

STATE OF MICHIGAN
COURT OF APPEALS

ANITA M. KRAMER,

Plaintiff-Cross-Appellant,

v

BRENT C. KRAMER,

Defendant-Cross-Appellee.

UNPUBLISHED

February 1, 2005

No. 247191

Kent Circuit Court

LC No. 01-000097-DO

Before: Griffin, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals by right from a judgment of divorce. We affirm in part, reverse in part, and remand for further proceedings.

In the judgment of divorce, the trial court awarded plaintiff the marital home with a debt of \$128,000, the remaining funds in a receiver's account from the sale of marital property, and spousal support of \$125 per week for a period of fifteen years based primarily on the fact that the marital home's debt resulted from multiple loans made to defendant for use in his businesses.

Plaintiff first asserts that the trial court should have ordered that defendant pay the \$128,000 debt against the marital home. We disagree. Plaintiff does not challenge any of the trial court's findings of fact, but, rather, its property distribution and spousal support decisions. "A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable." *McNamara v Horner (After Remand)*, 255 Mich App 667, 670; 662 NW2d 436 (2003), citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). 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).

Plaintiff argues that defendant should be liable for the entire \$128,000 debt on the marital home because of the multiple loans made to defendant for use in his businesses and that the trial court's ultimate award of the home including its \$128,000 debt and \$97,500 in spousal support is inequitable because it leaves her roughly \$30,000 short. However, plaintiff fails to consider the trial court's further award of the approximately \$17,000 to \$20,000 remaining in the receiver's fund from the sale of the property around defendant's business and her admission during trial that \$10,000 of the proceeds from the initial mortgage on the home was used to purchase a vehicle, which she was also awarded. The combination of the award of the receiver's fund and

the \$10,000 used to purchase this vehicle approximates the \$30,000 which plaintiff maintains she has lost. Furthermore, plaintiff fails to consider the value added to the home by defendant's work during the marriage. Under these circumstances, the trial court's property division is not inequitable.

Plaintiff next asserts that the trial court abused its discretion in failing to require defendant to secure his spousal support obligation with a life insurance policy payable to plaintiff. We disagree. The award of alimony is in the trial court's discretion. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). The trial court's decision as to alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Id.* at 433. 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 alimony is to be based on what is just and reasonable under the circumstances of the case. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

Plaintiff relies on *Kurz v Kurz*, 178 Mich App 284; 443 NW2d 782 (1989), in support of her argument that the trial court abused its discretion by not ordering defendant to secure his spousal support obligation through a life insurance policy. In *Kurz*, this Court found that the trial court abused its discretion by requiring the plaintiff to purchase a life insurance policy naming defendant as the sole beneficiary in order to secure defendant's right to spousal support because, pursuant to the divorce judgment in that case, plaintiff's obligation to pay spousal support ended at his death. *Id.* at 296-297. Contrary to plaintiff's contention, however, *Kurz* does not establish as a rule of law that the trial court must require the purchase of a life insurance policy to secure future payments of spousal support ordered in the judgment of divorce. In addition, we have found no case law or statute requiring the trial court to order such security. Therefore, we do not find an abuse of discretion.¹

Finally, plaintiff asserts that the trial court abused its discretion by refusing to award her attorney fees. We agree. This Court reviews an award of attorney fees for abuse of discretion. *Gates, supra* at 437-438. An abuse of discretion occurs only if the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.* at 438.

Attorney fees in a divorce action are not recoverable as of right. *Kurz, supra* at 297. Pursuant to MCL 552.13, the trial court may require a party "to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency." Furthermore, MCR 3.206(C) allows for the award of attorney fees as follows:

¹ We note, however, that the record establishes that plaintiff was forced to seek an order of income withholding after defendant failed to timely pay the spousal support ordered by the trial court. The record also establishes that after entry of the judgment of divorce, defendant's debts were discharged in bankruptcy. Furthermore, during trial there was testimony that defendant purposely allowed his greenhouse business to fail in the hope that plaintiff's home, which had secured the debt on the business, might suffer foreclosure. Given these facts, we see no basis by which plaintiff would be precluded from again requesting the trial court to modify the spousal support award to secure future payments. MCL 552.28; *Gates, supra* at 433-434.

(1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay.

Plaintiff timely requested that the trial court award her attorney fees because defendant's unreasonable conduct added costs to what should have been a simple divorce. Attorney fees are appropriately awarded when "the party requesting payment of the fees has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation." *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). We conclude from our review of the record that defendant's misconduct during the divorce proceedings warranted an award of attorney fees to plaintiff. Plaintiff filed numerous pretrial motions concerning discovery and related to preserving the property ultimately to be divided between the parties. In several instances, property within the control of defendant was seized, thus affecting the ultimate property disposition in this case. Defendant also failed to pay spousal support as required by the trial court. We are persuaded that given this record, the trial court abused its discretion in failing to award at least a modest amount of attorney fees to plaintiff to the extent required to offset the attorney fees incurred by plaintiff as the result of defendant's abuse of the litigation process. On remand, the trial court shall award a reasonable amount of attorney fees to plaintiff consistent with this opinion.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with the opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra