DM

Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by right from a default judgment of divorce. We affirm.

The parties were married in February 2006. Two children were born of the marriage. Plaintiff filed a complaint for divorce in September 2013, and the court entered a default judgement of divorce on May 5, 2014. Plaintiff was awarded legal and physical custody of the children. Defendant is currently serving a federal prison term for conviction of possession of child pornography, and is scheduled to be released in December 2022.

Generally, this Court reviews for clear error a trial court’s factual findings related to the division of marital property. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous if the Court is left with a definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). “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. But . . . the dispositional ruling . . . should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable.” *Sparks*, 440 Mich at 151–152.

Defendant first argues that the trial court erred when it awarded 50% of the proceeds from defendant’s annuity to plaintiff. Defendant asserts that the award was improper pursuant to MCL 552.101(2) because plaintiff was neither a designated beneficiary nor entitled to benefits by assignment or change of beneficiary. MCL 552.101(2) provides as follows:

Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the

wife was named or designated as beneficiary, or to which the wife became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage.

This statute plainly requires the court to determine the wife's rights in an annuity if she is a named beneficiary or was entitled by assignment or change of beneficiary. It does not, however, forbid the court from awarding some portion of an annuity in a divorce action even if the wife is not a named beneficiary. This situation is governed by MCL 552.18(1), which states as follows:

Any rights in and to vested pension, annuity, or retirement benefits, or accumulated contributions in any pension, annuity, or retirement system, payable to or on behalf of a party on account of service credit accrued by the party during marriage shall be considered part of the marital estate subject to award by the court under this chapter.

Thus, rights to an annuity accrued during the marriage are subject to division, regardless of whether plaintiff was a designated beneficiary or entitled to benefits by assignment or change of beneficiary. Accordingly, the trial court did not err in awarding part of the annuity to plaintiff.

Defendant also challenges a provision of the judgment of divorce regarding defendant's student loans. The provision provides as follows:

Defendant shall be responsible for his student loans though Firstmark Services, as plaintiff is a cosigner and defendant is in prison, plaintiff shall pay the monthly payment. When defendant is no longer in prison he shall be responsible for repayment of this loan to plaintiff in the sum of \$5,000.00, along with interest of 7% and any costs and attorney fees if plaintiff has to seek action to enforce this provision.

Defendant asserts that the court cannot order defendant to repay plaintiff for paying his student loan because plaintiff cosigned on the loan. We disagree. While plaintiff did cosign the loan, the loan is subject to equitable division by the trial court because it is marital debt. MCL 552.19; *Reed v Reed*, 265 Mich App 131, 151-152; 693 NW2d 825 (2005). We do not agree that assignment of a marital debt to the party whose education was financed from the monies advanced under a loan agreement was an abuse of discretion. Further, we do not agree with defendant's unsupported assertion that the provision was unconstitutionally vague because it did not set an amortization rate for the interest of the loan. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *Bronson Methodist Hosp v Michigan Assigned Claims Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012) (citation omitted).

Defendant also contends that the trial court denied him the right to discovery and erred by dismissing two motions to show cause that defendant filed. The crux of defendant's arguments in this regard is directly related to defendant's objections to Michigan's no-fault divorce statute. In the trial court, and now on appeal, defendant vigorously asserted that no-fault divorce is detrimental to public policy, that plaintiff's statement in the complaint that there was no

reasonable likelihood that the parties' marriage could be preserved was false, and that there were individuals who contributed to plaintiff's filing of divorce who should testify in support of defendant's claims against the divorce. Defendant's arguments are unavailing. Despite defendant's disagreement with Michigan law, plaintiff is entitled to a divorce. Michigan is a no-fault divorce state. See MCL 552.6. Pursuant to statute, a trial "court shall enter a judgment dissolving the bonds of matrimony if evidence is presented in open court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved." MCL 552.6(3). Further, "a divorce will be granted upon the request of only one of the original marrying parties, i.e., even over the objection of one of the original marrying parties." *Draggoo v Draggoo*, 223 Mich App 415, 424; 566 NW2d 642 (1997). Plaintiff testified under oath that there had been a breakdown in the marital relationship to the extent that the objects of matrimony had been destroyed and that there was no reasonable likelihood that the marriage could be preserved. Accordingly, the trial court was correct that defendant's arguments in this regard were irrelevant to the proceedings.

For completeness, we further note that the trial court did not abuse its discretion in denying two motions to show cause filed by defendant. *Schoensee v Bennett*, 228 Mich App 305, 316; 577 NW2d 915 (1998). Defendant allegedly subpoenaed two witnesses he claims failed to appear, prompting him to file a motion to show cause. We find no error in the trial court's determination that the subpoenas served on the witnesses were improper.

Defendant raises additional arguments, which we now briefly address. Generally, we note that defendant's arguments are cursory and not properly supported. Again, "[a]n appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *Bronson Methodist Hosp*, 298 Mich App at 199. Because defendant failed to provide citation to appropriate authority or policy, many of his claims were abandoned. *Id.*; MCR 7.212(C)(7). Defendant claims that the trial court erred in proceeding on plaintiff's complaint for divorce, as opposed to his counterclaim for separate maintenance. Defendant cannot and does not show that the trial court was obligated to proceed with his counterclaim over plaintiff's complaint. Defendant also asserts that plaintiff's complaint was not verified, and, as such, the court lacked personal jurisdiction over defendant. Initially, MCR 3.206(B) does not require a complaint to be verified, despite defendant's assertions. MCR 3.206 requires a verified statement to be submitted to the Friend of the Court and to defendant. Further, defendant's objections to the statements in the complaint relate to plaintiff's statement that the marriage had broken down, and do not relate to the existence or nonexistence of a verified statement. Even assuming there was an error with plaintiff's statement in the complaint, plaintiff later testified under oath that the marital relationship had broken down and could not be preserved. In regard to personal jurisdiction, defendant waived that argument by failing to assert his position in his first responsive pleading. MCR 2.111(F)(2). Any of defendant's additional arguments that were not specifically referenced in this opinion have been reviewed and lack merit.

Affirmed. Plaintiff, the prevailing party, may tax costs. MCR 7.219.

/s/ Kathleen Jansen

/s/ David H. Sawyer

/s/ Karen M. Fort Hood