

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER R. GETTS,

Plaintiff-Appellee,

v

LINDA S. GETTS,

Defendant-Appellant.

UNPUBLISHED

May 20, 2003

No. 238040

Wayne Circuit Court

LC No. 98-827914-DM

Before: Markey, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

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

Defendant first argues that the trial court erred in refusing to award her any portion of the lump sum or monthly payments under the Ford settlement agreement because the trial court's ruling was wrong as a matter of law, and none of the payments were for pain and suffering. We disagree. A question of law is subject to de novo review on appeal. *Christiansen v Gerrish Twp*, 239 Mich App 380; 608 NW2d 83 (2000). Factual findings are subject to review for clear error. *Harper v Harper*, 199 Mich App 409, 410; 502 NW2d 731 (1993). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made. *Id.* If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

A judgment of divorce must include a determination of the property rights of the parties. *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). The court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). The parties' manifestation of intent to lead separate lives, such as the filing a complaint for divorce or maintaining separate homes, may be of crucial significance when apportioning the marital estate. *Byington v Byington*, 224 Mich App 103, 112; 568 NW2d 141 (1997).

A personal injury award for one spouse's pain and suffering is personal property, not joint marital property. *Bywater v Bywater*, 128 Mich App 396, 398; 340 NW2d 102 (1983). The trial court may award to a divorcing spouse any part of the real and personal estate of either party if the estate and effects otherwise are insufficient to suitably support and maintain that party. *Id.* The assets of both parties and jointly owned marital property, are available for distribution by the trial court. *Id.* at 398-399.

It is proper for the trial court to consider the actual source or ownership of an asset. *Bywater, supra* at 128 Mich App 399. This is one factor to be considered in reaching an equitable division in divorce proceedings. *Id.* While the fact that a particular asset belongs solely to one spouse may provide the trial court with a persuasive reason to award that property to its owner, nevertheless, if the marital estate is otherwise insufficient to maintain the nonowning party, the court may award all or part of the asset to that spouse. *Id.* at 400.

Defendant's allegation that the trial court's order of March 10, 2000, is wrong as a matter of law has no merit. On March 10, 2000, the trial court found:

to the extent any portion of the \$1,000,000.00 payment to be made to the Claimants in the proposed Ford Motor Company Settlement is attributable to pain and suffering for Christopher Getts, the amount so determined, if any, shall be considered the Plaintiff's separate property for purposes of this divorce action. The Court denies Plaintiff's request to determine what portion, if any, of such 1,000,000.00 payment is attributable to pain and suffering for Christopher Getts at this time and the same shall be addressed at the trial of this case.

As stated in *Bywater*, a personal injury award for a spouse's pain and suffering is not joint marital property; it is personal property. *Bywater, supra* at 128 Mich App 398. Therefore, as a matter of law, the trial court did not err in finding that any portion of the Ford settlement agreement attributable to plaintiff's pain and suffering be considered plaintiff's separate property.

Defendant argues that none of the payments under the Ford settlement agreement were for pain and suffering. In its opinion, the trial court stated, "[t]he amount provided by Ford, under paragraph 1(a) of the FORD settlement agreement filed under seal as Court Exhibit 1, is in its entirety compensation for the pain and suffering of Plaintiff." The trial court specifically found that the settlement from Ford was not for wage compensation or for medical treatment. The trial court relied on the fact that plaintiff's attorney was present during the negotiations with Ford and testified that provision 1(a) of the Ford settlement agreement was intended to compensate the victims of the Ford River Rouge explosion for their immense pain and suffering. The amount in section 1(a) was drafted using the average of the product liability caps of other states regarding non-economic pain and suffering damages.

The trial court cited *Bywater, supra* at 128 Mich App 340, and found that any settlement offered to plaintiff by Ford in section 1(a), which is for pain and suffering, is not marital property. The trial judge stated the amount in provision 1(a) cannot represent an offer to compensate defendant for a loss of consortium because defendant admitted that she had lost no amount of consortium.

The trial court also found that the assets of the estate were sufficient to support defendant in the lifestyle to which she was accustomed before the settlement from Ford, and therefore, the money from the Ford settlement agreement need not be invaded. The trial court also cited *Byington, supra* at 224 Mich App 103, and stated that because the Ford asset was acquired six months after the complaint for divorce was filed, this was a perfect example of a public manifestation to lead separate lives. Furthermore, the trial court found that defendant made no contribution to the Ford asset.

After review of the record, we conclude that the trial court's findings are not clearly erroneous and are supported by the record. Plaintiff's attorney for his claims against Ford as a result of the Ford River Rouge explosion testified that the Ford settlement agreement was for intangible elements of pain and suffering, mental anguish, humiliation, mortification, disfigurement, disability, and emotional distress. Plaintiff's attorney also testified that in the Ford negotiations, they discussed the potential value of intangible claims and non-economic damages. One million dollars represented a reasonable figure for pain and suffering. The \$1,000,000 was exclusively for non-economic damages. Defendant also admitted that she did not suffer a loss of companionship as a result of the accident. Therefore, the evidence demonstrated that the purpose of the Ford settlement agreement was to compensate plaintiff for his pain and suffering.

Furthermore, the assets of the estate before the Ford settlement were sufficient to support defendant in the style to which she was accustomed. Defendant testified that if she were able to leave the marriage with enough money to provide her the lifestyle to which she has been accustomed, that would be sufficient. Plaintiff's salary provided defendant a life that was sufficiently comfortable and met all her needs. Before the accident, defendant acknowledged that the marital estate was sufficient to provide her with the standard of living that she had during the marriage. Defendant testified that she never lived a life of luxury, did not go to the spa, was not a member of a private club, and did not eat at expensive restaurants. Therefore, the trial court did not err in concluding that the assets of the estate were sufficient to support defendant in the living style that she was accustomed.

Moreover, the evidence clearly showed defendant did not contribute to the Ford settlement award, and that before the accident, plaintiff and defendant were publicly living separate lives. Defendant only visited plaintiff in the hospital on the night of his accident. Other than opening jars, defendant did not help plaintiff while he was recovering from his accident. Defendant never offered to help plaintiff after he left of the hospital and never offered to take him to physical therapy. Defendant did not have any out-of-pocket expenses for treating plaintiff while he was in the hospital. At the time of the accident, the divorce had been filed for five months, and plaintiff and defendant were living separate lives. Plaintiff and defendant had ceased going out in public together as a married couple and had stopped presenting themselves as married people. The last time plaintiff and defendant had sexual relations was nine months before the accident. Therefore, we find that the trial court's findings of fact with regard to section 1(a) of the Ford settlement agreement are not erroneous.

Next, defendant argues that the monthly payments under section 1(c) of the Ford settlement agreement are marital assets. Section 1(c) of the Ford agreement states: (c) a lump sum will be paid in the amount of \$14,521.01 representing the monthly benefits for February through August 1999. Thereafter claimant or duly designated payee shall be paid 218 monthly

payments commencing on or about September 1, 1999. The trial court found: “Any payments to Plaintiff under paragraph 1(c) of Court Exhibit 1, is compensation for lost wages. This is an after acquired asset of the marriage.”

In its opinion, the trial court cited *Byington, supra* at 224 Mich App 103, and concluded:

that under appropriate circumstances an asset, (such as the asset at issue in the case at bar), might be awarded wholly to one party. The Court determines that such an award would be based on the other party’s lack of contribution to the acquisition of an asset, acquired by the other party alone, after the filing of the Complaint for Divorce. Further, the lack of contribution to the acquisition of the asset could be weighed to require award of such an asset to the party who acquired it. The Court of Appeals, instructs the a [sic] trial court to consider the manifestation of the parties to maintain separate lives when apportioning such an asset under the factors of *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992).

The trial court did not err in awarding the monthly payments under section 1(c) of the Ford settlement agreement to plaintiff. Defendant did not contribute to the Ford asset which was obtained after the parties manifested an intention to maintain separate lives. Defendant did not have any out-of-pocket expenses for treating plaintiff while he was in the hospital. By the time of the accident, the divorce had been filed for five months, and plaintiff and defendant were living separate lives. Plaintiff and defendant had ceased going out in public together or representing themselves as a married couple. Therefore, pursuant to *Byington*, the trial court did not err in awarding the monthly payments under section 1(c) of the Ford settlement agreement to plaintiff.

Defendant argues that the trial court’s division of the assets was not fair and equitable in light of all the circumstances. In dividing the marital estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party’s station in life, each party’s earning ability, each party’s age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal, supra* at 451 Mich 89.

The trial court analyzed the factors in dividing the marital estate and found that although the marriage was lengthy, defendant never made any palpable contribution to the marital estate and made no contribution to the Ford asset in dispute. The trial court found that the age of the parties was not a factor of any weight, but that the health of the parties weighed in favor of the distribution advocated by plaintiff because plaintiff is disabled and defendant can obtain employment. The trial court found that defendant is entitled to no portion of the property acquired after the parties’ manifestation of intent to lead separate lives.

The trial court awarded the marital home to plaintiff, with half the equity to defendant, ordered that each party be liable for his own credit card debt, and divided evenly all stock, brokerage accounts, pension and retirement funds. The trial court awarded plaintiff all the proceeds from the Ford River Rouge explosion settlement, all UAW crisis money, and River Rouge Trust Fund money. Defendant was awarded the Ford Probe, and plaintiff was awarded the Dodge Van. Defendant was awarded her two karat diamond ring and the interest income

produced from the Ford settlement agreement held in trust. The trial court ordered the balance of the property to be equitably divided.

We conclude that the trial court's ruling was fair and equitable in light of all the facts. The trial court did not err in analyzing the factors. Aside from the Ford settlement agreement proceeds, the assets were divided evenly. As stated above, section 1(a) of the Ford settlement agreement was awarded to plaintiff for his pain and suffering, which under *Bywater, supra* at 128 Mich App 398, is separate property. Additionally, the court correctly awarded the remainder of the Ford settlement agreement proceeds to plaintiff because pursuant to *Byington, supra* at 224 Mich App 103, defendant did not contribute to the asset, and the parties already maintained separate lives by the time the accident occurred. The trial court did not err in refusing to invade the Ford proceeds under *Bywater* because the court correctly found that the assets of the estate were sufficient to support defendant in the lifestyle to which she was accustomed. Therefore, we conclude that the trial court did not abuse its discretion in its division of the parties' assets.

Defendant next argues that the trial court erred in refusing to award defendant any portion of the UAW Crisis Fund and Ford River Rouge Fund payments. We disagree. Factual findings are subject to review for clear error. *Christiansen, supra* at 239 Mich App 380. The parties' manifestation of intent to lead separate lives, by filing a complaint for divorce or maintaining separate homes may be of crucial significance when apportioning the marital estate. *Byington, supra* at 224 Mich App 112. The factor of what each party contributed to the marital estate is significant with regard to property acquired after public manifestation to lead separate lives. *Id.* at 115. An appropriate weighing of the factors may in some cases result in a determination that the nonacquiring party is entitled to no portion of property acquired after a manifestation of intent to lead separate lives because of the difference in the parties' contributions to the acquisition of such property. *Id.* at 116. Because defendant did not contribute to the Ford asset which was obtained after the parties manifested an intention to maintain separate lives, pursuant to *Byington*, we find that the trial court did not err in awarding the UAW Crisis Fund and Ford River Rouge Fund payments to plaintiff.

Defendant next argues that the trial court erred in refusing to award her spousal support. We disagree. The trial court's factual findings are to be reviewed for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The main objective of alimony is to balance the incomes and needs of the parties in a way which will not impoverish either party, and an award of alimony must be based on what is just and reasonable under the circumstances of the case. *Moore, supra* at 242 Mich App 654. The factors to be considered in granting alimony are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993).

In its opinion, the trial court found that plaintiff is disabled and that defendant did not suffer from any disability that would prevent her from obtaining full time employment. Defendant received her certification from Michigan Para Professionals in medical assisting and

has twelve years of practical experience. Defendant stated that jobs in her area pay at least \$9.50 an hour. In addition, the trial court found that defendant will have a lump sum payment from the interest on the Ford settlement agreement funds to use to continue her new life. The trial court concluded that plaintiff is not entitled to alimony.

The trial court's findings were not clearly erroneous, and the ruling was fair and equitable. Although defendant had not worked since early 1990, there is no physical reason why she cannot seek employment. Defendant was trained as a medical assistant and obtained a diploma from Michigan Para Professionals. Medical assistant jobs are currently available for \$9 to \$9.50 an hour.

Additionally, defendant did not contribute monetarily to the marital estate. Defendant did not work for a majority of the marriage and did not contribute to any of the household expenses during the marriage. Defendant intended to return to work. During the marriage, defendant agreed with plaintiff that she would stay home until their child was in high school, and then she would return to work.

Furthermore, defendant will be able to maintain a similar lifestyle to the one she had with plaintiff with a combination of the property that she received from the division of the marital estate and the money she can earn from employment. Defendant lived a life that was sufficiently comfortable where all of her needs were met based on plaintiff's salary. Before the accident, defendant did not fear that the marital estate was not sufficient to provide her with the standard of living that she had during the marriage. We conclude the trial court did not err in refusing to award alimony to defendant.

Finally, defendant argues that the trial court erred in refusing to award expert and attorney fees. We disagree. The decision whether to award attorney fees in a divorce action is within the trial court's discretion and will be reviewed on appeal for an abuse of discretion. *Milligan v Milligan*, 197 Mich App 665, 670; 496 NW2d 394 (1992). The trial judge awarded defendant the \$15,000 in interest from the Ford settlement funds and stated, "this will give her monies to continue her new life and pay her attorney fees."

Defendant's claim is without merit because the trial court, in fact, awarded defendant half of the marital estate and \$65,000 to pay, in part, her attorney fees.

Plaintiff argues that defendant's appeal was vexatious as provided by MCR 7.216(C). MCR 7.216(C)(1)(a) provides that this Court may assess damages when it determines that an appeal was vexatious because it "was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal." We find that defendant's issues on appeal were not vexatious pursuant to MCR 7.216(C).

We affirm.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra