

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER P. LOMBARDO,

Plaintiff-Appellant,

v

DIANA JEAN LOMBARDO,

Defendant-Appellee.

UNPUBLISHED

July 21, 2022

No. 356822

Alpena Circuit Court

Family Division

LC No. 16-006866-DO

Before: BOONSTRA, P.J., and RIORDAN and RICK, JJ.

PER CURIAM.

In this domestic relations case, plaintiff appeals as of right from the trial court’s judgment of divorce. We affirm in part, vacate in part, and remand to the trial court for additional proceedings.

I. BACKGROUND

The parties met in 2007 and began living together in 2008. Plaintiff was an ear, nose, and throat doctor at all relevant times. Defendant worked as a phlebotomist when she met plaintiff, but left that job shortly thereafter to move with plaintiff to Alpena. The parties were married in November 2013, and plaintiff filed for divorce in November 2015. It is undisputed that the divorce was precipitated by a domestic violence incident, but the details of this incident were heavily disputed with each party alleging that the other was the aggressor.

Shortly after filing for divorce, plaintiff was ordered to make monthly spousal support payments of \$4,500, but this amount was later reduced to \$2,500 when plaintiff lost his job in 2017. In 2018, plaintiff relocated to California, where he found new employment. Defendant obtained a bachelor’s degree during the pendency of the divorce, but she had not found employment at the time of the trial. In November 2019, the trial court entered an order resolving numerous pending issues, including spousal support. Plaintiff was ordered to continue paying spousal support until November 2020, for a total of five years, but he stopped making payments in December 2019. Numerous show cause orders were issued against plaintiff during the pendency of the case for failing to cooperate with discovery and violating various pretrial orders. A bench trial was conducted in November 2020, and the judgment of divorce was entered in March 2021.

On appeal, plaintiff challenges the trial court's decision to award defendant spousal support for five years, the remaining balance of his health savings account (HSA), and attorney fees.

II. SPOUSAL SUPPORT

Plaintiff argues that the trial court erred by awarding spousal support for a five-year period following a two-year marriage. We vacate the spousal support award because the trial court failed to make adequate factual findings.

Whether to award spousal support or impute income is within the discretion of the trial court, and the trial court's decisions on these matters are reviewed for abuse of discretion. *Loutts v Loutts*, 298 Mich App 21, 25-26; 826 NW2d 152 (2012). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Id.* at 26 (quotation marks and citation omitted). The trial court's factual findings are reviewed for clear error, and "[a] finding is clearly erroneous if, after reviewing the entire record, we are left with the definite and firm conviction that a mistake was made." *Id.*

"The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished; spousal support is to be based on what is just and reasonable under the circumstances of the case." *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). Trial courts should consider the following factors when deciding the issue of spousal support:

(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 v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

"The trial court should make specific factual findings regarding the factors that are relevant to the particular case." *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010) (quotation marks and citation omitted).

The trial court did not decide the spousal support issue in its opinion and order following the bench trial. Rather, it deferred to the trial court's November 2019 opinion and order and declined to revisit the issue.¹ In the November 2019 opinion and order, the trial court stated as follows concerning spousal support:

¹ The judge who presided over the bench trial was not the same judge who entered the November 2019 opinion and order.

The parties in this matter were married less than 2 years. They have no children together. Plaintiff was previously employed by Alpena Regional Medical Center as a physician earning \$311,000 annually. His employment ended on January 20, 2017, and he has remained unemployed. Defendant is 52 years old, employed part-time with Myers Fashions Etc., and earns approximately \$9.50 per hour. On December 4, 2015, she was granted temporary monthly spousal support in the amount of \$4,500. That amount was subsequently modified to \$2,500 for the remaining months during the pendency of this divorce. Under the circumstances of the case, the Court awards Defendant \$2,500 in monthly spousal support for a term of one additional year. [Internal citations omitted.]

