

STATE OF MICHIGAN
COURT OF APPEALS

DEBRA E. MURPHY,
Plaintiff-Appellee,

UNPUBLISHED
January 19, 2006

v

RONALD J. MURPHY,
Defendant-Appellant.

No. 256050
Monroe Circuit Court
LC No. 03-028554-DM

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from the parties' judgment of divorce. Defendant challenges the trial court's award of three years of COBRA benefits to plaintiff, award of alimony to plaintiff in the amount of \$300 per week, and the zero valuation of plaintiff's car in the property distribution. We reverse and remand for further proceedings regarding the COBRA benefits and for the trial court to consider whether such COBRA payments would affect the trial court's prior ruling on alimony. We also remand on the issue of the valuation of plaintiff's car.

I

This Court's review of a trial court's findings of fact in a divorce case is limited to clear error. *Sparks v Sparks*, 440 Mich 141, 149-150; 485 NW2d 893 (1992). The burden to show clear error is on the appellant, who must demonstrate to the appellate court that, on the basis of all of the evidence, there is a clear and definite mistake. *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990). Even if there is no clear error, this Court "must decide whether the dispositive ruling was fair and equitable in light of those facts [T]he ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable." *Sparks, supra* at 151-152.

II

Defendant first argues that the trial court had no evidence on which to base its finding that plaintiff needed him to provide continued health insurance, or on how much it would cost defendant to purchase these benefits for the benefit of plaintiff. From the record presented to us, we are unable to ascertain the cost to defendant of such payments. The trial court ruled that defendant must provide full COBRA medical coverage for plaintiff for three years without mention of cost. It cannot be said that, in awarding COBRA benefits to plaintiff, the trial court

balanced the needs of each party or considered how much defendant or plaintiff could afford without any evidence or even consideration of the actual cost of doing so.

If COBRA coverage turned out to be relatively inexpensive, then it might be reasonable to conclude that its cost would not significantly impact defendant, who was otherwise ordered to pay over \$2,000 per month in alimony and child support (a total which consumes close to half of defendant's after-tax income as determined by the court). While alimony is within the trial court's discretion, it must still be based on facts and show a consideration of the appropriate factors. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003). Therefore, the trial court's award of those benefits without evidence about their actual cost was clearly erroneous. We therefore direct the trial court to ascertain the cost of the COBRA benefit and its impact on defendant.

III

Defendant next argues that the trial court's award of \$300 per week in alimony was excessive because it used an improper measure of his income when it failed to take into account his recent reduction in overtime hours. Because we have ordered the trial court to ascertain how much it will cost defendant to provide COBRA benefits for plaintiff, it is reasonable to expect that the trial court may wish to reconsider its award of alimony in this case and whether such award was excessive when considering the cost of the COBRA benefits. We note that our ruling does not require the trial court to eliminate or reduce the amount of alimony it awarded to plaintiff; rather, our ruling merely requires the trial court to reconsider the amount of alimony awarded to plaintiff in light of the cost to defendant of providing COBRA benefits to plaintiff. When reconsidering alimony we note that "the main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). "Alimony is to be based on what is just and reasonable under the circumstances of the case." *Id.* "Among the factors that should be considered 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*.

The trial court found no fault attributable to either party. It considered the long length of the parties' marriage. The court recognized that, while both parties are capable of working, the defendant was the one with the established career and work history. The court split the property between the parties about evenly. The court considered the parties' basic needs, their standard of living, and their health. And finally, the court considered defendant's income, both with and without overtime, over the previous four years and during the year of the divorce proceeding. While the trial court examined all of the relevant factors, because there was no consideration of the cost of COBRA benefits to plaintiff, the issue of alimony is left open to the trial court should it determine that a reduction or elimination of alimony is necessary to achieve its stated goal of an equal distribution.

In examining the other issues raised by defendant on his claim of excessive alimony, we find them to be without merit. Defendant's complaint that, because of his reduced overtime hours, the annual income imputed to him does not reflect his current income, was considered and rejected by the trial court. This was perfectly reasonable and well within the trial court's discretion. Given that the number of hours defendant worked varied over the years (as did his income), taking a sample of defendant's most recent completed calendar years of work and then averaging the number of hours worked is a very reasonable method to measure his income. If it turns out that defendant earns less income now or in the future, due to reduced hours of overtime, or any other reason, he is free to file for a change of alimony due to changed circumstances. See *Gates, supra* at 433-434. With regard to the permanency of the alimony, defendant may likewise request a change in alimony when he retires.

IV

Finally, defendant argues that the trial court improperly valued plaintiff's car as essentially worthless when there was clear evidence on the record indicating it had significant value. Defendant claims this makes the property distribution uneven, and asks that it be adjusted accordingly. We agree to the extent that the trial court gave the vehicle a zero valuation or, at the very least, did not adequately explain its decision in this regard.

A trial court's findings of facts regarding the valuation of marital assets will not be reversed unless clearly erroneous. *Beason, supra* at 805. The court's goal in dividing marital assets in a divorce is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). The division does not have to be mathematically equal, but if it is significantly unequal, the court must clearly explain why. *Gates, supra* at 423.

There are three factors that seem to indicate that the trial court imputed zero cash value to plaintiff's car. First, when one adds up the total value of marital property given to each party, not counting plaintiff's car, the total comes to \$72,500 for plaintiff and \$71,344.30 for defendant, which is basically an even split. Second, the trial court listed the value of plaintiff's car, a 2001 Chevrolet Monte Carlo Super Sport car, as having no value in evidence and listed its price as "\$?". And third, there was no explanation or justification given by the trial court for plaintiff to receive significantly more property than the defendant. Those facts, taken together, are consistent with an intention by the trial court to split the property relatively evenly because, while it is allowed to split property unevenly, it may do so only with a clear explanation. *Gates, supra*. No such explanation was offered here. Therefore, it is reasonable to conclude that the trial court treated plaintiff's car as if it had zero value.

The main difficulty with the trial court's findings is its statement that, for plaintiff's car, there was "no value in evidence" when there clearly was evidence on the record, i.e., defendant's testimony that the car was worth \$16,000. The trial court, as finder of fact, is free to disbelieve what it may have considered to be self-serving testimony, but it must at least acknowledge that the evidence was offered before rejecting it. It is not clear whether the trial court rejected the testimony or entirely forgot about it.

It is also unclear whether the trial court, in rejecting any value for the car, truly intended to find the car worthless, making the property division roughly equal, or whether the court

instead meant to acknowledge there was some value to the car, but that it did not alter the property division significantly, or whether the court acknowledged that the car had value that would significantly alter the distribution of property, requiring justification that, for whatever reason, was not given. Accordingly, we conclude that this case should be remanded with regard to this matter for the trial court to either reconsider its treatment of plaintiff's car and the property division or to better articulate its rationale in this regard.

We remand this case for further appropriate proceedings consistent with this opinion regarding the award of COBRA insurance benefits and its affect on the award of alimony. Additionally we remand on the issue of the valuation of plaintiff's car. We do not retain jurisdiction.

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello

/s/ Alton T. Davis