STATE OF MICHIGAN

COURT OF APPEALS

MARLENE RESST,

Plaintiff-Appellee,

v

ANTHONY F. RESST,

Defendant-Appellant.

UNPUBLISHED
October 7, 1997

No. 188125
Wayne Circuit Court
LC No. 95-500368

Before: Sawyer, P.J., and Saad and Gage, JJ.

PER CURIAM

I

Nature of the Case

This appeal raises the question of whether property acquired by one marital partner during a lengthy separation immediately preceding the divorce should be considered marital assets for equitable distribution. Defendant, Anthony F. Resst, appeals as of right from the trial court's property disposition portion of his judgment of divorce. Though we may not have made the same division of property, on the facts of this case we cannot conclude that the trial court's conclusion was inequitable and we therefore affirm the trial court's determination that the so-called "post-separation assets" were marital assets.

II

Facts

The parties' thirty-nine year marriage began in 1956 and ended in divorce in 1995. There was disputed testimony as to the cause of the marital breakup; plaintiff blamed defendant's extra-marital affair with a nineteen-year-old co-worker, defendant blamed financial problems. In any event, defendant permanently left the marital home in 1974. At the time, the parties had five children, ages five to seventeen. Defendant worked for Great Lakes Steel from 1952 until January 31, 1995. Plaintiff was

employed periodically from approximately 1979 until 1989, when she suffered a stroke which left her permanently disabled and unemployed.

Twenty-one years after her husband left the marital home, plaintiff filed for divorce on January 5, 1995, and the judgment of divorce was issued on July 13, 1995. The trial court found that a fifty-fifty division of the assets was fair and equitable in light of plaintiff's disability, as well as the fact that she raised the parties' five children without the father in the home. The trial court included as part of the marital estate defendant's bank accounts, 401(k), pension, and severance pay from Great Lakes Steel, all of which he acquired after the 1974 separation (hereafter defendant's "post-separation assets"). The trial court declined to award alimony to either party.

Defendant's sole claim on appeal is that the trial court's property disposition ruling was unfair and inequitable.

III

Analysis

In essence, the trial judge's job in this kind of case is to do justice and the appellate court's job is to review to ensure justice has been done. When reviewing a dispositional ruling in a divorce case, this Court must first "review the trial court's findings of fact for clear error and then decide whether the dispositional ruling was fair and equitable in light of the facts." *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). The trial court's objective in distributing marital property is to reach "a fair and equitable property division in light of all the circumstances." *Lee v Lee*, 191 Mich App 73, 77; 477 NW2d 429 (1991). Although divisions of property are not governed by specific rules, the Michigan Supreme Court has established a set of factors to assess in determining whether the interests of justice have been served: "(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." *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 593 (1992).

Applying these factors, the evidence showed that defendant left the marital home in 1974. The parties had five children, ages five to seventeen, whom plaintiff then raised without the father in the home. Although defendant was not present in the home, he regularly provided substantial financial support for his children in the form of groceries, clothing, maintenance on the home in which the children lived, payment of utility bills and property taxes, and later, assistance with college tuition. At the time of the divorce, there were considerable disparities in the respective health and earning capacities of the parties: since her stroke in 1989, plaintiff was paralyzed on her right side and in need of constant care. Plaintiff's sole income consisted of social security benefits in the amount of $292 per month, and supplemental benefits in the amount of $106. Defendant earned $53,000 in 1994.

Defendant argues that the post-separation assets are his alone. We agree with the trial court's determination that, despite the 1974 separation, defendant's post-separation assets were marital assets, subject to fifty-fifty distribution. MCL 552.19; MSA 25.99 empowers trial courts to award property that has come to either party "by reason of the marriage." See also MCL 552.401; MSA 25.136. Although plaintiff did not contribute directly, in a financial sense, to the acquisition of the post-separation assets, defendant enjoyed the fruits of his employment, in large part, because plaintiff was raising their children. See *Hanaway*, 208 Mich App at 293-294. To accept defendant's argument that his post-separation financial gain did not accrue to him "by reason of their marriage" would be to deprecate the contribution of a parent -- we reject such a notion.

Defendant also contends that the trial court erred in ordering the Brooklyn home sold, rather than determining a value for it. Ordinarily, a trial court abuses its discretion if it fails to determine the value of a substantial marital asset. See *McNamara v McNamara*, 178 Mich App 382, 393; 443 NW2d 511 (1989), modified 436 Mich 862; 460 NW2d 222 (1990). However, "[a] divorce case is equitable in nature, and a court of equity molds its relief according to the character of the case; once a court of equity acquires jurisdiction, it will do what is necessary to accord complete equity and to conclude the controversy." *Schaeffer v Schaeffer*, 106 Mich App 452, 457; 308 NW2d 226 (1981).

Defendant relies on *Lee*, *supra*, where we held that the trial court abused its discretion when it ordered the parties' marital home sold and the proceeds equally divided. *Id*. at 75-76. However, *Lee* is not controlling because there the court could have determined a value based solely on the state equalized value and lay testimony. Here, however, the parties presented *conflicting* evidence of the Brooklyn home's value. While plaintiff presented the state equalized value (SEV) ($49,800), defendant submitted a market appraisal ($65,000-69,000). In light of these discrepancies, the trial court had little choice but to order the Brooklyn home sold. The trial court did not abuse its discretion.

The trial court's decision was fair and equitable under the circumstances.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Hilda R. Gage