

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICIA ANN ZINN,

Plaintiff/Counterdefendant-  
Appellee,

v

ROGER A. ZINN,

Defendant/Counterplaintiff-  
Appellant.

UNPUBLISHED  
February 10, 2005

No. 248154  
Ionia Circuit Court  
LC No. 00-020797-DO

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Before: Whitbeck, C.J., Jansen and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce entered after a bench trial. On appeal, defendant challenges the trial court's determination of the marital assets, its distribution of the assets and its award of spousal support. We affirm in part, reverse in part, and remand.

I

Plaintiff and defendant married on October 26, 1994. Defendant moved out of plaintiff's home on May 30, 2000. On August 8, 2000, plaintiff filed a complaint for divorce from defendant, citing a breakdown of the marital relationship and requested a divorce, an equitable split of property, and alimony. A bench trial was conducted for this divorce in which both parties testified and presented arguments. The trial court issued its opinion in which it determined what assets were marital, and based on equity and a finding of fault divided the marital property 55%/45% in favor of plaintiff. With regard to spousal support, the trial court went through twelve factors,<sup>1</sup> and determined that spousal support was appropriate for plaintiff in order to balance the income and provide her with sufficient funds for medical insurance. The trial court provided that defendant is to pay \$125 a week to plaintiff, which shall terminate on the death of either party, the remarriage of plaintiff or upon plaintiff receiving full time medical

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<sup>1</sup> The trial court used the twelve factors citing *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992) and *Thames v Thames*, 191 Mich App 299; 477 NW2d 496 (1991).

benefits at no cost to her, and/or upon her becoming eligible for Medicare (plaintiff was fifty-two at the time of trial). A judgment of divorce was entered.

Subsequently, defendant filed a motion for relief from judgment and/or reconsideration, and contended that there were several mistakes warranting relief from judgment. A hearing was conducted on defendant's motion for relief from judgment, and subsequent to the hearing defendant filed an amended motion for relief from judgment or reconsideration. The trial court issued an opinion in regard to defendant's motion for relief from judgment, denying defendant's requests except a correction to reflect that some stock had been double counted.

## II

Defendant contends that the trial court erred on numerous issues of law, abused its discretion in its dispositional rulings, and rendered findings against the great weight of the evidence rendering the property settlement entirely inequitable.

### A. Standard of Review

When reviewing a property division in a divorce judgment we review the factual findings of the trial court for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002). This Court gives special deference to a trial court's findings when based on the credibility of the witnesses, *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997), and the determination of the proper time for valuation of an asset is in the trial court's discretion, *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 76; 471 NW2d 631 (1991). 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); *Sparks, supra* at 151-152; *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999).

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, supra* at 188; *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division need not be mathematically equal, but any significant departure from congruence must be clearly explained. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). To reach an equitable division, the trial 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); *McNamara, supra* at 185.

Pursuant to MCR 2.612(C)(1)(a) and (f), a party may be relieved from a final judgment, order, or proceeding for:

- (a) Mistake, inadvertence, surprise, or excusable neglect.

\* \* \*

(f) Any other reason justifying relief from the operation of the judgment.

A trial court's decision to grant relief under MCR 2.612 is reviewed for an abuse of discretion. *Driver v Hanley (After Remand)*, 226 Mich App 558, 564-565; 575 NW2d 31 (1997).

## B . Property Distribution

### 1. Individual Retirement Accounts (IRAs)

Defendant contends that the trial court clearly erred when it included three IRAs in the marital estate which defendant claims were purchased by life insurance proceeds from policies he owned prior to marriage, and, in the alternative argues that the trial court erred in denying his motion for relief from judgment and/or reconsideration or rehearing. The trial court did not clearly err at trial, based on the evidence presented, by including the three IRAs in the marital estate. In addition, relief from judgment based on mistake, MCR 2.612, or palpable error, MCR 2.119(F), is not warranted as any mistake was based on defendant's failures and a MCR 2.119(F) motion was not proper.

In dividing property in a divorce proceeding, the trial court's first consideration is the determination of what is marital and what is separate property. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). The trial court should include all property that came "to either party by reason of the marriage as part of the marital estate." MCL 552.19. The property distribution only divides the "marital estate," which consists of those assets "earned or acquired" by a spouse during the marriage. *Vander Veen v Vander Veen*, 229 Mich App 108, 110; 580 NW2d 924 (1998). When the parties have commingled their separate property or used it for joint purposes, an appellate court will consider the parties' intent in regard to including the assets in the marital estate. See *Polate v Polate*, 331 Mich 652, 654-655; 50 NW2d 190 (1951) (affirming distribution of a building to both parties although it was owned by the husband before the marriage, but put into both parties' names); *Ross v Ross*, 24 Mich App 19, 30-31; 179 NW2d 703 (1970).

The trial court included defendant's three IRAs in the marital estate. Defendant argues that the IRAs were purchased by insurance proceeds that should be considered separate assets because the policies were purchased prior to the marriage. In defendant's trial brief he did not indicate that the three IRAs were premarital assets, and it is undisputed that the IRA funds were purchased or acquired during the marriage. See *Vander Veen, supra* at 110. Thus, the IRAs would be considered a marital asset unless defendant could show otherwise. At trial defendant indicated that he had documentary proof that these IRAs were purchased from insurance proceeds accrued prior to marriage, but presented none of this alleged documentary proof. Defendant testified that he had the life insurance with Prudential since the "late 60's or early 70's. I cashed them in and I purchased three Roth IRA's with the monies from that." However, the trial court found that defendant's testimony was not credible, and indicated in its opinion that he was not credible "[b]ecause the defendant was evasive and argumentative during his testimony, especially in light of the fact that he was selling assets and attempting to conceal these sales from plaintiff during the divorce process."

Given the fact that the trial court found defendant's testimony was not credible it did not clearly err in determining that the three IRAs were marital assets based on the evidence that was presented. There was no showing, beyond defendant's testimony, that these IRAs "existed independently of . . . the marriage partnership." *Dorr v Dorr*, 460 Mich 573, 585; 597 NW2d 82 (1999). Therefore the trial court's decision does not leave us with a definite and firm conviction that a mistake has been made.

Defendant also argues that his motion for relief from judgment should have been granted on this issue pursuant to MCR 2.612(C)(1)(a) and (f), because he showed a mistake was made, and further argues that he has presented palpable error pursuant to MCR 2.119(F). However, any mistake or error caused at trial was based on defendant's failure to act. Defendant's motion and amended motion for relief from judgment or in the alternative reconsideration and/or rehearing only states MCR 2.612 as the basis for relief; not MCR 2.119(F) (and MCR 2.612 is the proper motion for defendant to file from the divorce judgment).

With the motion for relief from judgment, defendant presented documentation supporting that he owned life insurance policies prior to marriage that were liquidated at different times in 1996 and 1997, during the marriage. After a hearing on this motion, defendant also filed an amended motion for relief from judgment attempting to show that he received insurance proceeds at a time which was in close proximity to when the IRA funds at issue were purchased. The information provided with the initial motion for relief from judgment supported that: four of the Prudential policies were liquidated on November 5, 1996; one on November 7, 1996; and one on March 4, 1997. In his amended motion, after the hearing on the motion for relief from judgment, defendant submitted some documentation supporting that some of the IRA funds may have been purchased on November 19, 1996; November 22, 1996; November 4, 1996; March 14, 1997; and April 29, 1997. No showing was made as to why this documentation was not presented at trial or presented in the original motion for relief from judgment. Although, it appears that at least some of these IRA funds were purchased from the insurance proceeds the trial court decided this issue and defendant has not presented any explanation as to why this documentation was not presented at trial.

MCR 2.612(C)(1)(a) and (f) were not designed to "to correct a failure to act or an ill-advised or careless decision by counsel." *Mikedis v Perfection Heat Treating Co*, 180 Mich App 189, 200; 446 NW2d 648 (1989); *Lark v Detroit Edison Co*, 99 Mich App 280, 283; 297 NW2d 653 (1980);<sup>2</sup> see also *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992). The most persuasive evidence presented by defendant, the documents showing that some of the IRA funds were purchased within two weeks of when the Prudential policies were liquidated, was not presented until defendant's amended motion for relief from judgment was filed. There was no showing that these documents could not have been presented at trial. Defendant may not make repeated post-ruling attempts to bolster its position with additional evidence where, as here, he provides no satisfactory explanation why the evidence was originally unavailable. See *In re*

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<sup>2</sup> The panel in *Lark*, *supra*, was interpreting the predecessor of MCR 2.612(C)(1)(a), GCR 1963, 528.3(1), but the language of the rules is identical.

*Pope Estate*, 205 Mich App 174, 178-179; 517 NW2d 281 (1994); *Cogan v Cogan* 119 Mich App 476, 478; 326 NW2d 414 (1982); see, generally, *Sargent v Eckhouse*, 171 Mich App 703, 706; 430 NW2d 763 (1988); *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Because MCR 2.612(C)(1)(a) and (f) are not designed to correct defendant's failure to act, the trial court did not abuse its discretion in denying defendant's attempt to get relief based on the same; and substantial injustice did not occur. Defendant's failure was based on a lack of due diligence, and this Court "will not equate this lack of due diligence with the mistake or excusable neglect required under the rule for setting aside a judgment." *Lark, supra* at 283-284.<sup>3</sup> Further, with regard to MCR 2.119(F), as noted, *supra*, this motion is not properly before this Court, but, nonetheless, the trial court did not abuse its discretion in finding that defendant failed to present palpable error when any error was contributed to by defendant's failure to present information at trial or before. See *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Regardless, defendant's own documentation, although not properly presented, supports that the proceeds from the insurance policies were placed into a general account and used for purchases not limited to the three IRAs. Monies earned during the marriage very well could have purchased the IRA funds. Because the proceeds were placed in an account that was used for purposes not limited to the purchase of the funds it would not be clear error to find that the funds were commingled and became marital property. The documentation clearly indicated that the proceeds were placed in a revolving account with various other unrelated purchases and transactions occurring. Courts have the discretion to include in the marital estate any property acquired by gift or inheritance if the otherwise separate property was commingled with the marital property or used for joint purposes. See *Charlton v Charlton*, 397 Mich 84, 94; 243 NW2d 261 (1976); *Ross, supra*.

## 2. Portland Township Ionia Road Property

Defendant argues that the trial court erred in its distribution of the Ionia Road property because it assessed over \$11,000 of debt in determining the equity when only around \$7,000 debt was owed on the Ionia Road property mortgage. In addition, defendant argues that the trial court abused its discretion in failing to require plaintiff to hold defendant harmless when defendant made payments on underlying debt during the divorce proceedings and for approximately two years post-judgment.

The trial court awarded plaintiff the Ionia Road property, which it valued at \$27,432 (appraised valued of \$39,000 less debt of \$11,568). Defendant's answer to plaintiff's interrogatories indicate that the debt on the Ionia Road property was \$11,567.54, with \$7,404.01,

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<sup>3</sup> It is noted that with regard to MCR 2.612(C)(1)(f), generally, relief is only granted under subparagraph (f) when the judgment was obtained by the improper conduct of the party in whose favor it was rendered, and there is no contention that plaintiff was acting improperly in this regard. *Altman, supra* at 478.

owed to Independent Bank and \$4,163 owed to Old Kent Bank. Defendant's trial brief indicates that the value of the Ionia Road property was \$39,000 with \$16,758.99 debt.<sup>4</sup> According to defendant's trial exhibit three, the mortgage for the Ionia Road property; showed a balance of \$7,016.12 due as of September 14, 2001. Defendant's trial exhibit four reveals that he refinanced his home with Allied Mortgage in August 2001, and indicated that \$9,742.77 was to pay off "Old Kent Bank." Defendant testified at trial that 58.1% of this was to pay off his home equity loan, but that 41.9%, or \$4,082 of this represented money borrowed to buy the Ionia Road property. Defendant's post-trial brief submits that the Ionia Road property had debt of \$11,098. This \$11,098 coincides with defendant's trial exhibits and his testimony. The parties were in agreement at trial and after trial that the debt on the property was between \$11,000 and \$11,600. It appears that the difference between the \$11,098 and the \$11,568 figures would probably be that the \$11,098 reflects the status as of September 2001, while the \$11,568 represents its status when defendant submitted his interrogatories.

The trial court found that the value of the Ionia Road property was "\$27,432.00 (appraised value of \$39,000.00 less debt of \$11,568.00)." In the opinion, the trial court indicates that plaintiff shall receive the Ionia Road property, but says nothing about the debt. In the divorce judgment, defendant was ordered to quitclaim the Ionia Road property deed to plaintiff and plaintiff "shall be responsible for, assume, and pay any and all indebtedness existing against said real estate and shall forever indemnify and save the Defendant harmless from any liability arising out of said indebtedness against said real estate." Thus, the trial court, in the judgment of divorce, only ordered plaintiff to assume the debt that existed against the property, which was \$7,016.12. Further, the trial court ordered that the parties be responsible for the debts and obligations incurred and contracted for individually after the commencement of the action, and the Allied Mortgage refinancing contract was entered into by defendant alone in August 2001, after the commencement of the divorce action.

Clearly, the trial court's intention, as evidenced in its opinion, was for plaintiff to receive an asset valued at \$27,432, because in making its distribution of the Ionia Road property to plaintiff, it used that value to calculate its approximate split of 55% to plaintiff and 45% to defendant. Valuing the Ionia Road property at \$27,432, the combined value given for the assets distributed to plaintiff was \$58,513 and the combined assets distributed to defendant were valued by the trial court at \$48,154, which is approximately a 55% to 45% split. Neither defendant nor plaintiff disputes the trial court's determination that the debt for the Ionia Road property was approximately \$11,568. The documentation supports that just over \$7,000 of debt attributed to the Ionia Road property was from a mortgage. And, the documentation, along with defendant's assertions and plaintiff's agreement that the indebtedness is over \$11,000, supports that approximately \$4,082 of the debt did come from the Old Kent bank loan that was paid off when defendant refinanced his home. Thus, at least \$4,082 of this debt is not attached to the property

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<sup>4</sup> When defendant presented that the debt of the property was over \$16,000 he presumably was attempting to place the entire Old Kent loan on the Ionia Road property (a marital asset), which was improper and a misrepresentation because his later testimony was that 58.1% of the Old Kent loan was to pay off his home (his separate asset).

via the mortgage, and if the trial court intended plaintiff to receive \$27,000 equity it likely intended her to pay the portion of the Old Kent Bank loan applicable to the Ionia Road property as well. If the \$4,082 is calculated out, plaintiff would receive an asset that is worth over \$31,000 and defendant would owe the \$4,082 debt; significantly changing the distribution intended by the trial court of 55% to plaintiff and 45% to defendant. It is clear that the intent of the trial court was to award plaintiff the \$27,432 equity, which apparently is derived in part from the \$4,082 indebtedness that was part of the Old Kent loan. This Court may modify judgments to rectify mistakes, interpret ambiguities, and alleviate inequities. *Hagen v Hagen*, 202 Mich App 254, 258; 508 NW2d 196 (1993). For the above reasons, we reverse the judgment of divorce only to the extent that it does not require plaintiff to pay the debt against the Ionia Road property, and we remand for correction of this mistake.<sup>5</sup>

Defendant also claims that plaintiff should reimburse him or hold him harmless for payments he made on the mortgage and taxes he paid on the property for approximately \$3,000. Defendant cites no applicable authority for this contention. The appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Ambs v Kalamazoo Co Road Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003), nor may he give issues cursory treatment with little or no citation of supporting authority, *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Argument must be supported by citation to appropriate authority or policy. MCR 7.212(C)(7); *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Consequently, defendant has abandoned the issue.<sup>6</sup>

### 3. Personal Savings Plan

Defendant next argues that it was arbitrary and capricious for the trial court to award plaintiff the personal savings plan valued at \$31,081, and to order defendant to supplement the account if the market fluctuated downward, but to allow plaintiff to retain any increases. "For purposes of dividing property, marital 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, supra* at 114 n 4 (citations omitted). The trial court valued the asset at the time of trial and did

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<sup>5</sup> Relief from a judgment on the grounds of mistake will only be granted where the circumstances are extraordinary and the failure to grant the relief would result in substantial injustice. *Gillespie v Bd of Tenant Affairs of the Detroit Housing Comm*, 145 Mich App 424, 428; 377 NW2d 864 (1985). It would be a substantial injustice for defendant to have to pay the portion of the Old Kent bank loan that was applicable to the Ionia Road property because this payment substantially changes the trial court's attempt to achieve a 55%/45% split.

<sup>6</sup> Nonetheless, with regard to the post-judgment debt, defendant did not quit claim the deed of the Ionia Road property to plaintiff giving her the opportunity to sell the property and pay off the debt. And, plaintiff was not required to hold defendant harmless until defendant executed a quit claim deed conveying his interest to her.

not change this valuation, but only required that defendant supplement the personal savings plan account so it could be transferred to plaintiff as it was valued the date of trial.<sup>7</sup> The trial court used the value submitted by defendant at the time of trial and did not abuse its discretion in using this day; nor did use of this date render the distribution inequitable. See *id.* Further, “in determining the valuation date, the circuit court must and does retain considerable discretion to see that equity is done.” *Id.* The fact that trial court required defendant to supplement if the market fluctuated from the date valued does not render the decision inequitable; this determination was clearly within the trial court’s allowed discretion as the court only required that plaintiff receive what the asset was valued at trial. See *id.* (noting that the trial court has considerable discretion in determining valuation dates in order to forestall leverage efforts and gamesmanship).

