

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL LEWIS CHUDNOW,

Plaintiff-Appellant/Cross Appellee,

v

AMY REGAL CHUDNOW,

Defendant-Appellee/Cross
Appellant.

UNPUBLISHED

April 27, 2001

No. 218650

Oakland Circuit Court

LC No. 97-549160-DO

Before: Zahra, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Plaintiff appeals by right the parties' judgment of divorce that was entered on January 13, 1999. The trial court denied plaintiff's suit for an annulment of marriage from defendant, granting instead defendant's countersuit for divorce and requiring plaintiff to pay \$10,000 in property settlement and \$10,000 for defendant's attorney fees. Defendant's cross-appeal challenges the trial court's refusal to award defendant a greater sum pursuant to the terms of the parties' antenuptial agreement. We affirm.

I

Plaintiff first contends that the trial court erred in refusing to grant his request for an annulment of the parties' seven-week marriage due to defendant's fraudulent conduct in failing to inform plaintiff that she remained romantically involved with another man. We disagree.

An annulment may be granted on the basis of fraudulent conduct of a party prior to the marriage. MCL 552.2; MSA 25.82. However, in order for fraud to rise to the level necessary to support an order of an annulment of marriage the fraud must be of a "nature wholly subversive of the true essence of the marriage relationship." *Stegienko v Stegienko*, 295 Mich 530, 535; 295 NW 252 (1940). Grounds which have in the past supported an annulment decree include: 1) a misrepresentation that a party will consent to intercourse or to produce children, *id.*; 2) hiding the fact of a pregnancy at the time of the marriage, *Harrison v Harrison*, 94 Mich 559, 561; 54 NW 275 (1893); 3) misrepresenting the paternity of a child, *Yager v Yager*, 313 Mich 300, 307-308; 21 NW2d 138 (1946); *Gard v Gard*, 204 Mich 255, 270; 169 NW 908 (1918); *Sissung v*

Sissung, 65 Mich 168, 175; 31 NW 770 (1887); and 4) entering into marriage for the sole purpose of acquiring an interest in the other's property held before marriage under the law of another state, *Sampson v Sampson*, 332 Mich 214, 219; 50 NW2d 764 (1952). In contrast, the concealment by a party of the fact of prior marriage is generally not fraud justifying annulment. *Hess v Pettigrew*, 261 Mich 618, 623; 247 NW 90 (1933). As stated by the Michigan Supreme Court more than a century ago:

Fraudulent representations of wealth, or connections, or health, or temper and disposition, may in many cases be the chief inducements to matrimonial alliances, but no one has ever supposed that a marriage could be avoided for such frauds.

* * *

Those frauds which will invalidate a marriage are usually, at least, such as negative any consent to be married at all, without reference to previous inducements. The commoner cases are duress, surprise or stratagem, in procuring the marriage itself to be carried out; and the fraud must usually be nearly, if not absolutely, coincident in time with the marriage, and operate to destroy that intelligent consent which is required for the marriage itself, rather than the preliminary engagement. [*Leavit v Leavit*, 13 Mich 452, 455-456; 1865 WL 2113, p 3 (1865).]

In the instant case, the trial court, reviewing many of the cases cited above, denied plaintiff's suit for an annulment, stating: "the case law suggests that fraud which goes to the true essence of the marriage always somehow involves sex or child bearing." This statement is incorrect. *Sampson, supra*. However, the court hit closer to the mark with its further comment that:

The common denominator of these cases requiring fraud as the basis for an annulment is the intention of the responding party at the time of marriage. If it can be shown that said party has no intention of ever fulfilling his or her marriage "vows" or that such are impossible, an annulment may be granted.

In other words, while the failure of a party to tell the other of a previous sexual relationship is misleading, it does not rise to the level necessary to support an annulment unless it can be proved that the party intended to continue that relationship during the marriage, thus subverting the essence of the marital vow with its accompanying promise of fidelity. *Hess, supra; Leavit, supra*.

The trial court found that defendant's statement shortly before the wedding that she would be very happy if she could get over her previous relationship with her ex-boyfriend evidenced an intent to make the marriage work, notwithstanding her previous and continuing feelings for this other man. As the trial court was better able to judge the testimony of the witnesses before it, we do not find the court's decision erroneous. See e.g., *Morris v Clawson Tank Co*, 459 Mich 256, 269 n 8; 587 NW2d 253 (1998). Thus, the trial court did not err in finding that plaintiff failed to prove the degree of fraud required to support an annulment.

II

Plaintiff also argues that the trial court erred in awarding defendant a property settlement award of \$10,000 because defendant failed to show that the couple obtained marital assets subject to division during their seven-week marriage. We disagree.

We review a trial court's findings of fact with respect to its division of marital assets for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). A finding is clearly erroneous if, after a review of the entire record, we are left with the definite and firm conviction that the trial court made a mistake. *Id.* If the trial court's findings of fact are upheld, we must then decide whether the dispositional ruling was fair and equitable in light of those facts. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Quade v Quade*, 238 Mich App 222, 224; 604 NW2d 778 (1999). A dispositional ruling is discretionary and should be affirmed unless we are left with the firm conviction that the division of marital assets was inequitable. *Id.* Generally, marital assets are subject to division between the parties, but the parties' separate assets may not be invaded. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). However, upon a showing of additional need, the invasion of separate assets is permitted. MCL 552.23; MSA 25.103; *Reeves, supra*.

In the instant case, the tax returns submitted by defendant indicated a gross income of approximately \$15,000 per year. Although plaintiff's testimony somewhat refuted this evidence, the facts still support the conclusion that defendant earns much less than plaintiff, sustained financial losses as the result of the marriage, and could ill afford to spend the large amount of money on legal fees defending the annulment action that she was forced to as a result of the protracted nature of the proceeding. Given these facts, the trial court's factual findings were not clearly erroneous, and the property settlement award was equitable under the circumstances.

III

Plaintiff next argues that the trial court erred in awarding defendant \$10,000 in attorney fees. We disagree.

A trial court's decision to grant attorney fees in a divorce action is reviewed for an abuse of discretion. *Heike v Heike*, 198 Mich App 289, 294; 497 NW2d 220 (1993). A party to a divorce action may be ordered to pay the other party's reasonable attorney fees if the record supports a finding that such financial assistance is necessary to enable the other party to defend or prosecute the action. MCL 552.13; MSA 25.93; MCR 3.206(C); *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992); *Thames v Thames*, 191 Mich App 299, 310; 477 NW2d 496 (1991).

The circumstances of the instant case support the trial court's decision that some financial assistance was necessary to allow defendant to maintain her defense. Defendant presented a detailed bill for legal services, indicating she spent approximately \$25,000 in legal fees defending the instant action. Evidence presented at trial indicates that defendant's earnings are insufficient to bear this expense while plaintiff has substantially more wealth. Thus, we cannot

say that the trial court abused its discretion in awarding defendant partial legal fees in the amount of \$10,000. MCL 552.13; MSA 25.93.¹

In a related issue, plaintiff argues that, given the trial court's findings that defendant was primarily responsible for the breakup of the marriage, the trial court cannot justify awarding attorney fees to defendant. Plaintiff misconstrues the import of the trial court's comments regarding fault and the award was justifiable as referenced above. Therefore, plaintiff's argument in this regard lacks merit.

IV

Last, defendant argues on cross-appeal that the trial court should have given effect to the parties' antenuptial agreement and awarded her the \$50,000 property settlement amount provided for in the agreement. We disagree.

A trial court's decision whether to enforce an antenuptial agreement is reviewed for an abuse of discretion. *Rinevelt v Rinevelt*, 190 Mich App 372, 382; 475 NW2d 478 (1991), citing *Beason v Beason*, 435 Mich 791, 798; 460 NW2d 207 (1990). To be enforceable, an antenuptial agreement cannot have been obtained through fraud, duress, mistake, misrepresentation or nondisclosure of material fact and the agreement cannot have been unconscionable when executed or, because of changed circumstances, be unfair if enforced. *Id.* at 378-382.

In the instant case, the trial court gave the following rationale for its refusal to enforce the parties' antenuptial agreement:

Without question, defendant knew of Plaintiff's concerns about not being cheated upon and his desire for marital fidelity. In spite of this knowledge, Defendant intentionally failed to disclose the real nature of her relationship with [defendant's ex-boyfriend] before the antenuptial agreement was signed. As Plaintiff testified, he would never have signed such a contract if he knew the truth. Accordingly, the so-called "special duty of disclosure" required before the signing of a prenuptial agreement has been violated by Defendant. This non-disclosure went to the essence of the formation of the antenuptial agreement and does not depend on any disclaimers contained in the agreement itself. Accordingly the Court will not enforce it.

Based upon the standards set forth in *Rinevelt*, we cannot say the trial court clearly erred in making these findings. While the trial court did not find actual fraud on the part of the defendant, it is evident the court believed the testimony of a witness who stated that defendant not only had serious doubts about her decision to marry plaintiff, but remained torn between her continuing emotional and physical attraction for her ex-boyfriend and her desire to marry plaintiff for financial stability and security. Also, defendant confided to the witness that she had sex with her ex-boyfriend shortly before the wedding and that her relationship with him was

¹ We reject plaintiff's argument that the trial court erred in failing to make a record of the circumstances supporting an award of attorney fees.

much more than a simple friendship. Defendant's non-disclosure of her continued relationship with the ex-boyfriend, while not fraud of the type necessary to support an annulment, was material to the extent that plaintiff would have been influenced by it in his decision to sign the antenuptial agreement as written. *Rinvelt, supra* at 378-379. Moreover, the agreement would be unfair if enforced as written because of the changed circumstances that occurred shortly after the marriage ceremony. We therefore conclude that the trial court did not abuse its discretion in refusing to enforce the antenuptial agreement. *Id.* at 382.

Affirmed.

/s/ Brian K. Zahra

/s/ Michael R. Smolenski

/s/ Hilda R. Gage