STATE OF MICHIGAN

COURT OF APPEALS

RICHARD PAUL PETKUS, Plaintiff-Appellant,	UNPUBLISHED February 27, 2014
v	No. 313227 Ottawa Circuit Court
DEBORAH JANE PETKUS, Defendant-Appellee.	LC No. 10-066474-DM

Before: SAWYER, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

In this action for divorce, plaintiff, Richard Petkus, appeals as of right from the judgment of divorce entered by the trial court. Plaintiff challenges, among other things, the trial court's decision to award defendant, Deborah Petkus, 55% of the marital estate, monthly spousal support, and attorney fees and costs. We affirm.

I. TRESTLE PLASTICS SERVICES, LLC

Plaintiff first argues that the trial court made two factual findings that are against the great weight of the evidence: (1) plaintiff owns an interest in Trestle Plastics Services, LLC ("Trestle Plastics") and (2) the value of the interest is $66,000. We find no error.

We review a trial court's valuation of assets and its dispositional ruling for clear error.[1] *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). A finding is clearly erroneous when, after reviewing the record, this Court is left with a "definite and firm conviction that a mistake has been made." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

[1] We note that plaintiff presents several of his arguments in this case in terms of the trial court making factual findings "against the great weight of the evidence." However, the trial court's factual findings are appropriately reviewed for clear error as explained in *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651 n 14; 662 NW2d 424 (2003).

At the outset, we conclude that plaintiff has abandoned his arguments concerning Trestle Plastics by failing to provide this Court with copies of depositions that are essential to review his claim. See *Taylor v Blue Cross/Blue Shield of Mich*, 205 Mich App 644, 654; 517 NW2d 864 (1994) ("[D]efendant did not provide the transcript of the deposition of Debra Taylor at which the question was posed and objections were placed on the record. The issue is considered abandoned on appeal."). In his brief on appeal, plaintiff relies heavily on two depositions of Ricky Eustice. But plaintiff has not provided this Court with the transcripts of these depositions. Although the transcripts were admitted into evidence at trial, they are not included in the record. And plaintiff has not attached them to his appellate brief.

Regardless, we have reviewed the issues concerning Trestle Plastics in light of the record before us and find no clear error. Regarding whether plaintiff owns an interest in Trestle Plastics, there certainly was conflicting evidence presented at trial on this issue. We are not, however, definitely and firmly convinced that the trial court made a mistake in finding that plaintiff has an ownership interest in Trestle Plastics. The trial court's finding on this issue ultimately involved considering matters of witness credibility; the trial court is in a better position than this Court to do so; thus, we afford special deference to the trial court's findings based on credibility. *Stoudemire v Stoudemire*, 248 Mich App 325, 339; 639 NW2d 474 (2001); *Dragoo*, 223 Mich App at 429. The evidence at trial established that plaintiff signed both the articles of incorporation and a lease for Trestle Plastics. He was a member when the business originated. He would buy machinery and equipment for the business. Defendant testified that plaintiff would spend a lot of time at the business in the evenings after the company started. She explained that despite a non-compete agreement that prohibited plaintiff from having an ownership interest in Trestle Plastics, he chose to retain his interest. Plaintiff referred to Trestle Plastics as "his shop." And defendant had a key to the business. In 2008, plaintiff received $7,000 from Trestle Plastics. In 2009, he received a $3,000 check as well as meat from the "4-H." The evidence at trial illustrated that plaintiff was paid even though neither he nor Trestle Plastics kept track of his hours; it was reasonable for the trial court to infer from this fact that plaintiff is an owner. Although Eustice testified at trial that many of Trestle Plastics' documents were fabricated, one document indicated that plaintiff was owed $46,000 as of September 2008; this significant allocation to plaintiff supports the inference that he is an owner. Most significantly, there was evidence at trial that plaintiff held himself out as an owner of Trestle Plastics. In a 2008 questionnaire provided to his financial planner, plaintiff represented that he had an ownership interest in Trestle Plastics. Given this evidence, the court's finding was not clearly erroneous.

With respect to valuation, a party seeking to include property as part of the marital estate bears the burden of establishing a reasonably ascertainable value. *Wiand v Wiand*, 178 Mich App 137, 149; 443 NW2d 464 (1989). A trial court has great latitude in determining the value of a closely held corporation, which is often a difficult task. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994); *Pelton*, 167 Mich App at 25-26. A "trial court may, but is not required to, accept either party's valuation evidence." *Pelton*, 167 Mich App at 25. "[W]here a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Jansen*, 205 Mich App at 171.

Here, the trial court's valuation of the interest in Trestle Plastics at $66,000 is within the range established by the proofs; in the 2008 questionnaire provided to the financial planner, the

parties valued their interest in Trestle Plastics at $66,000. Therefore, there is no clear error. See *id.*

We reject plaintiff's contention that the trial court improperly valued the asset using its value in 2008. "[M]arital assets are typically valued at the time of trial or at the time judgment is entered, *though the court may, in its discretion, use a different date*." *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997) (emphasis added). Here, the trial court acted within its discretion to use a different date, particularly where Eustice's testimony established that much of Trestle Plastics' documentation was fabricated, making the records from Trestle Plastics unreliable to assist the court in valuation.

We also reject plaintiff's contention that the trial court's valuation is erroneous because defendant failed to produce expert testimony. Plaintiff has not provided this Court with any legal authority to support this claim. Plaintiff may not merely announce his position without citation to supporting authority and leave it to this Court to discover and rationalize the basis for his claim. See *McIntosh v McIntosh*, 282 Mich App 471, 485; 768 NW2d 325 (2009). Regardless, although the trial court was required to value the parties' interest in Trestle Plastics, see *Olson v Olson*, 256 Mich App 619, 629; 671 NW2d 64 (2003), the trial court was free to reject expert valuation testimony had defendant provided it, see *Pelton*, 167 Mich App at 25.

Finally, we reject plaintiff's additional argument that the valuation should be diminished because he is, at best, a one-fourth owner as opposed to a one-third owner. The trial court did not make a factual finding of ownership percentage; rather, the court simply concluded that plaintiff has an ownership interest.

II. HOME REPAIRS

Plaintiff also argues that the trial court erroneously found that the marital home needed $3,000 in repairs, which the trial court ordered plaintiff to pay to defendant. We disagree.

To begin, we emphasize that plaintiff has not provided any citation to legal authority to support this claim. "[W]here a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Berger v Berger*, 277 Mich App 700, 715; 747 NW2d 336 (2008).

Nevertheless, we conclude that the trial court did not clearly err by determining that $3,000 in home repairs was needed. At trial, defendant's testimony established that there were a number of repairs that needed to be made to the home. Much of the testimony focused on damage arising from the failure of the sump pump. There was "unsafe" water damage and black mold affecting the basement, bedrooms, walls, wood trim, window sills, and carpeting. Furthermore, various items needed to be remedied or replaced, including a sliding door, an entry door from the garage, a ceiling light tile, a front door with broken glass, the sump-pump hookup, and damage to various walls. The trial court's finding that the home needed these repairs is not clearly erroneous.

Regarding the value of the repairs, defendant "bears the burden of proving a *reasonably ascertainable value*." *Wiand*, 178 Mich App at 149 (emphasis added). Given the evidence of damage to the marital home, particularly the evidence of the unsafe water damage and mold, a

valuation of at least $3,000 of damage to the home was reasonably ascertainable from the evidence at trial and not clearly erroneous. See *id.*; *Dragoo*, 223 Mich App at 429. "It is well known that factfinders may and should use their own common sense and everyday experience in evaluating evidence." *People v Simon*, 189 Mich App 565, 567; 473 NW2d 785 (1991). And the trial court as factfinder was free to make reasonable inferences from the evidence. See *Cummings v Grand Trunk Western R Co*, 372 Mich 695, 697; 127 NW2d 842 (1964).

We reject plaintiff's argument that the trial court erred because the parties' stipulation to the value of the home included no reservation for the cost of repairs. Although the stipulation did not include such a reservation, the parties did not stipulate that the party to whom the trial court awarded the marital home would not seek to recover assistance for repairs. Plaintiff also argues that the trial court gave no reason why the items of deferred maintenance would not already be reflected in the stipulated value of the home. This argument also lacks merit as the trial court likewise gave no reason why the items of deferred maintenance should be reflected in the stipulated value of the home. The parties simply stipulated that the value of the marital home was $160,000. There is no indication in the record that this value accounts for repairs that needed to be made. It is reasonable to infer that the $160,000 appraisal reflected the circumstances of the home at the time of the appraisal—a home in need of repairs.

III. DIVISION OF MARITAL ESTATE

Plaintiff also argues that the trial court inequitably awarded defendant 55% of the marital estate. We disagree.

Where a trial court makes findings of fact and dispositional rulings for the division of marital property, we review the trial court's findings for clear err. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). If the trial court's findings of fact are not clearly erroneous, we must determine whether the trial court's distribution of marital property was "fair and equitable" in light of the findings of fact. *Id.* We will affirm the trial court's disposition of marital property unless we are "left with the firm conviction that the division was inequitable." *Id.* at 429-430.

A division of marital property need not be equal; however, it must be equitable. *Sparks*, 440 Mich at 159. Courts consider the following factors relative to the parties when addressing the division of marital property: (1) duration of the marriage, (2) contributions to the marital estate, (3) age, (4) health, (5) life status, (6) necessities and circumstances, (7) earning abilities, (8) past relations and conduct, and (9) general principles of equity. *Id.* at 159-160. "There may even be additional factors that are relevant to a particular case. For example, the court may choose to consider the interruption of the personal career or education of either party." *McDougal*, 451 Mich at 89. "The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight." *Woodington v Shokoohi*, 288 Mich App 352, 363; 792 NW2d 63 (2010).

Here, the trial court concluded "that based upon the significant disparity in the incomes, education, and earning capacities of the parties, and the significant fault in the breakdown of the marriage attributable to Mr. Petkus, that a 55%-45% division of property is appropriate and equitable." With regard to income, the court found that plaintiff worked full time and earned

gross income over $55,000 in 2010. The court noted that plaintiff had additional income from other sources, sometimes significant. The court found that defendant returned to the work force on a part-time basis in the cleaning industry but has had to liquidate assets to sustain herself. Her gross monthly income was $790 per month. These findings of fact are supported by the record and, thus, not clearly erroneous.

With regard to education, the court found that plaintiff has a college degree and that defendant has a high school degree. The finding that plaintiff has a college degree is clearly erroneous. The evidence at trial was that he has a high school degree. The court's finding as to defendant is supported by the record and, thus, not clearly erroneous.

With regard to earning capacity, the court found that both parties are able to work. Plaintiff has traditionally held both his primary job and independent business ventures. He has been working in his field of experience for 27 years. The court stated that defendant is limited by her basic education, out-of-date work history, and limited job skills. She has a higher potential but will need time to improve her skills and income-earning capacity. These findings are supported by the record and, thus, not clearly erroneous.

With regard to fault in the breakdown of the marriage, the court found that plaintiff was "clearly the primary party at fault . . . due to his use of violence and abuse toward Mrs. Petkus." The trial court extensively discussed the evidence of plaintiff's abuse of defendant. The court found defendant's account of the incidents of domestic violence and abuse to be more credible than plaintiff's. The trial court discussed such incidents as defendant's 1997 head injury, the locking of defendant in the basement, and incidents of sexual abuse. The court explained that the marriage was "a classic example of a power-and-control form of domestic abuse, in which Mrs. Petkus' life has been dominated by her husband." These findings of fact are supported by the record and, thus, not clearly erroneous. Without discussing each incident of abuse contained in the record, it is clear that the evidence at trial supports the finding that plaintiff dominated and physically, sexually, and emotionally abused defendant.

When considering the factors that the trial court relied on to divide the marital estate, we are not "left with the firm conviction that the division was inequitable." *Draggoo*, 223 Mich App at 429-430. Although the trial court erroneously relied on a disparity in education as a factor supporting a division of property favoring defendant, the remaining factors strongly support such a division of property. Plaintiff's income was almost six-times greater than defendant's income. There is a substantial disparity in the parties' earning capacities because defendant was a stay-at-home mother for over 20 years while plaintiff was working in the same industry. Moreover, plaintiff was the party at fault for the breakdown of the marriage due to his domination and physical, sexual, and emotional abuse of defendant. We are not firmly convinced that a 55%-45% division of the property was inequitable.

IV. SPOUSAL SUPPORT

Plaintiff argues that the trial court's award of $350 of monthly spousal support to defendant is not fair and equitable. We disagree.

"The award of spousal support is within the discretion of the trial court." *Ewald v Ewald*, 292 Mich App 706, 722; 810 NW2d 396 (2011). We review a trial court's findings of fact with respect to spousal support for clear error. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). "If the trial court's findings are not clearly erroneous, the reviewing court must then decide whether the dispositional ruling was fair and equitable in light of the facts. The trial court's dispositional ruling must be affirmed unless the reviewing court is firmly convinced that it was inequitable." *Ewald*, 292 Mich App at 723 (internal citation omitted).

"The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished." *Berger*, 277 Mich App at 726. When deciding whether to award spousal support, courts generally consider the following factors relative to the parties: (1) past conduct and relations; (2) the duration of the marriage; (3) ability to work; (4) the source and amount of property awarded to the parties; (5) age; (6) ability to pay alimony; (7) the present situation of the parties; (8) the parties' needs; (9) health; (10) prior standard of living and whether one supported the other; (11) fault for the divorce; (12) contributions to the joint estate; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Id.* at 726-727. A "trial court should make specific findings of fact regarding those factors that are relevant to the particular case." *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993).

In this case, the trial court addressed each factor. Regarding the past conduct and relations of the parties, the court found that plaintiff dominated and abused defendant as previously discussed. The court also found that plaintiff's treatment of defendant had caused her to be unfriendly toward others; defendant would let her anger get the better of her; she would scream and use bad language toward plaintiff and their children. These findings are not clearly erroneous as they are supported by the record evidence.

As to the duration of the marriage, the court properly found that the parties had been married for 23 years.

With respect to the parties' ability to work, the court found that both parties are able to work. Plaintiff traditionally worked two jobs: his primary job and his independent business ventures. Defendant was limited by her basic education, out-of-date work history, and limited job skills. The court found that defendant would need time to improve her work skills and earning capacity. These findings are not clearly erroneous as the evidence at trial supports them.

Concerning the source and amount of property awarded to the parties, the court found that virtually all of the parties' assets were acquired during the marriage, except for a small portion of plaintiff's 401(k) plan. The court found that plaintiff had a successful retirement plan. The court noted that the family's mortgage was paid off and that the parties had lived frugally until recently. The evidence at trial supports these findings. There is no clear error.

Regarding the parties' age, the court clearly erred by finding that plaintiff was 50 years old and that defendant was 46 years old; the record before this Court demonstrates that both

parties were 46 years old. As to the parties' ability to pay alimony, the court found that plaintiff has "some ability to pay alimony." The court explained that plaintiff works full time and earned gross income over $55,000 in 2010, plus additional income from other ventures.[2] The court found that defendant did not have the ability to pay alimony. The court explained that she returned to part-time work after many years at home and had to liquidate assets during the proceedings to support herself. These findings are supported by the record and not clearly erroneous.

Regarding the present situation of the parties, the court found that plaintiff has a college degree and has been working in his field for 27 years; it also found that defendant is a high school graduate and is working part time for a cleaning business. The court found that she has higher potential but requires further education and work experience to increase her ability to support herself. Aside from the court's clearly erroneous finding that plaintiff has a college degree, there is no clear error as the evidence supports these findings.

With regard to the parties' needs, the court found that plaintiff was meeting his own needs; however, defendant was unable to financially meet her needs in light of projected monthly expenses of $3,500 and her monthly $790 income and $1,620 entitlement to child support. The court explained that defendant would be short about $1,000 per month and that plaintiff could not afford to pay $1,000 per month in spousal support. These findings are supported by the record. Notably, the court ordered plaintiff to pay $1,620 per month in child support. And defendant introduced into evidence at trial her proposed budget indicating expenses of $3,500 per month; plaintiff did not object to this value at trial and does not do so on appeal. There is no clear error.

Concerning the parties' health, the court properly found that both parties are in reasonably good health. Although defendant testified about problems with her shoulders, there was no other evidence indicating that she suffered from ill health.

With respect to the parties' prior standard of living and whether one supported the other, the court found that the parties lived a middle-class lifestyle during the marriage and were able to take vacations and buy recreational vehicles. The court stated that the parties have a continuing

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[2] We reject plaintiff's suggestion that the trial court abused its discretion by imputing an additional $5,000 per year in income. See, generally, *Loutts*, 298 Mich App at 25-26 (stating that this Court reviews for an abuse of discretion a trial court's decision to impute income). The evidence at trial was that plaintiff received $7,000 from Trestle Plastics in 2008 and $3,000 in 2009. This averages to $5,000 per year. Although the evidence at trial only supports a finding of $1,000 in additional income from Trestle Plastics in 2010, there was testimony that the amount of time plaintiff spent at Trestle Plastics decreased drastically after filing the complaint for divorce. Furthermore, the evidence at trial illustrated that in addition to the wages that plaintiff received from Trestle Plastics, he also received distributions of meat connected to Trestle Plastics' support of the 4-H program. Given this evidence, the trial court's decision to impute an additional $5,000 of annual income to plaintiff did not fall outside the range of reasonable and principled outcomes. See *id.* at 26.

obligation to support the children, with both parties having incurred such expenses. The evidence at trial established these facts; there is no clear error.

Addressing fault for the divorce, the court found plaintiff to be the party primarily at fault for the breakdown due to his use of violence and abuse toward defendant. As previously explained, there is no clear error.

Regarding the parties' contributions to the joint estate, the court found that both parties contributed to the joint estate, explaining that plaintiff worked full time and that defendant was the children's primary caregiver at home. The court opined that although the parties had different roles in the marriage, it considered their contributions to be equal. These findings are undisputed and supported by the record. There is no error.

The court concluded that the effect of cohabitation on a party's financial status was inapplicable.

Finally, the court addressed general principles of equity. In doing so, the court found that the parties have several smaller debts and expenses that they would each have to assume. The court particularly noted plaintiff's assumption of monthly child support. The court found that because of these expenses, plaintiff's ability to pay spousal support would be substantially reduced. The court explained that defendant would be forced to reduce her budget significantly, find full-time employment, or allow a portion of her property settlement to be consumed by living expenses. In light of the court's previous findings and the evidence at trial, these findings are not clearly erroneous.

Considering the totality of the trial court's factual findings, we are not left with a firm conviction that the trial court's decision to award $350 per month in spousal support was inequitable. See *Korth v Korth*, 256 Mich App 286, 288; 662 NW2d 111 (2003). The trial court found and the evidence supported that plaintiff was the party most at fault for the divorce because of his physical, sexual, and emotional abuse of defendant, which occurred throughout the marriage. Although both parties are able to work, defendant was a stay-at-home mother for most of the marriage and, thus, has limited vocational skills and a low earning capacity. Plaintiff, however, worked in the same field for the entire marriage and has a much stronger earning capacity. His income is nearly six-times greater than defendant's income. Both parties contributed equally to the marital estate. Plaintiff has the ability to meet his own needs; defendant does not. Defendant will fall considerably short in meeting her monthly expenses; although plaintiff is financially unable to meet the difference, monthly spousal support of $350 is not inequitable. As the trial court explained, its limited spousal-support award forces defendant to reduce her budget significantly, find full-time employment, or allow a portion of her property settlement to be consumed by living expenses. There is no clear error.

V. ATTORNEY FEES & COSTS

A. TRIAL COURT PROCEEDINGS

Finally, plaintiff argues that the trial court erred by ordering him to contribute to the payment of the attorney fees that defendant incurred in the trial court. We disagree.

"Any findings of fact on which the trial court bases an award of attorney fees are reviewed for clear error . . . ." *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). We review a trial court's decision to award attorney fees for an abuse of discretion. *Gates*, 256 Mich App at 437-438.

A party in a divorce action is not entitled to attorney fees as of right. *Stoudemire*, 248 Mich App at 344. "In domestic relations cases, attorney fees are authorized by both statute, MCL 552.13, and court rule, MCR 3.206(C)." *Smith*, 278 Mich App at 207. MCL 552.13(1) provides that a court may require a party in an action for divorce to "pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency." Under MCR 3.206(C)(1), a party may, at any time, request that the court order the opposing party to pay attorney fees. Under MCR 3.206(C)(2)(a), a party who requests attorney fees must allege sufficient facts to show that "the party is unable to bear the expense of the action, and that the other party is able to pay . . . ."

Here, the trial court ordered plaintiff to pay $6,900 toward defendant's attorney fees.[3] The court found that plaintiff had paid between $6,000 and $7,000 for his attorney fees; defendant had paid $9,427.49 in attorney fees and costs to date; defendant owed her attorney $9,060.07, which she was unable to pay; and there was a substantial disparity in the parties' incomes. These findings are not clearly erroneous. The parties' testimony regarding attorney fees and costs comports with the court's findings. And as previously discussed, the record evidence illustrates a disparity in income.

The court did not clearly err by concluding that defendant did not have the ability to pay her attorney fees and that plaintiff had the ability to contribute to her fees. See, generally, MCR 3.206(C)(2)(a). In *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007), this Court held that a party sufficiently demonstrates inability to pay attorney fees where that party's yearly income is less than the amount of fees owed to the party's attorney. Here, defendant's yearly income ($9,480) is less than the amount of her attorney fees (approximately $18,500). Furthermore, given that plaintiff's annual income of at least $55,000 is about six-times greater than defendant's annual income, plaintiff has the ability to contribute the $6,900 ordered by the trial court toward defendant's attorney fees.

We reject plaintiff's contention that the trial court abused its discretion by awarding attorney fees because there was no evidence regarding the amount of time defendant's attorney spent in this case. "The party requesting attorney fees bears the burden of proving they were incurred and that they are reasonable." *Reed*, 265 Mich App at 165-166 (internal citations omitted). "*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

[3] In its opinion and order, the court opined that it was ordering plaintiff to pay $12,000 toward defendant's attorney fees. However, the court noted that $5,100 had already been assumed by plaintiff's assumption of the Chase VISA debt; thus, the court opined that plaintiff was responsible for the remaining $6,900 balance. The judgment of divorce orders plaintiff to pay $6,900 toward defendant's attorney fees.

those services." *Id.* at 166 (emphasis added). During trial, the court admitted documentation of the attorney fees due to defendant's attorney. The documentation illustrated the amount paid and the balance due. Defendant's counsel explained that the documentation would be used for purposes of defendant's request for attorney fees. The trial court stated that the documentation was sufficient absent an objection from plaintiff. Plaintiff did not object or contest the reasonableness of the fees requested.

Accordingly, the trial court's decision to order plaintiff to pay $6,900 toward defendant's attorney fees did not fall outside the range of reasonable and principled outcomes. See *Smith*, 278 Mich App at 207.

B. APPELLATE PROCEEDINGS

As a final matter, defendant requests that this Court grant her appellate attorney fees under MCR 3.206. Defendant argues that she "is unable to afford attorney fees on appeal," without alleging any facts to illustrate her inability to pay her attorney for this appeal. Because defendant has failed to allege facts sufficient to demonstrate an inability to bear the expense of this appeal, we deny defendant's request for appellate attorney fees. See *Gates*, 256 Mich App at 439 (explaining that an allegation of inability to pay appellate attorney fees must be supported by a sufficient allegation of facts demonstrating such inability); *Spooner v Spooner*, 175 Mich App 169, 174; 437 NW2d 346 (1989) (denying a request for appellate attorney fees due to a failure to allege sufficient facts demonstrating an inability to bear the expense of the appeal without aid).

Affirmed. Defendant as the prevailing party may tax costs pursuant to MCR 7.219(A).

/s/ David H. Sawyer
/s/ Stephen L. Borrello
/s/ Jane M. Beckering