STATE OF MICHIGAN

COURT OF APPEALS

ADELE LAVERNA BROWN,

Plaintiff-Appellee,

v

EARL BROWN,

Defendant-Appellant.

UNPUBLISHED
June 9, 1998

No. 201325
Berrien Circuit Court
LC No. 96-002334 DO

Before: Markey, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right the parties' January 1997 judgment of divorce in which plaintiff was awarded one-half interest in, and exclusive use of the marital home, the parties' only significant asset. We affirm.

I. The Trial Court's Findings

Defendant first argues on appeal that the trial court erred in finding that both plaintiff and defendant were in "tenuous health," when the record does not establish that such was the case for plaintiff, and that it was his alleged abuse, rather than the burden plaintiff's live-in fifty-five-year-old mentally and physically handicapped sister posed, that caused the breakdown of the parties' marriage. We find no error in the court's factual findings.

When reviewing a dispositional ruling in a divorce case, this Court first reviews the lower court's findings of fact for clear error and then decides whether the dispositional ruling was fair and equitable in light of those facts. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). A trial court's finding is clearly erroneous where, although there is evidence to support the finding, this Court is left with a firm conviction that a mistake has been made after reviewing the entire record. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). When applying this principle, deference shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it, MCR 2.613(C), and where the trial court's view of the evidence is plausible, this Court may not reverse. *Beason, supra* at 805.

With respect to the parties' health, the court found that both had "tenuous" health. On appeal, defendant argues that while such a description is fitting for defendant, it is not for plaintiff. "Tenuous" is defined in part as meaning "flimsy," "weak," or "having little substance or strength." *Webster's New Collegiate Dictionary* (1973), p 1202. Here, the record establishes that plaintiff had back problems, that she had had back surgery, that she suffered from anxiety and tension, that she took prescription drugs for her heart, that she was anemic, and that she was unable to return to work outside the home. Moreover, in addition to plaintiff's own testimony as to her health, the trial court was also able to observe the witness personally, something this Court cannot do. Finally, we find that because defendant's health may be worse than plaintiff's, this does not mean that the trial court clearly erred in using the same general term to describe both of them.

Defendant also challenges the trial court's determination that he was at fault for the breakdown of the marriage, stating that the root of the problem was plaintiff's sister who was living under plaintiff's care in the marital home. In *Zecchin v Zecchin*, 149 Mich App 723, 728; 386 NW2d 652 (1986), this Court stated that the focus of fault is on the conduct of the parties leading to the separation or the breakdown of the marriage. Such a definition certainly does not limit the finding of fault to a sole contributing factor and, although plaintiff's sister undoubtedly posed a burden, we find that the record reveals that defendant had been abusive and violent toward plaintiff throughout their marriage, and that it was in fact an incident of abuse that prompted plaintiff to file for a divorce. In short, we have no firm conviction that the lower court made a mistake.

II. The Trial Court's Rulings on Matters of Law

Next, defendant argues that the trial court committed several legal errors when analyzing the evidence and dividing the parties' property and that its award to plaintiff was unfair and inequitable. We hold that based on the record the trial court's final dispositional ruling concerning the marital estate was fair and equitable and will therefore remain unchanged despite any errors the trial court may have committed in arriving at that decision. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995); MCR 2.613(A); See also *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995), holding that this Court will not reverse a trial court's decision where the right result was reached for the wrong reason.

Absent a binding agreement, the goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). To reach an equitable division, 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, each party's earning ability, each party's age, health and needs, fault or past misconduct, and other "general principles of equity." *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992). Moreover, the division need not be mathematically equal to qualify as being equitable, so long as the facts of the case warrant the disparity. *Impullitti v Impullitti*, 163 Mich App 507, 513; 415 NW2d 261 (1987).

Here, the evidence establishes that both parties were seventy-two years of age, that they initially married in 1945, divorced in 1975, remarried in 1983, and then separated in 1996, and that both were

of questionable health and unable to work at the time of the divorce trial. The record also revealed that defendant's monthly income exceeded plaintiff's by approximately $497 and that, following the parties' separation, defendant took it upon himself to withdraw nearly $10,000 in marital funds to purchase a new mobile home and a vehicle to drive, leaving plaintiff with very little savings. Finally, we note that the record was replete with evidence that defendant was physically and emotionally abusive toward plaintiff. Further, although the parties' financial contribution to the marital home was not equal, there was evidence that plaintiff had taken on the responsibility of maintaining the upkeep of the home, that she had cared for defendant for several years, and that she had done routine property repairs following defendant's frequent destructive spells. Plaintiff was in her later years of life and expressed a great desire to remain in the marital home.

Defendant also argues that the trial court committed legal error when it awarded plaintiff's handicapped sister, who had been entrusted to plaintiff's care, an interest in the parties' marital property. In his bench opinion, Judge Grathwohl divided the property in pertinent part as follows:

> [T]he Court is going to place the real estate in the name of the parties as tenants in common. That means – that means that each party will have an undivided one half interest in the real estate.
>
> Adele Brown shall have exclusive occupancy of the home subject to these conditions: At the time of her death or the death of her sister Peggy Rummage, or if either Peggy Rummage or Adele Brown vacate the home, or upon, I don't think it's likely, but upon remarriage of Adele Brown, the home shall be sold and net proceeds should be – will be divided on a 50-50 basis.

Defendant claims that the language of the court's order granted Rummage a life-estate interest in plaintiff's and defendant's property or, in the alternative, that plaintiff's possessory right was based solely on her desire to continue caring for Rummage. Defendant contends that, either way, such an award is in violation of the law. We conclude, however, that Rummage has no legal interest in the property. Should plaintiff die or vacate the premises, Rummage would have no claim to the property nor a right to remain in the parties' home. The possessory interest is vested with plaintiff, conditioned in part on Rummage's status as a co-occupant. Therefore, the trial court did not improperly "convey" property to a third party.

Defendant and plaintiff owned the marital home free and clear and, aside from plaintiff's right to possess the home, the trial court awarded each party one-half interest in equity upon resale. Hence, the only real disparity between an "equal" division would be the advantage afforded plaintiff of present possession. After considering the facts, we find that such a disparity is not inequitable.

Affirmed.

/s/ Jane E. Markey
/s/ Richard Allen Griffin
/s/ William C. Whitbeck