STATE OF MICHIGAN

COURT OF APPEALS

ROSEANNA L. GROLEAU, Plaintiff-Appellee,	UNPUBLISHED May17, 2007
v	No. 272809 Menominee Circuit Court
JONATHAN DAVID GROLEAU, Defendant-Appellant.	LC No. 05-011466-DM

Before: Schuette, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right a judgment of divorce distributing the parties' marital estate. After making a minor modification to the final judgment, we affirm.

As an initial matter, this Court has jurisdiction over the trial court's decision to dismiss a personal protection order. In its decision distributing the marital estate, the trial court declined to enter the parties' stipulation to dismiss a personal protection order (PPO) against defendant. The order had been entered in an independent action over which the court had jurisdiction. Defendant moved for reconsideration of the original decision, and the court granted the motion, dismissing the PPO. Plaintiff argues that this Court lacks jurisdiction over defendant's appeal because his reconsideration motion involved the PPO action, not the divorce action, and his appeal was not taken from the divorce judgment within the time prescribed by MCR 7.204. We disagree. The court's grant of reconsideration created a new "final" order, because it revised "an earlier" final order that upheld the PPO. MCR 7.202(6)(a)(*i*). By adjudicating the parties' rights regarding the PPO in its initial determination and incorporating that decision into its final divorce judgment, the trial court essentially consolidated the actions. Therefore, the trial court's later reversal of the PPO was a relevant legal determination of the parties' rights regarding the final divorce judgment, and the new final judgment was subject to an appeal of right. MCR 7.203(A)(1). Defendant timely filed a claim of appeal from this final order, properly invoking this Court's jurisdiction. MCR 7.204(A)(1)(a).

On appeal, defendant argues that the trial court erred in failing to recuse itself for bias. We disagree. Though defendant moved for disqualification, he failed to seek review before the chief judge, see MCR 2.003(C)(3), so this issue was not preserved. *Welch v Dist Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996). We review the issue for plain error. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004). The standard for recusal because of bias or prejudice "requires a showing of *actual* bias." *Cain v Dep't of Corrections*,

451 Mich 470, 495; 548 NW2d 210 (1996). Moreover, a judge is not "personally biased or prejudiced" under MCR 2.003(B)(1), unless "the challenged bias [has] its origin in events or sources of information gleaned outside the judicial proceeding." *Cain*, *supra* at 495-496. Similarly, if a party fails to demonstrate actual bias, due process only requires judicial disqualification "in situations where 'experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Crampton v Michigan Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975), quoting *Withrow v Larkin*, 421 US 35, 47; 95 S Ct 1456; 43 L Ed 2d 712 (1975). "A trial judge is presumed to be impartial, and the party asserting partiality has the heavy burden of overcoming that presumption." *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898 (2006).

Defendant's allegations of bias all arise out of various rulings, findings, or proceedings throughout this action. A trial court's "rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v United States*, 510 US 540, 555; 114 S Ct 1147; 127 L Ed 2d 474 (1994). Although the court's instruction to defense counsel to direct defendant to "shut up" was perhaps injudicious, it does not demonstrate animus or enmity. See *id*. As for the court's ex parte modification of a mutual temporary restraining order, the court's explanation does not demonstrate bias but principled judicial reasoning. The trial court's action was clearly designed to enable plaintiff to maintain the parties' business. Therefore, defendant fails to demonstrate any extrajudicial origin for the trial court's action and fails to persuade us that the trial court was actually biased against him. Nor do the trial court's rulings "display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id*. Defendant has accordingly failed to carry his "heavy burden" of establishing bias under the due process clause. *Coble*, *supra*.

Defendant next argues that various findings that the trial court made concerning the property division were in error. We disagree. We review for clear error a trial court's findings of fact made pursuant to the division of marital property. *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005). We will affirm the ultimate property disposition unless we are "left with the firm conviction that the division was inequitable." *Id.* In resolving a dispute over the value of a business "the trial court has great latitude in arriving at a final figure." *Pelton v Pelton*, 167 Mich App 22, 26; 421 NW2d 560 (1988); see also *Jansen v Jansen*, 205 Mich App 169, 170-171; 517 NW2d 275 (1994).

Defendant first argues that the trial court erred in valuing the parties' business because it ignored defendant's expert's testimony that the business should be valued using the income approach to valuation. However, the court's valuation was not clearly erroneous. Defendant's expert testified that it was proper to employ the cost method approach in valuing a business, and he provided the data for doing so, even though he attested that, in his opinion, the income approach was more appropriate under the circumstances. The trial court did not agree because it took into consideration the entirety of the parties' circumstances and not merely the profit-generating capacity of the business. The trial court's latitude in determining the businesses' valuation entitled it to select from competing estimates, even if the range of proofs was wildly divergent. *Jansen*, *supra* at 171. "[W]here a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Id*. Because the court's determination did not contravene the expert's testimony or the alternative values he identified, the determination was not clearly erroneous. *Id*.

Defendant also argues that even if the court's determination to use the cost method approach in valuing the business was correct, it erred in disregarding the expert's valuation under this approach. This argument misconstrues the court's distribution. The court expressly relied on and employed the expert's calculations in its distribution. The cost method approach, as presented by defendant's expert, independently valued the individual assets of the parties' corporations, assessed the respective corporate liabilities, and arrived at corporate net values. In distributing the marital estate, the court parsed out various corporate assets and liabilities between the parties, though these assets and liabilities had been grouped together in the expert's valuations. The remaining assets that were not individually distributed by the court were distributed as the respective "values" of the businesses. Defendant's suggestion that the court ignored the expert's valuation is simply incorrect.

Defendant also argues that the court erroneously failed to attribute income tax penalties and interest solely to plaintiff because she was responsible for having incurred them. However, the court's findings indicate that defendant was unwilling to contribute effort or energy to the family's support, and that plaintiff, through her own efforts, was solely responsible for the success of the parties' businesses. Given these findings, it would have been inequitable to attribute liability exclusively to her, but divide the assets that she salvaged. Under the circumstances, we find no error in the trial court's division of liability.

Defendant also argues that the trial court erroneously attributed to him alone certain dividend distributions that he received and expended, while attributing equally between the parties certain dividend distributions that plaintiff received and expended. We disagree. Plaintiff presented evidence that she used her distributions for various expenses related to the marital household. These expenses included medical and dental bills for the parties' children, the parties' federal and state taxes, tuition for the children, loans to defendant's business with which she paid its corporate liabilities, corporate accounting expenses, and court-ordered counseling. In contrast, defendant's use of his distributions related almost exclusively to his own personal expenses. The court divided the expenses plaintiff paid on behalf of the marriage equally between the parties, and it attributed the distributions defendant received solely to him as an asset. We see no error in this approach.

Defendant finally argues that the trial court erred in failing to incorporate an earlier award of costs and fees into its distribution of the marital estate. We agree. Under MCR 2.313(A), defendant was entitled to seek an order compelling discovery when plaintiff failed to respond to discovery requests. See MCR 2.310(C)(3). Defendant sought, and received, an order compelling discovery, and plaintiff ignored the order. Afterward, the trial court found that plaintiff clearly failed to comply with the order. Therefore, under MCR 2.313(B)(2), the court was obligated to "require" plaintiff "to pay the reasonable expenses, including attorney fees, caused by the failure . . . ." Defendant incurred $656.51 in costs and fees as a result of plaintiff's failure to comply with the discovery order. The court ordered the payment of defendant's costs and fees, said that it would incorporate them in its final distribution, but then erroneously neglected to do so. Therefore, we simply modify the final judgment accordingly.

We modify the trial court's judgment to include an award to defendant for his attorney fees and costs in the amount of $656.51. In all other respects, we affirm.

/s/ Bill Schuette
/s/ Peter D. O'Connell
/s/ Alton T. Davis