

STATE OF MICHIGAN
COURT OF APPEALS

ANGELA DIANE TATE,

Plaintiff-Appellant,

v

MAURICE TATE,

Defendant-Appellee.

UNPUBLISHED
November 4, 1997

No. 194900
Kent Circuit Court
LC No. 94-001617

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, arguing that the trial court erred in the distribution of the marital property. We affirm.

The parties were married on June 21, 1991 and separated in July 1994. A stipulation and temporary order with respect to custody of the parties' one child, and division of debts, was entered on August 18, 1994. With respect to the division of debts, the temporary order required equal contribution to all joint debts and child care costs, and that each party be responsible for his or her own credit card debt. After the temporary order was entered, but before the trial date of February 2, 1996, defendant changed jobs and received a 401(k) distribution of approximately \$8,029.92 from his former employer. Defendant used that money to pay various marital debts, including a lump sum payment to plaintiff of \$1650. Plaintiff contends that the trial court should have awarded her one-half of the 401(k) distribution. There is no merit to this issue.

The goal in distributing marital assets is to reach an equitable distribution of property in light of all the circumstances. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). The division is not based on a mathematical formula that results in exact equality. *Id.* In order to achieve an equitable result, the trial court should consider the duration of the marriage; the contribution of each party to the marital estate; each party's station in life; earning ability; needs; fault; past misconduct; and any other equitable circumstance. *Id.* Furthermore, the division of marital property is within the discretion of the trial court. *Id.* at 309. Though appellate review is de novo, this Court must accept the trial court's factual findings unless those findings are clearly erroneous. *Id.* at 308-309.

After considering the above factors, the trial court ordered that the division of debts enumerated in the temporary order was to remain in effect, and that the parties were to split all doctor bills and child care expenses equally. The court noted that the parties' incomes are virtually equal, with plaintiff receiving slightly more annual income after alimony and child support are factored into the equation. The trial court concluded that defendant had used the 401(k) distribution sum to pay marital debts, and that adjusting the division of property so that plaintiff would receive one-half of the distribution would not change the bottom line distribution. Rather, it would only require a readjustment of the debts that would have to be divided between the parties if they had not been paid out of the 401(k) distribution. Thus, the court determined that the bottom line would remain the same, and that redistributing the 401(k) money, and then the division of debts, would be a pointless exercise. The trial court's holding did not alter the equity of the division made in the temporary order.

With respect to the order that the parties jointly file all past due income tax returns, the trial court found no evidence to support plaintiff's allegations that joint filing would subject her to potential liability for any fraudulent statements made by defendant. Plaintiff complained that she did not trust defendant to be accurate in disclosing his income and withholding records. The trial court found, however, that there was no evidence to support this accusation, as defendant was not self-employed and was receiving no income in addition to his annual salary. There would be no way, therefore, for defendant to alter his employers' records in order to "underreport" his income or withholding. We agree with the trial court that it is reasonable and routine to rely on W-2 statements from defendant's employers to accurately reflect this information.

Because this Court is not left with a definite and firm conviction that a mistake has been committed by the trial court, we conclude that the trial court's findings and rulings are not clearly erroneous and resulted in an equitable division of marital property.

Defendant filed a motion for sanctions in this matter, alleging that plaintiff's claim is frivolous. MCR 7.216(C). We agree that plaintiff lacked any reasonable basis for believing that there was a meritorious issue to be determined on appeal. Accordingly, we remand to the trial court for a determination of appropriate attorney fees to be awarded defendant.

Affirmed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Myron H. Wahls

/s/ Roman S. Gribbs