

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS A COLE,

Plaintiff-Appellee,

v

LAURIE A COLE,

Defendant-Appellant.

UNPUBLISHED
September 17, 2013

No. 306107
Kalamazoo Circuit Court
LC No. 2008-007483-DO

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Defendant, Laurie A. Cole, appeals as of right the trial court's judgment of divorce. The judgment granted Laurie Cole 60 percent of the value of the marital residence. It also granted plaintiff, Thomas A. Cole, 60 percent of the value of the parties' business interests, with Laurie Cole's 40 percent to be held in an equitable trust until Thomas Cole's death or retirement. It awarded Laurie Cole spousal support and required Thomas Cole to pay 75 percent of Laurie Cole's attorney fees. We reverse the trial court's order requiring Laurie Cole's attorneys to pay her former attorneys' fees, reverse the trial court's order modifying the judgment of divorce after Laurie Cole filed her claim of appeal, and reverse the trial court's decision not to value the parties' business interests and remand for it to value those interests and reconsider its division of property in light of that finding. In all other respects, we affirm the judgment of the trial court.

I. FACTS

A. BACKGROUND

Thomas Cole and Laurie Cole married in 1982. The parties met at Thomas Cole's business, Cole Automotive Management (Cole Automotive), where Laurie Cole worked in the office. Thomas Cole had been employed in the automotive business since he graduated from high school. Laurie Cole had also graduated high school and had some college, but she did not have a college degree. According to Laurie Cole, after the parties married, she gave up her career because Thomas Cole did not want her to work.

Thomas Cole testified that he typically worked Monday through Friday from 8:00 a.m. until 7:00 p.m., on Saturday from about 9:00 a.m. until 4:00p.m., and for about four hours on Sunday. Laurie Cole testified that she primarily maintained the house, cooked, raised money for

charity, and helped to raise Thomas Cole's children from a previous marriage. The parties had no mutual children.

The parties' marriage was tumultuous. Thomas Cole testified at trial that he and Laurie Cole had talked about getting divorced for "probably 20 years." Laurie Cole testified that the parties were frequently separated and in therapy.

B. BREAKDOWN OF THE MARRIAGE

Thomas Cole testified that the parties' marriage broke down because of Laurie Cole's infidelity and persistent overspending. He testified that the parties began experiencing financial difficulty in 2005, when his income dropped dramatically because of the impact of the financial crisis on the automotive industry. Thomas Cole testified that he asked Laurie Cole to reduce her spending; Laurie Cole testified that he did not ask her to reduce her spending, and that he continued to spend excessively on luxuries like Churchill Downs suite tickets, private jet tickets, and the parties' horses.

On August 11, 2006, Thomas Cole and a private investigator entered an apartment in which Laurie Cole was living and found her in bed with another man. Laurie Cole testified that she believed that Thomas Cole had been having extramarital sexual relationships since 2005.

In July 2008, the parties consulted an attorney to prepare their divorce. Attorney Michelle Marquardt informed the parties that they had incurred about \$1.6 million in debt. Marquardt testified that she used the parties' existing financial data to arrive at this amount, and she did not independently value the businesses. At that time, the value of the parties' businesses was continuing to decrease. Thomas Cole filed a complaint for divorce on October 17, 2008.

C. THE PARTIES' SITUATION AT THE TIME OF THE DIVORCE

At the time of the divorce trial, Thomas Cole was 67 years old and had a history of high blood pressure, stroke, heart surgery, anxiety, panic attacks, and diabetes. Laurie Cole was 57 years old and had some back problems.

Thomas Cole testified that, when he filed for divorce, the parties' household was running a deficit of \$25,000 a month. He testified that he had withdrawn all of his money from his pension plan, had borrowed against his life insurance policy, and was financing the parties' lifestyle on a home equity line of credit. Thomas Cole also testified that his automobile dealership furnished him, Laurie Cole, and his granddaughter with cars.

He testified that, at the time of trial, his income included his salary from Cole Automotive of \$187,400 and \$26,868 from social security. He testified that he would not receive a salary increase or distribution until the businesses were "evened out." Thomas Cole represented that his monthly cash flow was about -\$15,000 a month. William VanderSalm, Laurie Cole's business valuator, testified that Thomas Cole's cash flow was \$12,000 a month.

VanderSalm testified that, during the pendency of the divorce, Thomas Cole lived on less than \$3,000 a month. Laurie Cole testified that she lived on about \$2,900 a month, but this amount required her to "eliminate a few things" and did not include housing expenses. Laurie

Cole testified that she decided not to seek employment during the pendency of the divorce because she was occupied with the divorce case and with gardening to improve the value of the marital residence.

D. BUSINESS INTERESTS

Thomas Cole owned a 50 percent interest in Cole Automotive, an S-Corporation. Cole Automotive is a holding company for seven companies that principally include automobile dealerships, but also include an insurance agency and a company that holds the business's real estate. Thomas Cole testified that Cole Automotive's shareholder agreement restricts him from transferring ownership. Laurie Cole requested an interest in Thomas Cole's company. She testified that her preference was for Thomas Cole to "stay on board and have half the stock, because I know he and [his partner] are not investing money to lose it."

Thomas Cole testified that his businesses were under water by May 2001, and that the business's losses totaled over \$1.6 million by 2008. James Lass, Cole Automotive's Certified Financial Officer, testified that Cole Automotive was operating at a loss at the time of trial and that it had a negative cash flow.

Additionally, Cole Automotive had been loaning Thomas Cole money. Thomas Cole testified that the loans included amounts that Cole Automotive paid on Thomas Cole's loans on his behalf and amounts that Thomas Cole had been unable to pay on "capital call-ins" of the partnership to address the corporation's financial difficulties. Lass testified that Thomas Cole owes these amounts to various partnership entities—not to his partner personally—and that the amounts are reflected on the business accounts as accounts payable to Thomas Cole's partner. Thomas Cole testified that he owed around \$2.9 million dollars.

Heidi Bolger, a CPA with experience in valuing closely held businesses, testified that the value of Thomas Cole's share in his partnership, when accounting for his debts to the partnership, was -\$2,885,961. Nicholas Adamy, a professional in business valuation, testified that he valued Thomas Cole's interest in Cole Automotive as \$525,000, before taxes. Adamy testified that he valued Thomas Cole's interest as though it were a controlling interest. He testified that Cole Automotive owed \$2.9 million to Thomas Cole's partner and that he did not owe those amounts personally. Additionally, Adamy believed that Bolger had double-counted some of the companies' debts.

Thomas Cole testified that he owned a 5 percent interest in Gull Road Equity Partners. He purchased his shares with a loan on which he owed \$263,800 at the time of trial; Cole Automotive was loaning him the money to pay that loan. The value of his shares in the Gull Road Partnership was worth \$44,491, but because it was contained in an "ending capital account," he could not receive the money until the partnership sold. He received a partnership distribution of \$7,700 in 2008, but forwarded it to Cole Automotive to reduce his indebtedness.

E. REAL PROPERTY

The parties owned two real properties—the marital home and a condominium in Florida. At the time of trial, concerning the marital home, Thomas Cole was paying \$3,500 on the mortgage, utilities of \$915 a month, maintenance expenses of \$833 a month, and property taxes

of \$8,500 a year. Concerning the condominium, Thomas Cole was paying a mortgage of \$2,500 a month, utilities of \$125 a month, maintenance of \$208 a month, an association fee of \$10,600 a year, and property taxes of \$5,627 a year.

During the pendency of the divorce, Thomas Cole continued to withdraw from the home equity line of credit to pay his expenses, to forward amounts to Laurie Cole, and to pay for Laurie Cole's temporary spousal support. The parties stipulated that Laurie Cole was aware that Thomas Cole was drawing from the home equity line.

F. ATTORNEY FEES

Laurie Cole testified that she did not have the ability to pay her attorneys. Similarly, Thomas Cole testified that he did not have the ability to pay *his* attorneys. He testified that he had already paid Laurie Cole's attorneys more than he had paid his own attorneys.

Laurie Cole also testified that she had borrowed \$45,000 from her parents to pay Adamy. She borrowed \$25,000 from her parents on December 31, 2009, and \$20,000 on March 2, 2010. She obtained a loan agreement from her step-mother to protect her parents' interests on March 25, 2010. She testified that she obtained the loan agreement because her attorneys told her to do so in order to protect her parents' interests.

G. THE TRIAL COURT'S OPINION AND JUDGMENT

1. DISTRIBUTION OF MARITAL PROPERTY

The trial court found that the parties were married for 26 years, and that both parties were stubborn, difficult, and contributed to the breakdown of the marriage. It noted that neither party was solely at fault.

The trial court found that Thomas Cole put 100 percent of his effort into the business, and that at that time, Laurie Cole contributed to the marital home, upkeep, and Thomas Cole's wellbeing. However, it found that Laurie Cole did not raise a family, contribute to the success of the business, or contribute to acquiring marital assets and paying marital debts.

The trial court ordered that the marital home and Florida condominium be sold and that Thomas Cole be reimbursed for his principal payments from September 14, 2009, when he stopped living in the marital home. It ordered that the remaining equity in the home be split between the parties with 60 percent to Laurie Cole and 40 percent to Thomas Cole. It found that Laurie Cole deserved a larger share of the marital home because she was not employed, was not receiving "bountiful" spousal support, and because it was awarding Thomas Cole a larger share of the parties' business interests.

Concerning the value of the parties' business interests, the trial court found that it would not be equitable to value the business because of the state of the economy. It found that it could not order Thomas Cole to give Laurie Cole a share of the business. It awarded Laurie Cole 40 percent of the business interests, which it ordered Thomas Cole to hold in an equitable trust that would be distributed to Laurie Cole at the time of the divestment of his ownership or the time of his death.

2. SPOUSAL SUPPORT

The trial court found that Thomas Cole was in his late 60s and Laurie Cole was in her late 50s. It found that Thomas Cole's health was worse than Laurie Cole's health. It found that Thomas Cole was working diligently. It chastised Laurie Cole for failing to attempt to find a job during the pendency of the divorce. It found that both parties had previously enjoyed a high standard of living that would no longer be attainable for either party because of "economic realities." It found that Laurie Cole was slightly more at fault for the breakdown of the marriage, but that Thomas Cole was also unjustifiably vindictive. It found that both parties had the capacity to behave maliciously toward the other.

The trial court found that Thomas Cole had the ability to pay spousal support and that Laurie Cole had a need for it because of her limited assets and lack of work experience. It concluded that reasonable spousal support was justified, and ordered Thomas Cole to pay Laurie Cole \$4,000 a month in spousal support until the end of 2011, and \$5,000 a month thereafter until Laurie Cole turned 65 or received her share of the business interests.

3. ATTORNEY FEES

The trial court found that both parties had accumulated over \$200,000 in respective attorneys fees and that these fees were fair and reasonable. It found that there was a clear disparity of income between the parties, but that Laurie Cole was unreasonable for failing to pay any of her attorneys from her spousal support. It found that Laurie Cole had had the ability to pay at least some of her own attorney fees, and that she had been able to pay her attorneys at least \$300 a month. It ordered Thomas Cole to pay 75 percent of Laurie Cole's attorney fees.

H. POSTJUDGMENT PROCEEDINGS

Laurie Cole filed a motion for clarification concerning Thomas Cole's responsibilities toward the business interests and its award of attorney fees. The trial court found that most of Laurie Cole's motion for clarification presented issues that it had previously ruled on, but it clarified that Thomas Cole's sole responsibilities concerning the business interests were to not diminish the value of the business interests and to honor Laurie Cole's rights to request information concerning the business interests on his retirement or death. It also clarified that Thomas Cole was to pay Laurie Cole's attorney fees "dollar for dollar" in the amount that he paid his own attorneys' fees.

On September 7, 2011, Thomas Cole moved the trial court for reconsideration. On September 12, 2011, Laurie Cole filed her notice of a claim of appeal with the trial court. On November 22, 2011, the trial court responded to the motion for reconsideration, lowering its award of attorney fees from 75 percent to 60 percent because it had failed to consider some of Laurie Cole's behavior that had "added to the attorney fees in this case." Subsequently, the trial court requested that the parties brief the issue of whether it had authority to issue its November 22, 2011 final response. The parties agreed that the trial court did not have authority to modify its order because Laurie Cole had appealed it. No resolution of this issue is contained in the record.

II. DISTRIBUTION OF MARITAL PROPERTY

A. STANDARD OF REVIEW

When reviewing a judgment of divorce, this Court reviews the trial court's factual findings for clear error, and then determines "whether the dispositive ruling was fair and equitable in light of those facts."¹ The trial court's factual findings are clearly erroneous if, after considering all of the evidence, we are definitely and firmly convinced that the trial court made a mistake.² We should affirm the trial court's dispositive ruling unless we are definitely and firmly convinced that the division was inequitable.³

B. VALUATION OF BUSINESS INTERESTS

Laurie Cole contends that the trial court erred by failing to value the parties' business interests. We agree that the trial court erred by failing to value these interests.

The trial court must make specific findings of fact on the values of disputed marital properties.⁴ The trial court's findings of fact are sufficiently specific if the parties can "determine the approximate values of their individual awards by consulting the verdict along with the valuations to which they stipulated."⁵

In *Olson v Olson*, the parties presented widely varying testimony concerning the value of a husband's ownership interest in a corporation's stock.⁶ The trial court did not set a value on the ownership interest in the stock, found that it was unable to make a decision on the value on a sound basis, and instead awarded the wife a one-half interest in the husband's stock.⁷

This Court held that the trial court erred by not assigning a value to the business interests.⁸ We reasoned that the trial court must make specific findings regarding the value of disputed property in a divorce if the value of the property is in dispute.⁹

¹ *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

² *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

³ *Sparks*, 440 Mich at 152.

⁴ *Woodington v Shokoohi*, 288 Mich App 352, 364; 792 NW2d 63 (2010); *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003).

⁵ *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993).

⁶ *Olson*, 256 Mich App at 622-623.

⁷ *Id.* at 623-624.

⁸ *Id.* at 629.

⁹ *Id.* at 627.

We conclude that this case is analogous in many ways to our decision in *Olson*. Here, the parties hotly contested the value of their business interests. The parties' experts gave widely divergent valuations of the parties' business interests—Bolger testified that the value of the parties' business interests was -\$2,885,961. Adamy testified that he valued the parties' business interests as \$525,000, before taxes.

The trial court found that “it would not be equitable for this Court to place a value on the business assets at his time given the great rise and fall of the economy and also the car sales business[.]” This is substantially analogous to determining that it is unable to make a decision on the value of the stock on a sound basis. But it is clear in this case that the parties' strongly contested the value of the business interests—most of the trial testimony was devoted to expert valuations of the business interests. Further, at the hearing on the motion for reconsideration, Laurie Cole's counsel argued that the trial court had failed to value the business interests. The trial court opined that it might have to go back and reconsider that point. However, it ultimately failed to assign a value to the parties' business interests. Because the trial court did not assign a value to the parties' business interests, they cannot determine the values of their specific awards. We conclude that we must remand for the trial court to value the parties' business interests.

We are mindful that this may be a difficult task. Even when considering the trial court's finding that “there may have been an error that occurred in [Bolger's] valuation of the business that resulted in certain debts being counted twice,” the parties' proposed valuations varied by almost \$3 million dollars. However, we note that when expert witnesses provide widely divergent valuations of marital property, “the trial court has great latitude in arriving at a final figure.”¹⁰ Generally the trial court does not clearly err when its “valuation of a marital asset is within the range established by the proofs[.]”¹¹

Further, we decline the parties' requests that this Court assign a value to their business interests or determine the date of valuation. The trial court has considerable discretion to determine a valuation date of the marital assets.¹² The trial court may value a marital asset as of “the date of trial, the date of judgment, or a more appropriate date.”¹³ If the trial court does not choose the date of the divorce judgment as the date to value the assets, it should give a plausible reason for choosing a different date.¹⁴ Because the trial court erroneously determined that it did not have to value the parties' business interests, it did not assign a valuation date. We have no reason to believe that the trial court will abuse its discretion on remand.

¹⁰ *Pelton v Pelton*, 167 Mich App 22, 26; 421 NW2d 560 (1988).

¹¹ *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994)).

¹² *Thompson v Thompson*, 189 Mich App 197, 199-200; 472 NW2d 51 (1991); *Woodington*, 288 Mich App at 365.

¹³ *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997).

¹⁴ *Thompson*, 189 Mich App at 199.

C. AWARD OF BUSINESS INTERESTS IN AN EQUITABLE TRUST

Laurie Cole also contends that the trial court erred by ordering that Thomas Cole hold her property in an equitable trust because its order gave her “no control over when her share will be distributed” and because there is no reason to believe that Thomas Cole will act in Laurie Cole’s best interests when managing the trust. We disagree.

The trial court’s primary objective in a divorce proceeding is to “arrive at a property settlement that is fair and equitable in light of *all* the circumstances.”¹⁵ Here, there was substantial testimony at trial that the value of the parties’ business interests was actually more than -\$2 million because of loans that the parties had been taking from the business that would need to be repaid before the business interests could be sold. Further, the partnership distributions are being used to repay the parties’ substantial debts on the business interests: the parties are not realizing any income from the business interests because the income from the business interests is being used to pay off existing debts to Cole Automotive. Lass testified that the parties owed Cole Automotive about \$2.9 million, and Thomas Cole testified that he did not expect to receive partnership distributions at any time in the near future.

We reject Laurie Cole’s argument that Thomas Cole may deliberately mismanage the business, contrary to her interests. Laurie Cole herself testified that her preference was for Thomas Cole to “stay on board . . . because I know he and [his partner] are not investing money to lose it.” Her testimony at trial undercuts her assertion on appeal that Thomas Cole may deliberately mismanage the business.

The trial court might have decided to reduce the value of the business interests to present value and require one of the Coles to pay half of his or her share of the value of the business—whether positive or negative—to the other.¹⁶ But because of the unique economic circumstances surrounding the automobile industry at the time that the parties filed for divorce, requiring the trial court to order one party to pay the other for the value of the business interests may result in either an inequitably low payment from Thomas Cole to Laurie Cole for the present value of a recovering business interests, or it may result in an inequitably high payment from Laurie Cole to Thomas Cole to cover her half of the marital debts on the business interests.

Given these circumstances, we conclude that the trial court’s decision to treat the business interests more like a marital residence—ordering a future sale without determining its value and then splitting whatever equity exists at that time between the parties¹⁷—may have been the most equitable decision. However, on remand, the trial court *must* value the parties’ business interests. It *may* then reconsider its distribution of the marital business interests and require one party to pay the other party for the value of their business interests—whether that value is positive or negative.

¹⁵ *Boonstra v Boonstra*, 209 Mich App 558, 563; 531 NW2d 777 (1995).

¹⁶ See *Olson*, 256 Mich App at 629.

¹⁷ See *Id.* at 627 n 5.

D. UNEQUAL DIVISION OF MARITAL PROPERTY

Laurie Cole contends that the trial court erred by unequally distributing the marital property. We disagree.

The trial court must determine the property rights of the parties in a judgment of divorce.¹⁸ The trial court may award the parties real property, personal property, or “the value thereof, to be paid by either party in money.”¹⁹ When dividing the parties’ property in a divorce case, the trial court should consider the following factors, known as the *Sparks* factors, if they are relevant to the circumstances of the case:

- (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity.^[20]

The trial court’s division of marital property need not be mathematically equal, but it must be equitable.²¹ The trial court should clearly explain any significant departure from a congruent division of the marital estate.²²

Here, when distributing the marital estate, the trial court made findings on each of the *Sparks* factors. It found that several of these factors favored Thomas Cole slightly, including the contributions of the parties to the marital estate, the age and health of each party, and the past relations and conduct of the parties. Further, the facts of this case indicate that the parties had two significant assets—the business interests and the marital real estate. To the extent that the trial court awarded Thomas Cole a larger interest in the business interests, it also awarded Laurie Cole a larger interest in the parties’ real estate. Though the parties’ real estate was arguably a more valuable asset than the parties’ business, for the reasons explained previously, this Court cannot determine for certain whether the award resulted in an uneven distribution of the marital property. Finally, the trial court clearly explained that it departed from congruence concerning the business, stating that it gave Thomas Cole a greater share of the business interests because of the parties’ unequal contributions to the marital estate and because of the extensive debts attendant to the business.

Under the facts of this case, we are not convinced that the trial court’s decision was inequitable when it distributed the parties’ marital property in a way that favored Thomas Cole on the business and Laurie Cole on the parties’ real estate. However, because for the

¹⁸ MCR 3.211(B)(3); *Olson*, 256 Mich App at 627.

¹⁹ MCL 552.19.

²⁰ *Sparks*, 440 Mich at 159-160.

²¹ *Id.* at 158.

²² *Byington*, 224 Mich App at 114-115.

reasons below the trial court failed to value the parties' business interests, it may reconsider the equity of distribution of the marital estate on remand in light of that value.

E. MORTGAGE PRINCIPAL CREDIT

Laurie Cole contends that the trial court erred by crediting Thomas Cole for one-half of the amount by which he reduced the principal on the marital home during the pendency of the divorce. We conclude that the credit did not make the resulting property division inequitable.

When dividing marital property, the trial court may consider whether marital assets were accumulated after the parties manifested their intent to lead separate lives.²³ Here, the trial court ordered that it would reimburse Thomas Cole for one-half of the principal payments on the parties' real estate from the date of September 14, 2009, to the date of the judgment of divorce. Both of the parties were living in the marital home until they engaged in a domestic altercation. After the altercation, Thomas Cole moved out of the marital home.

To the extent that Thomas Cole's continued mortgage payments reduced the principal on the house and increased its equity, those payments took place after the parties were leading separate lives and after Thomas Cole no longer had the benefit of the marital home. Reimbursing Thomas Cole for one-half of the amount by which he reduced the mortgage principal effectively reimbursed him for Laurie Cole's failure to contribute to the mortgage during that time. We conclude that the trial court's decision to reimburse Thomas Cole under these circumstances did not result in an inequitable division of marital property.

Finally, though Laurie Cole contends that Thomas Cole withdrew equity from the marital home by incurring debt on the home equity line of credit, the trial court may have considered the issue of the balance on the home equity line entirely separate from the issue of the mortgage credit. The balance increased from \$717,679.81 when Thomas Cole filed for divorce in 2008 to \$934,892 by 2010. Thomas Cole testified that during this time period, he used the home equity line to pay for his own living expenses and to forward Laurie Cole \$130,000 dollars, uses which were consistent with the equity line's uses before the parties filed for divorce. It is clear from the record that both parties were aware of Thomas Cole's withdrawals from the home equity line and benefitted from these withdrawals. We conclude that the trial court did not err by failing to attribute the decrease in home equity solely to Thomas Cole.

III. SPOUSAL SUPPORT

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's findings of fact concerning spousal support.²⁴ If the trial court's findings of fact are not clearly erroneous, this Court must decide

²³ *Woodington*, 288 Mich App at 364.

²⁴ *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003).

whether the dispositional ruling was fair and equitable.²⁵ This Court reviews for an abuse of discretion the trial court's decision to award spousal support, and we must affirm the trial court's decision unless it was inequitable.²⁶

B. LEGAL STANDARDS

The objective of spousal support is to balance the incomes and needs of the parties in a way that is just and reasonable under the circumstances of the case.²⁷ To make this determination, the trial court should consider a wide variety of factors, including:

(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 spousal support; (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.^[28]

C. APPLYING THE STANDARDS

First, Laurie Cole contends that the trial court inappropriately assigned too much weight to the factor concerning fault. We disagree.

The trial court should take care not to give only one factual finding disproportionate weight.²⁹ "Marital misconduct is only one factor among many and should not be dispositive."³⁰

Here, the trial court determined that Laurie Cole was slightly more at fault for the breakdown of the marriage than Thomas Cole was. But this is not a case where the fault factor disproportionately supported only one party. The trial court also found that Thomas Cole was at fault for the breakdown of the parties' marriage, and that he exhibited unjustified vindictiveness and had the capacity to behave maliciously.

Further, the trial court considered several additional factors when awarding spousal support. The trial court also indicated that "fault is not a huge factor with this court." From a

²⁵ *Id.* at 433.

²⁶ *Id.* at 432-433.

²⁷ *Berger v Berger*, 277 Mich App 700, 727; 747 NW2d 336 (2008).

²⁸ *Id.* at 726-727.

²⁹ See *Sparks*, 440 Mich at 163; *McDougal v McDougal*, 451 Mich 80, 88; 545 NW2d 357 (1996).

³⁰ *Sparks*, 440 Mich at 163.

reading of the trial court's opinion, it is clear that it put much more weight on the parties' ages, abilities to work, and contributions to the marital estate. Therefore, we are not convinced that trial court assigned the fault factor disproportionate weight.

Second, Laurie Cole contends that the trial court's award of \$5,000 a month in spousal support will require her to invade her marital assets to pay for her living expenses. She cites two cases for this proposition, neither of which supports her assertion that one party should not be required to invade his or her property award to *support him- or herself*. Both of the cases on which Laurie Cole relies, *Hanaway v Hanaway* and *Gates v Gates*, concern whether a party should be required to invade assets to pay *attorney fees* when he or she is relying on those assets to live.³¹ A party abandons his or her assertion by failing to provide any authority to support it.³² Because Laurie Cole's authority does not support her assertion, we conclude that she has abandoned it.

Third, Laurie Cole contends that the trial court's finding that Thomas Cole was taking on the majority of the marital debt was clearly erroneous because, after the sale of the parties' residences, Thomas Cole had no debt. But we conclude that the trial court's finding that Thomas Cole was taking on the vast majority of the marital debt was not clearly erroneous. Thomas Cole and Lass testified that he owed Cole Automotive about \$2.9 million in debts that were acquired during the marriage. The trial court awarded Thomas Cole the majority of the business interests that were related to that debt. We are not definitely and firmly convinced that the trial court erred when it found that Thomas Cole was taking on the majority of the marital debt.

Fourth, Laurie Cole contends that the trial court clearly erred in its findings concerning the prior and present situations of the parties. We conclude that the trial court adequately considered the parties' situations.

Here, the trial court made findings concerning the prior standard of living of the parties—"a very high standard of life"—but it also found that, because of economic realities, neither party would be able to maintain as high of a standard of living. Thomas Cole testified that both parties were living beyond their means before he filed for divorce. He testified that, after the economic downturn, he had withdrawn all of the funds from the parties' retirement account to pay for living expenses. He testified that he was withdrawing money from the home equity line of credit to maintain their standard of living. We conclude that the trial court's findings were not clearly erroneous.

Fifth, Laurie Cole contends that the trial court erred by failing to make a specific finding regarding Thomas Cole's income. We disagree.

³¹ *Hanaway v Hanaway*, 208 Mich App 278, 299; 527 NW2d 792 (1995); *Gates*, 256 Mich App at 438.

³² *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

The trial court *did* make findings concerning the relative incomes of the parties—it found that Thomas Cole had a greater income and earning potential than Laurie Cole did, and that he had an ability to pay spousal support. However, it also found that Thomas Cole was not able to pay generous amounts of spousal support because of the downturn in the economy. Extensive testimony at trial supported this finding.

Additionally, the parties' opinions concerning Thomas Cole's monthly cash flow varied widely. Here, Thomas Cole represented that his monthly cash flow was about -\$15,000 a month, but VanderSalm testified that Thomas Cole's cash flow was \$12,000 a month. The trial court awarded Laurie Cole \$4,000 a month in spousal support until the end of 2011, and \$5,000 a month thereafter. The trial court's finding that \$5,000 a month in spousal support was justified is consistent with Laurie Cole's expert's opinion concerning Thomas Cole's monthly cash flow of \$12,000.

To the extent that Laurie Cole may be arguing that the trial court was required to make a *specific* factual finding, she provides no authority to support her position. A party abandons its assertions when it fails to provide any authority to support them.³³ We conclude that Laurie Cole has abandoned her argument by failing to provide any authority to support it.

Finally, Laurie Cole contends that the trial court erred by requiring spousal support to terminate on Thomas Cole's death because the trial court can, in its discretion, allow a party to collect spousal support from a decedent's estate. Periodic, permanent spousal support does not necessarily terminate on the death of the payor.³⁴ However, we are not persuaded by Laurie Cole's argument that the trial court's decision in this case was inequitable. While the trial court *could* continue her spousal support after Thomas Cole's death, no authority supports a position that the trial court *must* do so. Further, if Laurie Cole does continue to need spousal support after Thomas Cole's death, nothing prevents her from moving the trial court to modify its current spousal support order.³⁵ We reject Laurie Cole's argument that the trial court's order terminating spousal support on Thomas Cole's death necessarily leads to an inequitable result.

We conclude that we must affirm the trial court's award of spousal support because its factual findings were not clearly erroneous and its ultimate award was not inequitable under the circumstances of this case.

³³ *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

³⁴ *Flager v Flager*, 190 Mich App 35, 36-37; 475 NW2d 411 (1991).

³⁵ See *Luckow Estate v Luckow*, 291 Mich App 417, 425; 805 NW2d 453 (2011).

IV. ATTORNEY FEES

A. STANDARD OF REVIEW

This Court reviews the findings of fact on which the trial court based its award of attorney fees for clear error.³⁶ This Court reviews the trial court's decision regarding an award of attorney fees for an abuse of discretion.³⁷ The trial court abuses its discretion when its decision regarding attorney fees results in an outcome that falls outside the principled range of outcomes.³⁸

B. DEBT TO LAURIE COLE'S PARENTS

Laurie Cole contends that the trial court clearly erred by failing to include a \$45,000 debt to her parents when she borrowed the money to obtain an expert to assist in her divorce. She argues that the record clearly established that she borrowed this money from her parents.

We conclude that the trial court's implicit finding that the \$45,000 was a gift from Laurie Cole's parents was not clearly erroneous. Here, Laurie Cole testified that she borrowed \$25,000 from her parents on December 31, 2009, and borrowed a further \$20,000 on March 2, 2010. However, Laurie Cole's parents did not sign the loan agreement providing that she would have to pay them back until March 25, 2010. The discrepancy between the times that she borrowed the money and the time that she signed the loan agreement would allow a logical person to conclude that these amounts were actually gifts, not loans. Therefore, we are not definitely and firmly convinced that the trial court made a mistake when it excluded the money that Laurie Cole owed her parents from its calculation of fees and costs.

C. AMOUNT OF FEES

Laurie Cole contends that the trial court erred because Thomas Cole had the ability to pay all her attorney fees. We conclude that the trial court did not abuse its discretion by requiring Thomas Cole to pay only 75 percent of Laurie Cole's attorney fees.

The party seeking attorney fees has the burden to establish both financial need and the ability of the other party to pay.³⁹ When awarding attorney fees, the trial court should consider "the extent to which its award of spousal support leaves the parties with assets and income comparable to one another."⁴⁰

³⁶ *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005).

³⁷ *Id.*

³⁸ *Ewald v Ewald*, 292 Mich App 706, 725; 810 NW2d 396 (2011).

³⁹ MCR 3.206(C)(2)(a); *Ewald*, 292 Mich App at 724.

⁴⁰ See *Gates*, 256 Mich App at 439.

Here, the trial court found that the parties had a disparity of income. However, it also found that Laurie Cole had the ability to pay her attorneys at least \$300 a month because of her award of spousal support and the property distribution. It therefore ordered Thomas Cole to pay 75 percent of Laurie Cole's attorney fees.

We conclude that the trial court's findings were not clearly erroneous. Here, the trial court awarded Laurie Cole \$5,000 a month in spousal support. Laurie Cole testified that, during the pendency of the divorce action, she had been living on about \$2,900 a month but the amount did not include housing expenses. Even considering housing expenses, the trial court's finding that Laurie Cole would be able to afford to pay her attorneys \$300 a month from her spousal support award of \$5,000 a month was not clearly erroneous.

Further, though Laurie Cole contends on appeal that Thomas Cole had the ability to pay all her attorney fees, the party requesting attorney fees has the burden to allege sufficient facts to show that she cannot bear the expense of the action.⁴¹ Because Laurie Cole simply did not sustain her burden to show that she could not afford to pay *any* of her attorney fees, the trial court's findings were not clearly erroneous.

Laurie Cole additionally contends that the trial court should not have required her to invade her spousal support to pay for her attorney fees. A party should not be required to invade assets to pay attorney fees when he or she is relying on those assets to live.⁴² However, because the trial court's finding that Laurie Cole could afford to pay \$300 a month on her attorney fees was not clearly erroneous, we conclude that this is not a case in which the trial court's order requires her to invade the assets which she is relying on for living expenses.

We conclude that the trial court's decision that Laurie Cole could afford to pay some of her attorney fees was a reasonable outcome. Therefore, the trial court did not abuse its discretion by requiring Thomas Cole to pay 75 percent of Laurie Cole's attorney fees.

D. METHOD OF PAYMENT OF ATTORNEY FEES

Laurie Cole contends that the trial court abused its discretion by requiring Thomas Cole to pay her attorneys "dollar for dollar" at the rate that he pays his own. We reiterate that a party abandons his or her assertions when it fails to support them.⁴³

Other than a blanket citation concerning when the trial court may award attorney fees, Laurie Cole has provided no specific authority concerning whether a trial court abuses its discretion by tying the payment of one party's fees to payment of the other party's fees. She does not even provide any analogous or persuasive authority from other areas of law. Parties abandon issues on appeal if they "merely announce their position and leave it to this Court to

⁴¹ MCR 3.206(C)(2); *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999).

⁴² *Hanaway*, 208 Mich App at 299; *Gates*, 256 Mich App at 438.

⁴³ *Caldwell*, 240 Mich App at 132.

discover and rationalize a basis for their claims.”⁴⁴ We conclude that Laurie Cole has abandoned this argument.

Laurie Cole also contends that the trial court exceeded its jurisdiction by ordering her attorneys to pay her previous attorneys’ outstanding fees. We agree.

“[T]he jurisdiction of a divorce court is strictly statutory and is limited to determining ‘the rights and obligations between the husband and wife, to the exclusion of third parties’”⁴⁵ A divorce court cannot exceed its limited statutory authority.⁴⁶ Here, the trial court’s order purports to establish the rights of third parties to the divorce action—Laurie Cole’s current attorneys and her former attorneys, respectively—against each other. However, the court’s jurisdiction is generally limited to the husband and wife alone.⁴⁷ Therefore, by purporting to establish the rights of these third parties against each other, the trial court has exceeded its jurisdiction. We conclude that we must reverse the trial court’s decision requiring Laurie Cole’s attorneys to pay her former attorneys’ attorney fees.

E. AMENDMENT OF ITS FEE DECISION

Laurie Cole contends that the trial court erred by modifying its judgment of divorce after she filed her claim of appeal. We agree.

A trial court may not amend a judgment or order appealed from after a claim of appeal has been filed, absent exceptions that do not apply in this case.⁴⁸ Below, both parties agreed that the trial court did not have authority to modify its judgment. However, no resolution of the issue is contained in the lower court record. We therefore reverse the trial court’s order amending its judgment of divorce after Laurie Cole filed her claim of appeal without prejudice.⁴⁹

⁴⁴ *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

⁴⁵ *Estes v Titus*, 481 Mich 573, 582-583; 751 NW2d 493 (2008), quoting *Yedinak v Yedinak*, 383 Mich 409, 413; 175 NW2d 706 (1970).

⁴⁶ *Yedinak*, 383 Mich at 413.

⁴⁷ *Estes*, 481 Mich at 582-583; *Yedinak*, 383 Mich at 414.

⁴⁸ MCR 7.208(A).

⁴⁹ See *Wilson v Gen Motors Corp*, 183 Mich App 21, 41; 454 NW2d 405 (1990); also see *Co-Jo, Inc v Strand*, 226 Mich App 108, 119; 572 NW2d 251 (1997).

V. JUDICIAL BIAS

A. ISSUE PRESERVATION AND STANDARD OF REVIEW

To preserve an issue of judicial bias, a party must raise the claim before the trial court.⁵⁰ However, this Court may address an unpreserved claim if failure to consider the issue will result in manifest injustice.⁵¹

B. LEGAL STANDARDS

A party may move for disqualification of a judge if the judge is biased or prejudiced for or against a party.⁵² This Court will remand a case to a different trial judge if “the appearance of justice will be better served if another judge presides over the case.”⁵³ This Court will remand a case for consideration by a different judge “if the original judge would have difficulty putting aside previous views or findings, if reassignment is advisable to preserve the appearance of justice, and if reassignment will not entail excessive waste or duplication.”⁵⁴

This Court presumes that trial judges are not biased and a party asserting judicial bias “has the heavy burden of overcoming the presumption.”⁵⁵ Judicial rulings “almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays ‘a deep-seated favoritism or antagonism that would make fair judgment impossible’[.]”⁵⁶

C. APPLYING THE STANDARDS

Laurie Cole asks this Court to remand the case to a different judge because the trial court’s opinion contains value judgments and biases. We disagree.

Here, Laurie Cole’s assertion that the trial court is biased against stay-at-home spouses is unsupported by the record. The trial court indicated that it assumed that if one of the parties stayed home, it would assume that the parties collectively benefitted by one party staying home. The trial court subsequently found that Laurie Cole contributed to the marital home and to the parties’ wellbeing, but did not contribute as much to the *financial* success of the parties. Because

⁵⁰ *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011); *Illes v Jones Transfer Co (On Remand)*, 213 Mich App 44, 56 n 2; 539 NW2d 382 (1995). MCR 2.003(D).

⁵¹ *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

⁵² MCR 2.003(B)(1)(a).

⁵³ *Bayati v Bayati*, 264 Mich App 595, 602; 691 NW2d 812 (2004).

⁵⁴ *Id.*

⁵⁵ *Mitchell v Mitchell*, 296 Mich App 513, 523; 823 NW2d 153 (2012).

⁵⁶ *Cain v Dep’t of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996), quoting *Liteky v United States*, 510 US 540, 555; 114 S Ct 1147; 127 L Ed 2d 474 (1994).

one of the *Sparks* factors is the “contributions of the parties to the joint estate,” the trial court’s finding concerning the parties’ disparate contributions to the marital estate was appropriate. Judicial rulings almost never constitute a ground for alleging bias.⁵⁷

Further, the trial court’s opinion does not display favoritism or antagonism toward Laurie Cole. Although it contains comments critical of Laurie Cole, it also contains comments favorable to her and comments critical of Thomas Cole. For instance, the trial court found that both parties misrepresented themselves and each other, and it found that both parties were stubborn, difficult, and capable of behaving maliciously.

Reading the trial court’s findings and conclusions as whole, we are not convinced that Laurie Cole has overcome her heavy burden to prove that the trial court was prejudiced against her. We therefore reject her request to assign this case to a different judge on remand.

VI. CONCLUSION

1. **Valuation of Business Interests.** We conclude that the trial court erred when it failed to value the parties’ business interests. The trial court’s property division does not otherwise appear inequitable but, because this error may affect the trial court’s property division, it may reconsider its division of the marital property on remand.
2. **Spousal Support.** We conclude that the trial court’s findings of fact concerning spousal support were not clearly erroneous and that its award was just and equitable under the circumstances. We thus affirm the trial court’s spousal support award.
3. **Attorney Fees.** We conclude that the trial court’s findings concerning attorney fees were not clearly erroneous and that it did not abuse its discretion by requiring Thomas Cole to pay 75 percent of Laurie Cole’s attorney fees. However, we reverse the order of the trial court requiring Laurie Cole’s attorneys to pay her former attorneys’ fees, and we reverse without prejudice the trial court’s order modifying its attorney fee award after Laurie Cole filed her claim of appeal.

In all other respects, we affirm the judgment of the trial court. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck

⁵⁷ *Gates*, 256 Mich App at 440.