The trial court failed to sufficiently articulate its reasoning for ordering spousal support to facilitate appellate review. The trial court simply listed facts that corresponded to some of the relevant factors, but it did not make findings pertaining to whether the facts weighed in favor of or against spousal support, nor did it explain its basis for concluding that the facts warranted additional support. For example, the trial court appears to have considered the length of the marriage. However, while it stated that the parties were married two years, it did not explain how the length of the marriage impacted its analysis. Although we know of no authority suggesting that a trial court cannot order spousal support for a duration longer than the marriage, the court should explain if the circumstances of this case were such that an award for more than double the length of the marriage was warranted. The trial court acknowledged that there is a massive disparity in the parties' earning abilities, but it did not discuss the parties' needs, the parties' health, or the parties' prior standard of living. Moreover, the trial court engaged in no discussion of the marital estate in terms of how the assets were acquired or how they would be distributed. Finally, despite the fact that such a long-term award relative to the length of the marriage likely would be based at least in part on equity grounds, the trial court did not discuss any such grounds. The trial court thus failed to "make specific factual findings regarding the factors that are relevant to" this case. *Myland*, 290 Mich App at 695 (quotation marks and citation omitted). Therefore, we remand to that court for further proceedings to either justify or modify its award of spousal support with sufficient factual findings.

III. ATTORNEY FEES

Plaintiff argues that the trial court erred by ordering him to pay defendant's attorney fees. We disagree to the extent that the trial court decided that an award of attorney fees was appropriate. However, the trial court did err by awarding the specific amount of attorney fees without conducting a hearing to determine the services rendered and the reasonableness of the services. We therefore vacate the amount of the award and remand to the trial court for further proceedings to address those issues.

"We review a trial court's grant or denial of attorney fees for an abuse of discretion. Any findings of fact on which the trial court bases an award of attorney fees are reviewed for clear error, but questions of law are reviewed de novo." *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005) (citations omitted).

"In domestic relations cases, attorney fees are authorized by both statute and court rule." *Id.* (citations omitted). MCL 552.13(1) provides: "In every action brought, either for a divorce or

for a separation, the court may require either party . . . to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency.” Additionally, MCR 3.206(D) provides, in relevant part:

(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 or a specific proceeding, including a post-judgment proceeding.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that:

(a) the party is unable to bear the expense of the action, including the expense of engaging in discovery appropriate for the matter, and that the other party is able to pay, or

(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply, or engaged in discovery practices in violation of these rules.

“Subrule (D)(2)(a) allows payment of attorney fees based on one party’s inability to pay and the other party’s ability to do so, while Subrule (D)(2)(b) considers only a party’s behavior, without reference to the ability to pay.” *Colen v Colen*, 331 Mich App 295, 305-306; 952 NW2d 558 (2020) (quotation marks and citation omitted). “The party requesting the attorney fees has the burden of showing facts sufficient to justify the award.” *Woodington v Shokoohi*, 288 Mich App 352, 370; 792 NW2d 63 (2010). “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.” *Safdar v Aziz*, 327 Mich App 252, 268; 933 NW2d 708 (2019) (quotation marks and citation omitted).

Plaintiff’s arguments are based almost entirely on MCR 3.206(D)(2)(b); however, the trial court based its award on MCR 3.206(D)(2)(a). The trial court’s finding that defendant was unable to bear the expense of the action while plaintiff was able to pay her fees was supported by the record. The highest income that defendant had earned prior to her departure from the workforce was the approximately \$35,000 annual pay she received as a phlebotomist before the parties relocated to Alpena. She was not employed at the time the divorce was finalized. Plaintiff, however, was a medical doctor who made an annual salary of approximately \$380,000. Moreover, defendant testified that she had to borrow \$35,000 from friends and family during the pendency of the divorce and that only \$1,000 of this money remained at the time of trial. These facts supported an award of attorney fees under MCR 3.206(D)(2)(a).

However, while the trial court did not abuse its discretion by ruling that defendant was entitled to an award of attorney fees under MCR 3.206(D)(2)(a), we nonetheless vacate the specific amount of the award. Because the award of attorney fees in this case was contested, the trial court was obligated to conduct a hearing to determine the services rendered and the reasonableness of the services. See *Safdar*, 327 Mich App at 268. The trial court did not do this. Thus, the award must be vacated to that extent.

IV. HEALTH SAVINGS ACCOUNT

Originally, plaintiff argued in his brief on appeal that the trial court erred by awarding the HSA, which he acquired through his employment at a hospital in Alpena, entirely to defendant instead of dividing it equally. However, plaintiff expressly abandoned that argument at the outset of oral argument before this Court. Consequently, we need not address it. See *Henderson v Civil Serv Comm’n*, 503 Mich 978; 923 NW2d 595 (2019) (MARKMAN, J., *concurring*).

V. CONCLUSION

We affirm the trial court’s ruling that defendant was entitled to attorney fees. However, we vacate its award of spousal support, vacate the specific amount of attorney fees awarded, and remand to that court for additional proceedings concerning those awards consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Michael J. Riordan
/s/ Michelle M. Rick