

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT E. PETERSON,

Plaintiff-Appellant,

v

DEBRA D. PETERSON also known as DEBRA D.
PEDERSEN,

Defendant-Appellee.

UNPUBLISHED

September 25, 1998

No. 198007

Cheboygan Circuit Court

LC No. 94-003802 DM

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, challenging the trial court's valuation of certain assets and an award of child support. We affirm.

First, plaintiff argues that the trial court improperly valued the family business, which consisted of two fishing operations. A trial court's valuation of an asset is a finding of fact that this Court will reverse only if it is found to be clearly erroneous. *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). A finding is clearly erroneous if, after review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Id.* This Court gives special deference to a trial court's findings when they are based on the credibility of the witnesses. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

Defendant testified that the business, including boats, a truck and equipment, was worth \$107,000. She also stated that the business earned approximately \$170,000 per year, and alleged that plaintiff had refused to inventory the two operations and that he was hiding business income and equipment in storage places all over town. Plaintiff testified that the business was worth far less than defendant alleged, asserting that the business' main asset was a boat called the Renegade, which was worth \$27,000. He averred that he earned around \$1,000 per month from the business when it was up and running. However, a bank loan officer testified at trial that plaintiff had represented to him in a loan application that the business was worth \$200,000.

The trial court valued the business at \$70,750, which it noted was “the mid point between the amount advanced by the plaintiff and the amount advanced by the defendant, and includes other items of the business that were not accounted for, such as buoys, trailers, anchors, fish boxes, et cetera.” The trial court also noted that the major asset of the business, which had not been appraised, was an exclusive right to fish in Hammond Bay that had been granted to plaintiff, and would have to remain with plaintiff because its ownership was restricted to a member of the Sault Ste. Marie Tribe of Chippewa Indians.

After carefully reviewing the entire record in the present case, we conclude that the trial court’s valuation was not clearly erroneous. The trial court listened to the testimony of both parties, including testimony that plaintiff had attempted to hide business income and assets and had reported a much higher estimation of the business’ value in applying for a loan, and split the value of the business down the middle. The court noted that the most significant business asset, the Hammond Bay fishing rights, belonged to plaintiff, but remained unappraised and thus were not even included in the valuation. Therefore, the court likely under evaluated the business in a manner that benefited plaintiff, and he should not now be heard to complain.

Second, plaintiff contends that the trial court erred in giving defendant a \$10,000 credit for household furnishings she brought into the marriage. Defendant testified that she brought bedroom sets, furniture, tables, lamps, stoves, refrigerators, microwaves, linens, silverware, and dishes into the marriage. Plaintiff testified that at the time of the divorce, the household furnishings had a total value of \$20,000. The trial court independently determined that defendant brought \$10,000 in furnishings into the marriage. In light of defendant’s testimony regarding the type and quantity of furnishings she brought into the marriage, and plaintiff’s failure to produce any proofs regarding the value of the furnishings the parties accumulated during their marriage, the court’s determination that the furnishings defendant brought into the marriage were worth \$10,000 was not clearly erroneous. We are not left with a definite and firm conviction that the trial court made a mistake. *Pelton, supra*.

Plaintiff further argues that if defendant is entitled to a credit for these household furnishings, then he should have received credit for the equity in the Renegade because it was purchased with proceeds from the sale of a boat that he brought into the marriage. While Michigan law generally provides that property brought into the marriage by a party will be returned to that party upon divorce without invasion by the other party, certain exceptions exist. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). For example, the court may award separate property of one spouse to the other “if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property.” MCL 552.401; MSA 25.136.

Plaintiff testified that he deposited the proceeds from the sale of the boat he owned prior to the marriage into the parties’ joint savings account, and that the money was subsequently invested in the parties’ fishing operations. Plaintiff recalled that these proceeds went toward a down payment on the Renegade, and the purchase of other fishing equipment. Testimony also established that during the marriage, defendant had contributed time, energy and money to the fishing operations. We find that defendant’s efforts on behalf of the parties’ business, in which plaintiff also invested the proceeds from the sale of the boat he owned prior to the parties’ marriage, effectively improved on and increased the

value of the business to the extent that plaintiff's proceeds from the sale of his boat may not be considered separate property. Therefore, we conclude that the trial court did not err in failing to give plaintiff a credit for these proceeds.

Next, plaintiff claims that the total distribution of the marital estate unfairly favors defendant. The division of a marital estate need not be equal, it must only be fair and equitable in light of the surrounding circumstances. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). While each spouse need not receive a mathematically equal share, significant departures from congruence must be clearly explained by the court. *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997).

The trial court awarded plaintiff \$79,750, which amount included the business. Defendant received a \$100,500 share of the estate, including the marital home and all the household furnishings. The trial court explained the disparity in the division as follows:

I would further find that there is evidence in this case, which is believable, that plaintiff closed out some bank accounts, never inventoried the business, and didn't pay payments accruing, disposed of some assets. All of these items have been persuasive to the court in arriving at the difference of \$20,750, which is awarded to the defendant in compensation for the assets which were undisclosed. I recognize that's a calculated guess, but that's what the evidence -- only this the evidence allows me to do.

We find this explanation sufficiently clear to support the trial court's mathematically unequal property division. *Byington, supra*. Furthermore, even accepting plaintiff's argument that the trial court should have awarded plaintiff approximately \$25,000 more in property to compensate for house payments he made after the parties had separated, we find the unappraised fishing rights received by plaintiff sufficiently valuable to offset the amount of post-separation house payments made by plaintiff. We conclude that, in light of the relevant facts, the trial court fairly and equitably divided the property.

Finally, plaintiff argues that the trial court erred in not modifying the child support award in light of an increase in defendant's income. The child support guidelines recommended that plaintiff should pay only \$134 per week, not the \$150 per week that he was ordered to pay before defendant became employed. However, the child support guidelines are not absolutely binding on the court. MCL 722.27(2); MSA 25.312(7)(2). A court may deviate from the guidelines if it states on the record or in writing why it finds the "application of the child support formula would be unjust or inappropriate in the case." MCL 722.27(2)(d); MSA 25.312(7)(2)(d). The court in this case did not extensively elaborate on its decision to depart from the guidelines. However, implicit in the trial court's statement that it would not alter the existing child support arrangement because plaintiff loves his son and will continue to pay \$150 per week was the court's finding that plaintiff was still able to pay sixteen dollars per week more than the guidelines suggested. Based on our review of the record regarding the parties' respective earnings, we are reluctant to interfere with the trial court's decision. Although the trial court did not articulate its reasoning as clearly as it might have, we find its statements sufficient to support its departure from the guidelines.

Affirmed.

/s/ William B. Murphy

/s/ Roman S. Gibbs

/s/ Hilda R. Gage