

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CRAIG KERRY MAYNARD,

Plaintiff-Appellant,

v

MARCY LEE MAYNARD,

Defendant-Appellee.

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UNPUBLISHED

January 29, 2025

2:19 PM

No. 369116

Gladwin Circuit Court

Family Division

LC No. 22-011399-DO

Before: N. P. HOOD, P.J., and REDFORD and MALDONADO, JJ.

PER CURIAM.

In this divorce action, plaintiff, Craig Kerry Maynard (Craig), appeals by right the property division and award of spousal support in favor of defendant, Marcy Lee Maynard (Marcy), as set forth in the trial court's judgment of divorce. On appeal, Craig argues that the trial court abused its discretion by awarding Marcy spousal support based in part on clearly erroneous factual findings. He also argues that the trial court clearly erred by classifying the parties' home as marital property and abused its discretion by awarding it to Marcy. For the following reasons, we affirm.

I. BACKGROUND

The parties married in 2006. At the time of the trial, Craig was 64 years old, and Marcy was 60 years old. There were no children born of the parties' marriage, but Marcy had an adult child from a previous relationship.

When the parties' relationship began, Marcy moved into the home that Craig had purchased with his previous wife for approximately \$60,000. The parties continued living in the home throughout their marriage and made various improvements to the property. Although Craig testified that he undertook home-improvement projects on his own and funded them entirely with his own money, Marcy testified that she helped Craig with his projects and paid for her own projects to improve the interior and exterior of the home during the parties' marriage.

Marcy's adult daughter lived with the parties for a period of time until the parties purchased a nearby home for her. Marcy's adult daughter and grandchildren lived four houses away from the parties' home, and Marcy helped care for her grandchildren on nearly a daily basis. Marcy

testified that Craig frequently fought with her about how much time she spent with her family, and she testified that Craig's temper and conduct led to the breakdown of the parties' marriage.

During the parties' marriage and at the time of trial, Marcy worked three part-time jobs, two of which provided inconsistent income. Marcy estimated that her monthly income was approximately \$1,900, and she estimated that her monthly expenses were approximately \$1,800, not counting rent or a mortgage. Marcy testified that she had tried to find better-paying employment, but she had been unsuccessful. She also had medical conditions that limited her ability to work. Craig, for his part, was disabled and did not work during the parties' marriage, although he received more than \$5,000 in monthly benefits from Social Security and the United States Department of Veterans Affairs. Throughout the parties' marriage, Craig largely paid the parties' bills and expenses.

During the divorce proceedings, Marcy obtained a Personal Protection Order (PPO) against Craig. Marcy testified that she sought the PPO following an incident in which Craig allegedly attempted to prevent her from leaving the parties' home in one of the parties' vehicles. Marcy explained that Craig stood behind the vehicle to prevent her from driving away. Marcy drove over the lawn of the parties' home while attempting to leave. As the events unfolded, Craig reached into the front window of the vehicle in an attempt to grab the car keys. As Craig did so, he grabbed Marcy's arm and eventually fell from the vehicle.

After the trial court referred the matter to the Friend of the Court (FOC) for a hearing and recommendation regarding spousal support and held a subsequent bench trial, it entered a judgment of divorce. The trial court classified the parties' home as marital property but awarded Craig the value of his premarital interest in the property. It awarded each party their personal effects, retirement accounts, and life insurance benefits. It also divided the remainder of the parties' marital equity in the home. It found that Craig was entitled to \$38,305 in marital equity, and Marcy was entitled to \$33,380. The trial court awarded the marital home to Marcy and ordered her to pay Craig \$40,000 within four months or the home would be sold. The court also awarded Marcy \$400 per month in spousal support for a period of two years. This appeal followed.

## II. SPOUSAL SUPPORT

Craig argues that the trial court abused its discretion by awarding Marcy spousal support on the basis of its clearly erroneous findings underlying its conclusion that he was primarily at fault in causing the parties' divorce. We disagree.

### A. STANDARDS OF REVIEW

We review a trial court's award of spousal support for an abuse of discretion. *Loutts v Loutts*, 298 Mich App 21, 25; 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). We review for clear error the trial court's factual findings relating to an award of spousal support. *Smith v Smith*, 328 Mich App 279, 286; 936 NW2d 716 (2019). "A finding is clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.* (quotation marks and citation omitted). "[T]he burden is on the appellant to persuade the reviewing court that a mistake has been committed,

failing which the appellate court may not overturn the trial court's findings." *Beason v Beason*, 435 Mich 791, 804; 460 NW2d 207 (1990). We must affirm the trial court's ultimate dispositional ruling unless we are "firmly convinced that it was inequitable." *Berger v Berger*, 277 Mich App 700, 727; 747 NW2d 336 (2008).

## B. ANALYSIS

A trial court has discretion to award spousal support under MCL 552.23. *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010). "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." *Loutts*, 298 Mich App at 26 (quotation marks and citation omitted). When determining whether to award spousal support, the trial court should consider factors including the following:

(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 the amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay support; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the parties' prior standard of living and whether either is responsible for the support of others; (11) the 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. [*Woodington v Shokoohi*, 288 Mich App 352, 356; 792 NW2d 63 (2010).]

"The trial court should make specific factual findings regarding the factors that are relevant to the particular case." *Myland*, 290 Mich App at 695 (quotation marks and citation omitted). A party's fault in causing the divorce is a valid consideration in awarding spousal support. *Denman v Denman*, 195 Mich App 109, 111; 489 NW2d 161 (1992). However, a trial court may not disproportionately weigh the concept of fault. *Sparks v Sparks*, 440 Mich 141, 162-163; 485 NW2d 893 (1992).

Craig first argues that the trial court clearly erred by finding that he was primarily at fault in causing the parties' divorce. We disagree. The trial court found that Craig was primarily at fault for the parties' divorce because of his quick temper and his actions that led Marcy to seek and obtain a PPO against him.<sup>1</sup> The trial court's finding that Craig was primarily at fault for the parties' divorce was supported by the record. Marcy testified that Craig regularly fought with her about how frequently she babysat her grandchildren and explained that Craig wished to pursue his own hobbies rather than babysitting. She also testified that Craig frequently used alcohol and

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<sup>1</sup> We recognize that Craig's alleged actions that led Marcy to seek and obtain a PPO against him occurred after he filed for divorce and should not have been considered when weighing the parties' relative fault in causing the divorce. Absent such evidence, the trial court's finding that Craig was primarily at fault for the parties' divorce was still supported by the record.

marijuana and at times passed out around her grandchildren.<sup>2</sup> She further regarded Craig as “scary” when he became intoxicated. Craig, for his part, attributed fault for the parties’ divorce to Marcy. He explained that Marcy frequently babysat her grandchildren at the expense of pursuing the parties’ hobbies.

We give special deference to a trial court’s findings when they are based on the credibility of the witnesses. See *Johnson v Johnson*, 276 Mich App 1, 11; 739 NW2d 877 (2007) (quotation marks and citation omitted). In light of the evidence presented, we are not left with a definite and firm conviction that the trial court mistakenly found that Craig was primarily at fault in causing the parties’ divorce. The trial court did not clearly err in this regard.

Craig further argues that the trial court’s spousal support award of \$400 per month for two years was not just or reasonable under the circumstances of the case. We again disagree. In evaluating the spousal-support factors, the trial court found that the 17-year length of the parties’ marriage, Marcy’s unequal earning ability, the amount of property awarded to the parties, Marcy’s need for support and Craig’s ability to pay support, the parties’ present situation, the parties’ prior standard of living, and the general principles of equity all favored Marcy. In light of these findings, the court determined that \$400 per month in temporary spousal support was appropriate until Marcy was eligible for Social Security benefits after two years. The record reflects that Marcy worked various part-time jobs throughout most of the parties’ marriage while Craig largely paid for the parties’ bills and expenses. At the time of trial, Marcy worked three part-time jobs, two of which provided inconsistent income each month, and made \$1,900 per month. Yet, Marcy’s estimated monthly expenses after the divorce totaled approximately \$1,800 per month. Because Craig filed for divorce, Marcy had applied for full-time work and had not been chosen for any positions. At the time of trial, Marcy was still two years away from being eligible for Social Security benefits. Conversely, Craig had a stable income of more than \$5,000 per month in benefits. In light of the evidence that Marcy was unable to meet her financial needs after the parties’ divorce, despite her best efforts, and in light of the evidence that Marcy had been accustomed to Craig financially providing for the parties throughout the marriage, the trial court’s spousal support award was not outside the range of reasonable and principled outcomes and did not constitute an abuse of discretion. See *Loutts*, 298 Mich App at 26.

### III. MARITAL PROPERTY DISTRIBUTION

Craig argues that the trial court clearly erred by classifying the parties’ home as marital property. He further argues that the trial court abused its discretion by awarding the parties’ home

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<sup>2</sup> Craig seemingly challenges the trial court’s consideration of evidence presented during the bench trial when fashioning its spousal support award. The trial court referred the matter to the FOC for a hearing and recommendation regarding spousal support but did not enter a spousal support order until after the bench trial. The issue of spousal support was still outstanding at that time, and the trial court did not err by considering evidence presented after the FOC hearing when fashioning its spousal support award.

to Marcy based in part on its erroneous presumption that he would become agitated by its proximity to his stepdaughter's home. We disagree.

#### A. STANDARDS OF REVIEW

This Court reviews for clear error a trial court's factual findings regarding whether a particular asset qualifies as marital or separate property. *Hodge v Parks*, 303 Mich App 552, 554; 844 NW2d 189 (2014). Factual findings are clearly erroneous if the reviewing court "is left with the definite and firm conviction that a mistake has been made." *Id.* at 555 (quotation marks and citation omitted). "This Court gives special deference to a trial court's findings when they are based on the credibility of the witnesses." *Johnson*, 276 Mich App at 11 (quotation marks and citation omitted).

This Court assesses the trial court's marital property division by first reviewing the trial court's findings of fact. *Cassidy v Cassidy*, 318 Mich App 463, 476-477; 899 NW2d 65 (2017). "Findings of fact, such as a trial court's valuations of particular marital assets, will not be reversed unless clearly erroneous." *Id.* at 477. Factual findings are clearly erroneous if the reviewing court "is left with the definite and firm conviction that a mistake has been made." *Hodge*, 303 Mich App at 555 (quotation marks and citation omitted). "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." *Cassidy*, 318 Mich App at 477. "The dispositional ruling is discretionary and will be affirmed unless this Court is left with a firm conviction that the division was inequitable." *Id.*

#### B. ANALYSIS

"A trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Woodington*, 288 Mich App at 358 (quotation marks and citation omitted). Generally, Michigan courts divide only the marital estate during a divorce proceeding and may not normally invade one spouse's separate property. See *Korth v Korth*, 256 Mich App 286, 291; 662 NW2d 111 (2003). Marital assets consist of assets that "have come to either party by reason of the marriage," whether it be real or personal property. MCL 552.19. Generally, marital property is property that was acquired or earned by the parties during the marriage, and, with certain exceptions, separate property is property that the parties obtained or earned prior to the marriage. See *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010). However, property acquired during the parties' marriage may be separate property, and property acquired before the marriage may become marital property. *Id.* at 201-202. Classification of the parties' marital home becomes more complex when one party separately purchased the home prior to the marriage:

The sharing and maintenance of a marital home affords both spouses an interest in any increase in its value (whether by equity payments or appreciation) over the term of a marriage. Such amount is clearly part of the marital estate. However, the down payment, the equity built up before the parties' marriage, and any appreciation that occurred before the parties' marriage should have been considered defendant's separate estate. [*Reeves v Reeves*, 226 Mich App 490, 495-496; 575 NW2d 1 (1997).]

“[S]eparate assets may lose their character as separate property and transform into marital property if they are commingled with marital assets and treated by the parties as marital property.” *Cunningham*, 289 Mich App at 201 (quotation marks and citation omitted).

Craig argues that the trial court erred by finding that the home was marital property because he purchased it prior to the parties’ marriage and was the party primarily contributing money and effort into the home. The trial court found that the parties’ home had clearly become marital property throughout their marriage. However, the court also found that Craig was entitled to \$30,000 for his prior interest in the home based on the home’s purchase price. The record reflects that Craig purchased the home in 1995 with his previous wife and paid off the mortgage on the home in 2008. Craig recalled paying \$60,000 for the home, and there was evidence that the home was valued at \$110,000 at the time of trial. Craig believed that the money he used to pay off the home came from the parties’ joint account, although the parties disagreed as to whether Marcy’s earnings went into the account.

The record further reflects that Marcy and her daughter moved into the home in 2005, and Marcy still lived in the home at the time of the parties’ divorce. While Craig did not believe Marcy contributed to the parties’ home during their marriage, Marcy testified that she took care of the parties’ housekeeping tasks, improved the home’s interior and exterior, and contributed financially to the parties’ expenses when she could. Marcy also testified that she helped Craig improve the property throughout the marriage and regularly purchased supplies to improve the home. Further, Craig added Marcy to the home’s warranty deed in 2010. Throughout the marriage, Marcy’s daughter and grandchildren visited the home several times a week and used the home to keep their animals. The evidence reflects that the parties did not treat the home as Craig’s separate property, and that the parties both contributed to the care and improvement of the home with marital assets. See *id.* Further, the trial court identified Craig’s interest in the property before the parties’ marriage and treated it as separate property. See *Reeves*, 226 Mich App at 495-496. Accordingly, the trial court did not err by finding that the home itself was marital property at the time of the parties’ divorce. See *Woodington*, 288 Mich App at 357.

Craig also argues that the trial court’s factual findings regarding the division of marital property were clearly erroneous because it placed significant weight on disputes between Craig and Marcy’s family, despite there being no evidence of such disputes in the record. In dividing and distributing the parties’ property, the trial court found:

Both parties want the home. The home is 4-5 houses away from [Marcy’s] daughter’s house. [Marcy] spends a lot of time with her daughter and grandkids, to the extent it has become an issue in the marriage. It is common sense to award the marital home to [Marcy] and removing [Craig] from the neighborhood where he could get potentially be agitated every day.

The record reflects that Marcy and her daughter shared a close relationship and lived with Craig before the parties married. Throughout the parties’ marriage and at the time of the divorce, Marcy’s family lived four houses from the parties’ home. Marcy visited with her grandchildren several times a week, and she regularly helped care for her grandchildren. A frequent point of contention in the parties’ marriage was Marcy’s relationship with her family and the frequency in which she babysat her grandchildren. In light of the evidence of the parties’ contentious

relationship toward the end of their marriage and Craig’s frustration with the frequency in which Marcy babysat her grandchildren, the trial court did not clearly err by finding that Craig could possibly become agitated by living in close proximity to Marcy’s family.

Finally, Craig argues that the trial court abused its discretion by awarding Marcy the parties’ marital home because it ignored Marcy’s earning ability and work history, and it disproportionately assigned fault to Craig. We disagree. In light of Marcy’s estimated monthly income and estimated monthly expenses, the court appropriately found that she would be unable to support herself in her prior standard of living without the marital home.

Moreover, “fault is clearly a proper factor to consider in the division of marital property.” *Washington v Washington*, 283 Mich App 667, 675-676; 770 NW2d 908 (2009). When considering fault as one of the factors in a property settlement, the trial court should examine the parties’ conduct during the marriage. *Welling v Welling*, 233 Mich App 708, 711; 592 NW2d 822 (1999). “The question . . . 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.” *Id.* “[F]ault is an element in the search for an equitable division—it is not a punitive basis for an inequitable division.” *McDougal v McDougal*, 451 Mich 80, 90; 545 NW2d 357 (1996). Accordingly, the trial court should not place excessive weight on the factor of fault when considering the division of marital property. *Id.* at 89-90. In considering the property-division factors, the trial court found that the parties were fairly equal regarding their past relations and conduct, but the general principles of equity favored Marcy because Craig was primarily at fault for the divorce. The trial court considered Craig’s conduct during the parties’ marriage, noting that he had a quick temper, which made Marcy nervous. The record supports the trial court’s findings that Craig used alcohol and marijuana, sometimes passing out around Marcy’s grandchildren, and that the parties fought about the amount of time Marcy spent with her daughter and grandchildren during the parties’ marriage. Conversely, there was little evidence in the record to support Craig’s assertion that Marcy’s conduct caused the breakdown in the parties’ marriage. We are not convinced that the trial court improperly weighed the parties’ relative fault when evaluating the relevant property-division factors. See *McDougal*, 451 Mich at 90.

In light of the evidence in the record and the trial court’s evaluation of the parties’ respective fault in the breakdown of the marital relationship, the parties’ earning abilities, and the parties’ work history, the trial court’s dispositional ruling was fair and equitable. See *Sparks*, 440 Mich at 152.

We affirm.

/s/ Noah P. Hood  
/s/ James Robert Redford  
/s/ Allie Greenleaf Maldonado