#### 4. Credit Card Debt and the Computer

Defendant contends that the trial court clearly erred in awarding plaintiff the computer and failing to include it in the marital estate, while also including it as a liability to defendant in the form of the credit card debt. Defendant has cited no applicable authority to support his contention. Argument must be supported by citation to appropriate authority or policy MCR 7.212(C)(7); *Peterson Novelties, supra* at 14. Defendant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue. *Yee, supra* at 406. Regardless, the trial court’s factual findings are not clearly erroneous and its distribution did not constitute an abuse of discretion. The trial court in its opinion found that no value had been established for the computer, and placed it on the list of assets for plaintiff to receive. In the trial court’s opinion denying defendant’s motion for relief from judgment regarding this issue, the trial court indicated that the assets that were given zero value were divided by the trial court as well as the debts, including the credit card. The trial court indicated that there was no evidence of what amount of the credit card debt was a result of the computer purchase, who made the payments, or whether prior payments were for the computer or other expenses. The trial court’s factual findings were not clearly erroneous, and the distribution of the computer to plaintiff and the credit card debt to defendant did not render the judgment inequitable.

#### 5. Coverage Period for Defendant’s Pension

Defendant argues that the trial court wrongly used, for coverage purposes, the date of the trial in calculating the value of defendant’s pension. For the purposes of dividing property, marital assets are typically valued at the time of trial or the time judgment is entered. *Byington, supra* at 114 n 4. The trial court did not abuse its discretion in valuing the coverage period to include through the date of trial; nor does its use of this time period render the distribution inequitable. See *id.*

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<sup>7</sup> We note that if the value of the asset had increased and plaintiff were allowed to retain the increase the distribution may have been improper because the asset would have, in effect, been valued twice. Here, although the trial court’s distribution may have allowed plaintiff to retain increases, there were no increases, and plaintiff was only to receive the asset as valued at trial.

## 6. Distribution

Defendant contends that the trial court abused its discretion by granting disproportionate weight to fault in awarding a 55%/45% split of the marital property and that the distribution was inequitable. Defendant also claims that name calling and verbal abuse cannot justify fault when that is all that resulted from his alcohol use. The trial court did not abuse its discretion by distributing the marital property 55%/45% in favor of plaintiff when it made findings regarding fault that were not clearly erroneous, and the split does not render the property distribution inequitable.

"A division of property in a divorce action need not be equal, but it must be equitable." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). To reach an equitable division, the trial 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 89; *McNamara, supra* at 185. The trial court, in assessing fault, should consider conduct that led to the breakdown of the marriage. *Knowles v Knowles*, 185 Mich App 497, 499; 462 NW2d 777 (1990). As the Michigan Supreme Court noted in *McDougal, supra* at 90 (emphasis in original), "fault is an element in the search for an *equitable* division -- it is not a punitive basis for an inequitable division."

For distribution purposes, the trial court made findings with regard to duration of the marriage, contribution of the parties to the marital estate, the age of the parties, the health of the parties, the life status of the parties, the necessity and circumstances of the parties, the past relations, conduct of the parties, and general equitable principles. See *McDougal, supra*. The trial court noted that: (1) for contribution purposes plaintiff did not work at the request of defendant and that defendant worked at General Motors; (2) plaintiff would be without health care coverage which will cost her \$380 per month; (3) defendant was at fault for the breakdown of the marriage; and (4) equitable principles weighed in favor of plaintiff. With regard to fault, the trial court provided the following:

The Plaintiff claims, and the Court agrees, that the Defendant is an alcoholic with a Jekyll and Hyde personality making life with him difficult at best. He was abusive verbally and started drinking after the marriage of the parties. Prior to the marriage he indicated to the Plaintiff that alcohol had ruined his two prior marriages and he was not going to let that happen again, but he was unable to do so. He was very profane, frequently drove while he was intoxicated and at one time stabbed the table with a knife. Defendant's conduct was inappropriate during the marriage and his testimony about that conduct during the trial was evasive and argumentative.

The trial court determined that the marital property should be distributed approximately 55% to plaintiff and 45% to defendant based on its findings.

Alcohol abuse can be a factor considered and can justify a disproportionate division of the assets. In *Welling, supra* at 711-712 (citations omitted), this Court provided:

In determining "fault" as one of the factors to be considered when fashioning property settlements, courts are to examine "the conduct of the parties during the marriage." The question here is whether one of the parties to the marriage is more at fault, in the sense that one of the parties' conduct presented more of a reason for the breakdown of the marital relationship than did the conduct of the other. Clearly, defendant's conduct in this case, as outlined above, did present a greater reason for the breakdown of the relationship. This is the obvious conclusion even if we assume that defendant's behavior was not "intentional" or "wrongful." The effect of the conduct on plaintiff and the marital relationship was highly detrimental, regardless of the reasons behind it.

There was testimony supporting the trial court's findings that defendant's use of alcohol led to the breakup of the marriage, that plaintiff quit her job at the request of defendant at the beginning of the marriage, that defendant earned significantly more than plaintiff, and that plaintiff would have a shortfall in her attempts to pay for healthcare insurance, which she was losing once her divorce with defendant was final. Defendant claims that name calling and verbal abuse is all that resulted from the drinking and cannot justify fault, but cites no applicable authority for this contention. Argument must be supported by citation to appropriate authority or policy. MCR 7.212(C)(7), *Peterson Novelties, supra* at 14. Defendant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. *Yee, supra* at 406.

Further, we find no basis for this contention. Defendant acknowledged that he drinks "every day usually." Plaintiff explained that defendant had a "Jekyll-Hyde type personality" in that one minute he would be sweet and the next "he just blows up and rants and raves at you." Plaintiff further testified that defendant on one occasion threw a plate and on another occasion stabbed a steak knife into the table because he did not like a comment she made. Plaintiff stated that the above instances are some examples and that towards the end defendant kept getting "worse and worse" and the incidents were more "numerous." Plaintiff also testified that defendant had told her before they married that alcohol had ruined his prior two marriages and that he promised her he would not drink. Upon being questioned if defendant's drinking caused the breakup of the marriage, plaintiff testified, "I know it was." The above testimony clearly supports the trial court's findings that defendant's conduct was highly detrimental to the marriage. Defendant's contention that the name calling and verbal abuse cannot justify the fault in this case is without merit because the above testimony supports that there was detrimental behavior beyond verbal abuse and yelling.

Defendant also claims that fault was overemphasized when the other factors supported congruence. This contention is without merit. The trial court in this case did not overemphasize fault in its property distribution, as it also considered general principles of equity in determining, for example, that plaintiff would need health care coverage which she was going to lose from the divorce, and also noted that plaintiff did not work during the marriage at the request of defendant. The trial court considered all the pertinent factors for an equitable division, and found factors beyond fault which supported its 55%/45% distribution; the trial court's findings were not clearly erroneous.

Based on a review of the proper considerations, the trial court determined that the marital property should be divided 55% to plaintiff and 45% to defendant. The trial court considered

factors beyond fault including necessity and circumstances and general principles of equity which it also thought weighed in favor of plaintiff. Giving the requisite deference to the trial court's determination of credibility, the court's finding that defendant was at fault in causing the breakdown in the marriage is not clearly erroneous. The trial court's finding is fully supported by evidence in the record. The trial court is in the best position to determine the extent to which each party contributed to the breakdown of the marriage. *Hanaway v Hanaway*, 208 Mich App 278, 297; 527 NW2d 792 (1996). Furthermore, even if the trial court placed unequal weight on the fault factor, no error will be found, as long as fault was not the only factor that the court considered, and it did not consider fault solely for punitive reasons, where the division is otherwise equitable. *McDougal, supra* at 88-90. It is clear from the record, as discussed, that the trial court weighed factors other than fault in the property division. There is no indication that the trial court's fault analysis was an attempt to punish defendant.

Giving the requisite deference to the trial court's determinations, and in light of defendant's drinking and behavior while drinking and plaintiff losing her health insurance, the trial court's distribution of 55% of the marital estate to plaintiff and 45% of the marital estate to defendant does not leave us with a definite and firm conviction that the distribution was inequitable.

### III

Defendant's next issue on appeal is that the trial court clearly erred and abused its discretion in awarding spousal support to plaintiff in the amount of \$125 weekly. We disagree.

#### A. Standard of Review

The award of alimony is in the trial court's discretion. *Gates, supra* at 432. On appeal, the trial court's factual findings are to be reviewed for clear error. *Beason, supra* at 805; *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The findings are presumptively correct and the burden is on the appellant to show clear error; a finding is clearly erroneous if the appellate court, on reviewing all the evidence, is left with a definite and firm conviction that a mistake has been made. *Beason, supra* at 804-805; *Moore, supra* at 654-655. If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks, supra* at 151-152; *Moore, supra* at 655. The trial court's decision as to alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Sparks, supra*; *Gates, supra* at 433.

#### B. Spousal Support

The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is just and reasonable under the circumstances of the case. *Moore, supra* at 654. Among the factors that should be considered when deciding if alimony is proper 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. *Olson, supra* at 631.

In the present case the trial court went through the pertinent factors and noted the following: (1) the past relations of the parties indicated that the breakdown of the marriage was the result of the significant fault on the part of defendant; (2) length of the marriage as seven years; (3) ability of the parties to work, noting that plaintiff gave up employment at Meijer and is now earning considerably less than if she had continued employment there; (4) the source and amount awarded to the parties noting again that plaintiff needed to re-enter the work force after leaving because of defendant and will be losing health benefits; (5) the age of the parties; (6) ability of defendant to pay spousal support in light of the fact that he averaged \$62,000 and may have voluntarily reduced his hours during the relevant time; (7) present situation of the parties; (8) needs of the parties, specifically, that plaintiff needs medical coverage and that defendant has it through his job; (9) health of the parties; (10) prior standard of living; (11) contributions of the parties to the joint estate; and (12) general principles of equity. Based on the above noted factors the trial court determined that spousal support was appropriate in order to balance the income of the parties and to make sure that plaintiff could afford medical coverage. The trial court awarded plaintiff \$125 per week until the death of either party, the remarriage of the plaintiff, or upon plaintiff receiving full time medical benefits at no cost through her employment or upon becoming eligible for Medicare (plaintiff was fifty-two at the time of trial).

The trial court has the discretion to award alimony as it considers just and reasonable under all of the circumstances relevant to a case. MCL 552.23. The main objective of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party. *Hanaway, supra* at 295. The trial court acknowledged the proper factors in its grant of spousal support in the amount of \$125 per week, and it specifically found and then recited the factors it deemed predominant. Under these circumstances, the trial court's factual findings were not clearly erroneous. See *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993). The time period of support could turn out to be particularly lengthy, but in light of the finding that plaintiff gave up a job at defendant's request where she would be making a significant amount more than she is currently making, plaintiff's need for health care coverage, and in light of the finding of fault, it cannot be said to be outside of the trial court's discretion. In particular, we note that the trial court found that defendant attempted to conceal assets from plaintiff and voluntarily reduced his hours, presumably in order to avoid alimony.<sup>8</sup>

The fact that plaintiff has assets and a form of income from a prior marriage does not render the award of spousal support inequitable. The trial court's decision regarding spousal support must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Sparks, supra*. We find that the award of spousal support was not inequitable.

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<sup>8</sup> Under certain circumstances, the voluntarily unexercised ability to earn income may be considered in determining a proper alimony award. *Moore, supra* at 655; *Healy v Healy*, 175 Mich App 187, 191-192; 437 NW2d 355 (1989).

IV

The trial court intended for plaintiff to receive the Ionia Road property subject to the mortgage and the portion of the Old Kent Bank loan attributable to the Ionia Road property, approximately \$4,082. We reverse the divorce judgment only to the extent it requires defendant to pay this debt attributed to the Ionia Road property and on remand we direct the trial court to modify its judgment to reflect that plaintiff is to pay 41.9% of the Old Kent Bank loan (which is now with Allied Mortgage). Presumably, this can be paid from the personal savings plan or the monies held in escrow from the sale of the Ionia Road property. We affirm the judgment of divorce entered by the trial court in all other respects. Defendant has abandoned any issue regarding reimbursement for payments he made on the Ionia Road property. With regard to the remainder of defendant's issues, the trial court's factual findings are not clearly erroneous and the dispositive ruling was fair and equitable in light of the facts. The trial court's determination with regard to spousal support was not inequitable.

We affirm in part, reverse in part, and remand for further proceeding consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra