STATE OF MICHIGAN

COURT OF APPEALS

CAROL SUE PLADARS, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED October 4, 2007
v	No. 276052 Oakland Circuit Court Family Division
ERIKS MARTINS PLADARS, Defendant/Counter-Plaintiff-Appellant.	LC No. 2006-717330-DM

Before: Schuette, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Defendant/counter-plaintiff, Eriks Martins Pladars ("defendant"), appeals as of right the December 13, 2006, judgment of divorce and order appointing a receiver. We reverse the judgment of divorce with respect to the attorney fee award and remand this case for a hearing concerning whether plaintiff/counter-defendant, Carol Sue Pladars ("plaintiff"), is able to pay her attorney fees in light of her new employment and whether her requested attorney fees are reasonable. In addition, we remand this case for the trial court to clarify parenting time on holidays and the two separate two-week segments in the summer. In all other respects, we affirm the judgment of divorce and order appointing a receiver.

I. FACTS

The parties were married on August 28, 1998. On November 4, 2002, plaintiff gave birth to twin girls, Isabella Machthild Pladars and Sophia Louise Pladars. Plaintiff filed for divorce on February 9, 2006.

On December 13, 2006, the trial court entered a judgment for divorce. The court found that there was an established custodial environment with both parties and awarded sole legal and physical custody to plaintiff. The trial court noted that plaintiff was more likely to foster a positive relationship between the children and defendant. Defendant had also exhibited signs of emotional instability and demonstrated a propensity for physical violence. Defendant was granted parenting time on alternate weekends, alternate holidays, one evening a week, and four weeks during the summers. The parties were to exchange the children at the police station.

The trial court ordered defendant to pay $1,524.57 a month in child support and 90 percent of childcare expenses. Defendant was ordered to pay plaintiff $30,000 from his premarital Vanguard account. Defendant was awarded the marital home, but he was required to pay plaintiff $178,029, or 60 percent of the home's equity. The remaining marital property was divided unequally between the parties: 60 percent to plaintiff and 40 percent to defendant. Also, the trial court ordered defendant to pay plaintiff's attorney fees in the amount of $15,000. However, plaintiff had secured employment, earning $75,000 a year, before entry of the divorce judgment. Defendant now appeals.

II. BEST INTEREST FACTORS

Defendant first argues that the trial court's findings of fact regarding best interest factors (b), (d), (e), (f), (g), (h), (j), (k), and (l) are against the great weight of the evidence and that the trial court abused its discretion in failing to award joint legal and physical custody. We disagree.

A. Standard of Review

MCL 722.28 provides that child custody orders and judgments shall be affirmed on appeal unless the trial court made "findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." See also *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). A finding of fact is against the great weight of the evidence if the evidence "'clearly preponderates in the opposite direction.'" *Id.* at 879, quoting *Murchie v Standard Oil Co*, 355 Mich 550, 558; 94 NW2d 799 (1959). This Court reviews the trial court's discretionary rulings, including custody decisions, for an abuse of discretion. *Fletcher*, *supra* at 879-881. This Court reviews questions of law for clear legal error, which occurs "[w]hen a court incorrectly chooses, interprets, or applies the law . . . ." *Id.* at 881.

B. Analysis

If a party requests joint custody, then the trial court is obligated to consider it. MCL 722.26a(1); *Shulick v Richards*, 273 Mich App 320, 326; 729 NW2d 533 (2006). The trial court must state its reasons for granting or denying a request for joint custody on the record, and the failure to do so requires remand. *Schulick*, *supra* at 326; see *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 406 (1999). However, there is no statutory presumption in favor of joint custody. *Wellman v Wellman*, 203 Mich App 277, 285-286; 512 NW2d 68 (1994). In determining whether joint custody is in the best interest of the child, the trial court must consider the best interest factors of MCL 722.23. MCL 722.26a(1); *Shulick*, *supra* at 326.

A trial court must make specific findings of fact regarding each of the twelve factors (each factor will be addressed individually [see *infra*]). *MacIntyre v MacIntyre* (*On Remand*), 267 Mich App 449, 451-452; 705 NW2d 144 (2005). The trial court is not required to weigh the statutory best interest factors equally. *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998). Moreover, a single circumstance may be relevant to the court's determination of more than one child custody factor. *Fletcher v Fletcher (After Remand)*, 229 Mich App 19, 24-25; 581 NW2d 11 (1998). Further, because the trial court initially found that an established custodial environment existed with both parties, clear and convincing evidence was required to

show that a change was in the child's best interests. MCL 722.27(1)(c); *Brown v Loveman*, 260 Mich App 576, 585; 680 NW2d 432 (2004).

MCL 722.23(b) provides that a trial court must consider the "capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any." In finding that factor (b) favored plaintiff, the court noted that although both parties were inclined to provide love and affection and had involved the children with their respective churches, defendant could not provide appropriate guidance because his emotional and mental health appeared unstable and his judgment was compromised. In making this finding, the court cited the testimony of plaintiff and the police officers and recounted that defendant's altercations with police involved force and occurred in front of the children. The court concluded that defendant failed to "comprehend that his actions raised serious questions for the police about the safety of [plaintiff]." In addition, the court noted that defendant was controlling and critical of plaintiff and that his moods created a dysfunctional atmosphere in the home.

The record supported these findings. Indeed, although both parties were characterized as loving parents who involved their children in religion, testimony was presented that plaintiff summoned the police due to defendant's conduct on two occasions – one of which involved defendant's use of force upon her. During the first altercation with police, defendant became upset with and approached an officer. The officer responded by pushing defendant away. During the second altercation, defendant would not allow the officers to enter the house and attempted to close the door on them. A physical struggle ensued, during which an officer used a taser gun to restrain defendant. The children were present for both incidents. In addition, plaintiff testified that defendant would follow her around the house, hold grudges, and was unforgiving.

Defendant claims that the trial court inappropriately focused on defendant's mental health, personality, controlling behavior, and alleged domestic violence, rather than education, religion, discipline and guidance, and the evidence that defendant took care of the children's daily needs, engaged in activities with them, and worked on their religious upbringing. However, the trial court's best interest findings and conclusions "need not include consideration of every piece of evidence entered and argument raised by the parties." *MacIntyre*, *supra* at 452. Consequently, given defendant's egregious behavior as noted above, the trial court's ruling on this factor was not against the great weight of the evidence.

MCL 722.23(d) instructs the trial court to consider the "length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." The trial court found that this factor favored plaintiff. Specifically, the trial court concluded that although the parties had lived in the marital home since the children were born, the home was not stable or satisfactory because defendant had refused to complete the home. The trial court noted that the home had lacked adequate flooring, a stove, telephone lines, and air conditioning for long periods of time, and the only completed room was the children's nursery. The trial court found that defendant had refused to purchase furniture or landscaping or install light fixtures, towel racks, or toilet paper holders in spite of his ability to pay for completion of the home and plaintiff was too fearful to defy him. The trial court determined that the home was chaotic and lacked the physical comforts the parties could afford to provide.

The record supports each of these findings. Indeed, defendant left numerous house projects unfinished, and as a result, plaintiff and the children were forced to live and sleep in unusually uncomfortable conditions in the house for long periods of time (e.g., the children slept on air mattresses on the basement floor for a time).

At trial, defendant claimed that he did not complete the house because plaintiff had been threatening divorce for three years and she wanted to sell the house. Defendant also explained that he did not have others install things or finish these projects because there was only a limited amount of money for these expenses. However, the mortgage on the home was approximately $103,248, and evidence was presented that defendant was earning around $90,000 and plaintiff, before leaving the workforce, was earning around $84,000. Given this, defendant's explanations for not completing the house are dubious at best. Notwithstanding, given the conditions in which plaintiff and the children were living, the court's findings were not against the great weight of the evidence.

Defendant claims that the trial court favored plaintiff in evaluating this factor in spite of her decision to move the children to an undecided location, which would require changing their school, doctors, and dentists. However, children often face these life changes regardless of whether they move into different homes. Further, a move such as the one contemplated by plaintiff does not necessarily require a change in health care providers. Thus, given that defendant's behavior with respect to providing the children a stable, satisfactory environment was particularly poor, the trial court's findings were not against the great weight of the evidence in evaluating this factor.

MCL 722.23(e) focuses on the "permanence, as a family unit, of the existing or proposed custodial home or homes." Factor (e) concerns the permanence of the custodial home, as opposed to its acceptability. *Ireland v Smith*, 451 Mich 457, 464; 547 NW2d 686 (1996); *Fletcher*, *supra* at 884-885. The trial court found the parties equal on factor (e), noting that defendant intended to remain in the marital home and plaintiff intended to relocate to Livonia or Canton. Although the record supports this finding, defendant argues that plaintiff's intention to move to a new location undermines the consistency he could provide the children in the martial home. However, mere changes of residences do not necessarily disqualify a parent for custody. *Ireland*, *supra* at 465. In light of this, the court's finding was not against the great weight of the evidence.

MCL 722.23(f) requires the trial court to consider the "moral fitness of the parties involved." Factor (f) relates to a person's fitness as a parent. see *Fletcher*, *supra* at 886-887. Although not an exhaustive list, types of morally questionable conduct relevant to factor (f) include: "verbal abuse, drinking problems, driving record, physical or sexual abuse of children, and other illegal or offensive behaviors." *Id*. at 887 n 6. The trial court found that factor (f) favored plaintiff because defendant had a pending criminal case and a personal protection order (PPO) had been issued against him. The trial court noted that defendant was angry, abusive, and disrespectful of authority, which caused the children to suffer emotional harm. The record supports these findings. Indeed, as noted above, defendant was involved in two altercations with police, both of which involved some sort of physical confrontation. The children witnessed both altercations, and as a result are fearful of police. In light of this, the court's ruling with respect to factor (f) was not against the great weight of the evidence.

Defendant claims the trial court improperly considered domestic violence, which was not related to defendant's fitness as a parent. However, because this behavior arguably has an influence on how defendant functions as a parent, it was appropriate for the trial court to consider. *Fletcher*, *supra* at 887. Thus, the court's finding was not against the great weight of the evidence.

MCL 722.23(g) focuses on the mental and physical health of the parties. The trial court found that factor (g) favored plaintiff. In making its finding, the court initially noted that both parties were in good physical health. However, the court acknowledged that defendant had made unsubstantiated allegations that plaintiff suffered from depression for over two years and had an eating disorder. The trial court stated that plaintiff had been treated for postpartum depression over defendant's protests and noted that, although mental illness had not been established regarding defendant, defendant suffered from emotional problems and was abusive, controlling, irrational, and angry.

Defendant only challenges this finding on the grounds that the trial court focused on defendant's mental or emotional state, of which there was no medical testimony, and that plaintiff also experienced mental or emotional problems. At the outset, it should be noted that although plaintiff experienced postpartum depression and was prescribed an antidepressant, there is no evidence that this prior condition affected plaintiff's parenting abilities in any way, and "the overwhelmingly predominant factor is the welfare of the child." *Harper v Harper*, 199 Mich App 409, 417; 502 NW2d 731 (1993).

Moreover, even without medical testimony, the record provided ample support for the court's finding regarding defendant's emotional state. Specifically, plaintiff testified that defendant did the following: he removed garbage from a garbage bag, restacked it and put the garbage back into the bag; he cried a lot in front of the children during Christmas of 2004 and refused to participate in holiday activities; he failed to meet plaintiff for their planned date to celebrate his birthday until 2:00 a.m. in November 2005, during which time he had been making suicidal comments; and he cried frequently in February 2005 while attending counseling with plaintiff. Further, defendant had been taking antidepressants since February 2006. Therefore, the court's finding was not against the great weight of the evidence with respect to this factor.

MCL 722.23(h) concerns the "home, school, and community record of the child." In finding that this factor favored plaintiff, the trial court stated that the marital home was not satisfactory and noted that defendant had enrolled the children in preschool without plaintiff's knowledge or consent and increased their attendance to five days a week, even though plaintiff was home full-time. The trial court recognized the parties' disagreement regarding preschool attendance and noted that the children had adjusted well to school. The trial court found that a change in schools would not be a significant disruption because the children had only been attending the school for four months at the time of trial. The record supports these findings.

In challenging the court's ruling, defendant asserts that the trial court relied on plaintiff's assertion that she was not consulted before the children were enrolled in preschool. Although plaintiff did indeed make this claim, this Court must "substantially defer to the superior vantage point of the trial court respecting issues of credibility and preferences under the statutory factors." *Harper*, *supra* at 414. Also, defendant claims that the court failed to consider plaintiff's uncertainty about where she would be living or working and the effect on the

children's schooling. However, no evidence was presented with respect to how plaintiff's work or living arrangement would necessarily affect the children's schooling. Thus, any conclusion regarding this uncertainty would have been merely speculative. Therefore, given defendant's controlling behavior regarding the children's education and failure to include plaintiff in these decisions, the court's findings were not against the great weight of the evidence in evaluating this factor.

MCL 722.23(j) concerns the "willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship…." The trial court found that factor (j) favored plaintiff, although it noted that the divorce was bitter and both parties had made disturbing accusations regarding the other party. The trial court noted that plaintiff had greater insight and it was likely she would foster a relationship between defendant and the children. The trial court also found that defendant held plaintiff in contempt and held her responsible for all the problems; therefore, the trial court concluded that there was virtually no chance he would permit a healthy relationship between plaintiff and the children.

The court's findings on this factor are consistent with the record. Indeed, defendant's behavior was frequently disrespectful to plaintiff and not conducive to a healthy relationship with the children. For example, defendant on several occasions took the children from plaintiff – once in violation of a PPO – even though it was not his appointed parenting time. On another occasion, defendant did not see the children during his appointed parenting time. Plaintiff even asserted that defendant attempted to interfere with her relationship with the children by only purchasing one set of car seats and using the vehicle with the car seats. In contrast, evidence was presented that plaintiff did not speak poorly about defendant in front of the children.

In challenging the court's ruling on factor (j), defendant asserts the trial court favored plaintiff in spite of the fact that she violated the parenting time order and prevented the children from seeing defendant for over a month. However, plaintiff testified that there was confusion regarding defendant's parenting time because even though he was permitted to see the children Labor Day weekend, he had been arrested the previous weekend and she did not have contact with him. Regardless, plaintiff indicated that she allowed defendant parenting time the two weekends following Labor Day. Given these circumstances, the evidence weighs heavily in plaintiff's favor regarding factor (j), and the court's ruling was not against the great weight of the evidence.

MCL 722.23(k) instructs the trial court to consider "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." The trial court found that factor (k) favored plaintiff. Although the trial court stated that the marriage was not characterized by physical violence, it noted that there was an element of power and control. The trial court found that, even with medication, defendant was unable to control his conduct. The trial court noted that defendant had pushed and grabbed plaintiff and had to be physically restrained by the police when he interfered with their investigation. The record confirms these findings. Indeed, plaintiff claimed defendant kicked her in the groin and had pushed her from behind. This occurred during the time defendant was taking antidepressants. Further, as noted above, the children witnessed defendant's altercations with police while they were investigating plaintiff's domestic abuse allegation.

Defendant asserts that the trial court erred because it acknowledged that the marriage was not characterized by domestic violence and because plaintiff struck him on one occasion. However, MCL 722.23(k) merely requires domestic violence, not that the domestic violence be the benchmark by which the relationship is characterized. Moreover, even though plaintiff once struck defendant, the record shows that defendant was predominantly the party at fault for the majority of domestic violence in the home. Thus, the trial court's findings were not against the great weight of the evidence with respect to this factor.

MCL 722.23(l) requires the trial court to consider any other factor it deems relevant to the custody dispute. The trial court did not find any other factors to be relevant under factor (l). Defendant claims that this ruling failed to take into account the parties' proposed day care for the children, which had changed since trial because plaintiff had found employment. However, defendant does not specify the proposed day care at issue and it is not this Court's responsibility to fashion defendant's arguments. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

After determining whether joint custody is in the child's best interest, the trial court must also consider "[w]hether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." MCL 722.26a(1)(b).

> In order for joint custody to work, parents must be able to agree with each other on basic issues in child rearing—including health care, religion, education, day to day decision-making and discipline—and they must be willing to cooperate with each other in joint decision-making. If two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children. The establishment of the right to custody in one parent does not constitute a determination of the unfitness of the noncustodial parent but is rather the result of the court's considered evaluation of several diverse factors relevant to the best interests of the children. [*Fisher v Fisher*, 118 Mich App 227, 232-233; 324 NW2d 582 (1982) (citations omitted).]

Here, the parties' ability to agree on basic issues of child rearing was laced with problems, and their behavior was particularly egregious with respect to the children's healthcare, education, and religion. Regarding education, the parties were not only unable to agree upon preschool arrangements, but defendant made decisions about whether the children would attend preschool without plaintiff's consent. Further, despite the fact that defendant had enrolled the children in preschool, plaintiff had not been taking the children to preschool every day since defendant left the marital home. It also appears that the parties treated their children's healthcare as a mere extension of their disagreements. For example, defendant once removed the children from preschool while they were with plaintiff to take them to a dentist appointment. Plaintiff had canceled this dentist appointment, but defendant reinstated it and then took the children to this appointment without notifying plaintiff. Additionally, although the parties originally agreed to raise the children in a church not affiliated with their respective denominations, they were unable to agree on a denomination for their children. In light of this, the trial court's decision not to award joint custody was proper.

Defendant claims that both parties indicated that they could cooperate with joint custody, and the issue of joint legal custody was never in dispute. However, the decision of whether to award joint custody rests with the court, and "'the parties to a civil matter cannot by their mere agreement supersede procedures and conditions set forth in statutes or court rules.'" *Phillips v Jordan*, 241 Mich App 17, 22; 614 NW2d 183 (2000); quoting *In re Ford Estate*, 206 Mich App 705, 708; 522 NW2d 729 (1994). Thus, when the parties' inability to agree on basic issues is considered in conjunction with the court's findings regarding the best interest factors, defendant's claim fails.

III. PARENTING TIME

Next, defendant contends that the trial court abused its discretion in allocating parenting time. We disagree, but note that the court's provisions with respect to holidays and summer parenting time are ambiguous.

A. Standard of Review

"The controlling factor in determining visitation rights [parenting time] is the best interests of the child." *Deal v Deal*, 197 Mich App 739, 742; 496 NW2d 403 (1993); see also MCL 722.27a. Thus, before deciding a parenting time dispute, the court must make findings with respect to the best interest factors relating to contested issues. *Hoffman v Hoffman*, 119 Mich App 79, 83; 326 NW2d 136 (1982). When a change in parenting time amounts to a change in an established custodial environment, a trial court is required to conduct a hearing to determine whether, by clear and convincing evidence, the change in parenting time is in the best interests of the child. *Brown*, *supra* at 598.

B. Analysis

After trial, the court evaluated the best interest factors with respect to custody and parenting time and "granted [defendant] parenting time on alternating weekends from Friday at 4:00 p.m. to Sunday at 7:00 p.m. (8:00 p.m. during the summer), alternate holidays, and one evening each week on Wednesdays from 4:00 p.m. until 8:00 p.m., including extended school breaks, [and] 4 weeks during the summer in two separate two week segments. During the extended summer parenting time, [plaintiff] can exercise parenting time one evening each week on Wednesdays from 4:00 p.m. to 8:00 p.m. Exchange of the children shall take place at a police station within ten (10) miles of [plaintiff's] residence."

Defendant contends that the court did not clearly explain this parenting time arrangement, which is not in the children's best interests. However, this argument fails to consider the trial court's extensive findings and conclusions with respect to each of the best interest factors, which were supported by clear and convincing evidence. Consequently, given defendant's egregious behavior in this matter, the trial court properly ordered the challenged parenting time provisions.

Defendant argues that it is not in the children's best interests to exchange the children at a police station because they are afraid of the police. However, the children's experience with the police resulted from watching defendant's physical interaction with the police. Moreover, as noted above, defendant has a history of violent behavior towards plaintiff. Thus, requiring the parties to exchange the children at the police station is proper. Additionally, defendant argues

that requiring the exchange to occur within ten miles of plaintiff's house places an inequitable burden on him. However, defendant has failed to specify any burden he might endure and the record provides no support for this argument. Therefore, this claim fails.

Defendant also claims that remand is required because the parenting provisions pertaining to extended school breaks, weekends, and holidays are unclear. However, the provision pertaining to extended school breaks and weekends is unambiguous on its face. Notwithstanding, defendant is correct that the provisions pertaining to alternate holidays fails to specify which holidays are to be alternated and the times during which the parties are to exchange the children on holidays. Also, the provision pertaining to the two separate two-week segments in the summer fails to specify the exact time or dates of the segments and the times for exchange. Therefore, remand is appropriate for clarification of these issues.

IV. PROPERTY DIVISION

Defendant next argues that the trial court erred in its property division. We disagree.

A. Standard of Review

This Court reviews a trial court's factual findings in a divorce action for clear error. *McNamara v Horner* (*After Remand*), 255 Mich App 667, 669; 662 NW2d 436 (2003). Clear error occurs when, after a review of the entire record, this Court is left with "a definite and firm conviction that a mistake has been made." *Id.* If the factual findings are upheld, this Court "must decide whether the dispositive ruling was fair and equitable in light of those facts." *Id.* at 670. Dispositional rulings are discretionary and will be affirmed "unless this Court is left with the firm conviction that the division was inequitable." *Id.*

B. Analysis

In making this argument, defendant first contends that the trial court committed clear error in awarding plaintiff $30,000 from defendant's premarital Vanguard account. This arguments fails. "In dividing marital assets, the goal is to reach an equitable division in light of all the circumstances." *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). "Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party." *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). "[A]ssets earned by a spouse during the marriage, whether they are received during the existence of the marriage or after the judgment of divorce, are properly considered part of the marital estate." *McNamara*, *supra* at 183. A court may divide a premarital asset that appreciated during the marriage due to the other spouse's "acquisition, improvement or accumulation." MCL 552.401; *Deyo v Deyo*, 474 Mich 952; 707 NW2d 339 (2005). However, a court may not divide a premarital asset if its appreciation was "wholly passive." *McNamara*, *supra* at 184.

At trial, defendant asserted that the Vanguard account was a premarital asset and that the money withdrawn from that account was used as a "loan" to pay plaintiff's share of the down payment on their marital home. However, notwithstanding this characterization, the parties later transferred $60,000 from their Ford account, a marital asset, into the Vanguard account after the proceeds from the sale of plaintiff's premarital home had been deposited into the Ford account.

Thus, not only was the Vanguard account's appreciation not "wholly passive," but also it appreciated as a result of funds contributed from plaintiff's "acquisition, improvement or accumulation." MCL 552.401; *Deyo*, *supra* at 952; *McNamara*, *supra* at 184.

Although defendant claims that the amount transferred from the Ford account merely constituted repayment of the "loan" from the Vanguard account, no explanation was offered at trial regarding why the parties originally placed the proceeds from plaintiff's premarital home into the Ford account. Therefore, in light of the circumstances, the court's award to plaintiff of $30,000 from the Vanguard account was proper. *McNamara*, *supra* at 188.

Defendant contends that the trial court's finding was clearly erroneous because the court failed to determine whether the Vanguard account was a marital asset. "[T]he trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Reeves*, *supra* at 493-494. Here, although the court noted that defendant claimed the Vanguard account was a premarital asset, such a determination was unnecessary given that division of the account was equitable in light of the circumstances noted above. *McNamara*, *supra* at 183. In other words, regardless of whether the account was a premarital asset, the court's division was equitable. Therefore, this argument fails.

Regarding the remaining property, defendant claims that the court disproportionately weighed fault and failed to consider that plaintiff has found employment since trial. This claim fails. In reaching an equitable division of the marital estate, the trial court is to consider the following factors "wherever they are relevant to the circumstances of the particular case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). Although fault is a factor to be considered in property division, "the trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance." *Id*. at 158.

Here, the trial court did not disproportionately weigh fault in dividing the property. Rather, the court considered all the *Sparks* factors and made findings with respect to each one. Specifically, in addition to fault, the court noted that defendant suffered from emotional problems and had a criminal trial pending. Further, the court accounted for the fact that plaintiff had quit her job to become a homemaker and may have a difficult time finding employment at her prior level of expertise. The record supported these findings. Further, it should be noted that to the extent the court did weigh fault, it did so equitably. Indeed, defendant's behavior with respect to the parties' home and finances, as well as his altercations with police showed an egregious pattern of control and dominance. Equity and not equality is the standard by which a court's decision in property division is judged. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Therefore, given the circumstances leading to this divorce, the court's decision was proper.

Defendant notes that the court's decision must be re-evaluated in light of the fact that plaintiff has found employment. However, arguably, the crux of the court's findings was defendant's own emotional problems and pattern of control and dominance. In light of this, it appears the property division was equitable even though plaintiff has found new employment.

However, even if plaintiff's employment situation were material to the court's decision, the court's finding contemplated the situation plaintiff is currently facing. Plaintiff's new job affords her a base salary of $75,000 per year. This is $9,000 less than the amount she was earning before leaving her previous job. In making its ruling, the court specifically noted that the four years during which plaintiff was out of the work force may impact her earning ability. Given this, the court's ruling is proper even though plaintiff has found employment since entry of the judgment.

V. ATTORNEY FEES

Defendant next contends that the trial court erred in awarding attorney fees to plaintiff. We agree.

A. Standard of Review

This Court reviews for an abuse of discretion a trial court's decision to award attorney fees in domestic relations cases. See *Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007). "'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.'" *Id*., quoting *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). "An award of legal fees is also authorized where the party requesting the fees has been forced to incur them as a result of the other party's unreasonable conduct." *Borowsky*, *supra* at 687. "The party requesting the attorney fees has the burden of showing facts sufficient to justify the award." *Id*.

B. Analysis

In awarding plaintiff attorney fees, the court found that plaintiff had demonstrated an inability to pay her attorney fees because she was unemployed. Additionally, the court noted that plaintiff incurred attorney fees because defendant: (1) permitted his attorney to "engage in a litany of unfounded accusations" that resulted in a protracted trial; (2) caused plaintiff to obtain a PPO; and (3) failed to comply with a court order requiring him to cooperate with plaintiff in preparing and filing their 2004 and 2005 tax returns.

At the outset, it should be noted that plaintiff obtained employment before entry of the judgment of divorce. Consequently, without further evidence, plaintiff's employment situation at the time of judgment did not support the court's conclusion that plaintiff was unable to pay attorney fees. Further, although the record supported the court's findings with respect to the PPO and tax returns, the court failed to specify any of defense counsel's "unfounded accusations" that defendant permitted.

Regardless, the court failed to make any determination pertaining to the reasonableness of the attorney fees incurred because of defendant's misconduct. "When requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services

were actually rendered, and the reasonableness of those services." *Reed v Reed*, 265 Mich App 131, 166; 693 NW2d 825 (2005). Indeed, the only evidence presented regarding attorney fees was the testimony of plaintiff and her mother at trial. This testimony was sketchy at best regarding the amount of attorney fees plaintiff owed.[1] Further, plaintiff submitted no evidence regarding the amount of attorney fees she actually incurred as a result of defendant's misconduct. Therefore, the trial court abused its discretion.

VI. APPOINTMENT OF A RECEIVER

Defendant next argues that the trial court abused its discretion in appointing a receiver. We disagree.

A. Standard of Review

This Court reviews decisions regarding the appointment of a receiver for an abuse of discretion. *Reed*, *supra* at 161. "Circuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law." MCL 600.2926. "The purpose of appointing a receiver is to preserve property and dispose of it under the order of the court." *Reed*, *supra* at 162. "[T]he appointment of a receiver is a harsh remedy which should only be resorted to in extreme cases. If less intrusive means are available to effectuate the relief granted by the trial court, a receiver should not be used." *Petitpren v Taylor School Dist*, 104 Mich App 283, 295; 304 NW2d 553 (1981) (internal citations omitted). "The appointment of a receiver may be appropriate when other approaches have failed to bring about compliance with the court's orders." *Cohen v Cohen*, 125 Mich App 206, 214; 335 NW2d 661 (1983). Also, "a party's past unimpressive performance may justify the trial court in appointing a receiver." *Reed*, *supra* at 162.

B. Analysis

At the outset, it should be noted that no evidence was submitted supporting plaintiff's assertions in her request for appointment of a receiver that defendant failed to file the income tax returns as of the date of the motion at issue or that defendant failed to pay utilities and plaintiff's uninsured medical expenses. Nevertheless, defendant has a history of disobeying court orders in this case.

First, although the trial court had ordered the parties on May 3, 2006, to complete their 2004 and 2005 tax returns within 30 days, on August 31, 2006, the court entered a second order requiring defendant to complete the tax returns within 10 days because defendant had failed to comply with the May 3, 2006, order (defendant testified that after September 20, 2006, he had signed and mailed the tax returns). Second, defendant violated the PPO and no contact order

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[1] Specifically, plaintiff testified that at the time of trial, she owed her trial attorney between $8,000 and $9,000 and her previous attorney $3,600. Plaintiff and her mother also noted that plaintiff had repaid a loan for attorney fees from her mother in the amount of $2,000 or $2,500. Plaintiff estimated that she may ultimately owe her trial attorney between $10,000 and $20,000.

when he approached plaintiff in the preschool parking lot and approached plaintiff in the preschool to pick up the children. Third, defendant violated the parenting time order before trial. Finally, despite the court's May 3, 2006, order requiring defendant to pay plaintiff $200 per week, plaintiff testified that defendant had occasionally missed his $200 weekly payments. Consequently, given defendant's history of failing to comply with court orders, the appointment of a receiver was not an abuse of discretion. *Cohen*, *supra* at 214.

Defendant claims that the appointment of a receiver was inappropriate because the order was entered within the time MCR 2.614(A)(1) provides for a stay. This argument is without merit. MCR 2.614(A)(1) provides that execution on a judgment is stayed for 21 days following entry of an order pertaining to a motion to alter or amend a judgment. However, this same rule allows a court to proceed to enforce the judgment on a motion for good cause. Here, the motion to appoint a receiver constituted good cause. Therefore, this claim fails. Regardless, even if entry of this order were erroneous, any error was harmless in light of defendant's history of defying court orders. See MCR 2.613(A).

VII. JUDICIAL BIAS

Finally, defendant contends that on remand, this case should be assigned to a different judge. We disagree.

A. Standard of Review

This argument is not preserved; therefore, it should be reviewed only for plain error. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). This Court may remand a case to a different judge "if the original judge would have difficulty in putting aside previously expressed views or findings, if reassignment is advisable to preserve the appearance of justice, and if reassignment will not entail excessive waste or duplication." *Bayati v Bayati*, 264 Mich App 595, 602-603; 691 NW2d 812 (2004). The party requesting judicial disqualification must show actual bias or prejudice. MCR 2.003(B)(1); *Cain v Dep't of Corrections*, 451 Mich 470, 494-495; 548 NW2d 210 (1996).

B. Analysis

Defendant claims the judge ordered defendant to pay "confiscatory support amounts." However, defendant failed to present evidence below showing that the support payments are beyond his ability to pay, let alone confiscatory. In addition, defendant claims that the judge refused to consider the effect of plaintiff's new job before entering the judgment of divorce. However, this failure merely affected the court's ruling with respect to attorney fees, and this Court "will not remand to a different judge merely because the judge came to the wrong legal conclusion." *Bayati*, *supra* at 603. Finally, defendant contends the appointment of a receiver shows the judge's inability to be objective; however, as noted above, the appointment of a receiver was not an abuse of discretion. Therefore, defendant has failed to show any actual bias or prejudice. Consequently, it is not necessary to reassign this case to a different judge.

We reverse the judgment of divorce with respect to the attorney fee award and remand this case for a hearing concerning whether plaintiff is able to pay her attorney fees in light of her

new employment and whether her requested attorney fees are reasonable. In addition, we remand this case for the trial court to clarify parenting time on holidays and in the summer time. In all other respects, we affirm the judgment of divorce and order appointing a receiver.

/s/ Bill Schuette
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter