

STATE OF MICHIGAN  
COURT OF APPEALS

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DARLENE M. OJA,

Plaintiff-Appellee,

v

DENNIS OJA,

Defendant-Appellant.

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UNPUBLISHED

January 19, 1999

No. 206798

Wayne Circuit Court

LC No. 93-308319 DO

Before: Kelly, P.J., and Hood and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from an order of distribution in this divorce case. We affirm.

This is the second appeal arising from this case. A prior panel of this Court remanded the case after determining that the trial court had clearly erred in determining the value of certain rental properties that the couple owned. The Court also found that the distribution of the estate may have been inequitable. *Oja v Oja*, unpublished opinion per curiam of the Court of Appeals, issued April 29, 1997 (Docket No. 174250). In that prior appeal, this Court held:

[the] trial judge was only provided with evidence by defendant which, through comparable properties established that the rental properties were worth at most \$40,200 and \$51,000. Because there is no factual basis for the trial judge's findings that the properties were worth \$55,000 and \$58,000, we are left with a definite and firm conviction that a mistake has been made and find that the trial judge clearly erred in valuing the rental properties. . . .

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In the case at bar, it appears that the trial court neglected to consider the source of the property and the parties' contributions toward both its acquisition and the general marital estate. The trial court awarded defendant less than 40% of the marital assets, however, plaintiff [sic] contributed most of the premarital assets and the vast majority of the family income used to acquire property and maintain the parties' standard of living

during the marriage. These factors, particularly when not offset by other equitable factors favoring plaintiff, favor defendant receiving a greater share of the marital property.

In recognizing the relative contributions of income by the parties identified in this record, we do not intend to signify approval of the “restitution” approach to property division urged by defendant. Such an approach “partakes of a suit for recession rather than the dissolution of marriage.” . . . On remand, the trial court must weigh *all* of the equitable factors relevant to the distribution decision, including those specifically noted above, and fashion a property division that is more equitable under the circumstances of this case. [*Oja, supra*, pp 2-3.]

On remand, the trial court did not reopen any proofs in the matter to determine the value of the rental properties. Instead, the court awarded defendant \$21,000 in the equity from the marital home, and \$1,946.96 in shared rent and a security deposit collected by plaintiff from one of the rental properties. The court refused to award defendant certain personal items he requested, finding that defendant had sat on his rights for three years.

On appeal, defendant argues that the action the court took on remand was contrary to the direction of this Court. He argues that he is entitled to a greater share of the marital estate in accordance with the opinion of this Court. We disagree. A trial court’s findings of fact will not be reversed unless clearly erroneous. *McMichael v McMichael*, 217 Mich 723, 728-729; 552 NW2d 688 (1996). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *McMichael, supra*, 217 Mich App 729. If the trial court’s findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands, supra*, 442 Mich 34.

Defendant argues that, on remand, the lower court failed to make the specific findings required by this Court. We disagree. Thus, in addition to determining whether the distribution was fair and equitable, defendant argues that the lower court’s decision must be evaluated under the doctrine of the “law of the case.” The law of the case provides that a trial court shall not take any action on remand that is in contravention with an appellate court’s ruling on an issue. *Driver v Hanley (After Remand)*, 226 Mich App 558, 565; 575 NW2d 31 (1997). Thus, a ruling “by an appellate court with regard to a particular issue binds the appellate and all lower tribunals with respect to that issue” and shall not be decided differently on remand. *Driver, supra*, 226 Mich App 565.

The division of marital property is within the sound discretion of the trial judge. *Demmon v Demmon*, 195 Mich App 109, 113; 489 NW2d 161 (1992). In distributing marital property, the goal of the court should be an equitable distribution, taken in light of all the surrounding circumstances, and not merely mathematical equality. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The court, when reaching its conclusion, should take the following into consideration: the duration of the marriage; the contribution of each party to the marital estate; each party’s station in life

and earning ability; each party's needs, fault or misconduct of the parties; and, any other equitable circumstances. *Byington, supra*, 224 Mich App 115. When rendering its decision, a trial court is required to comply with MCR 3.210(D), the rule governing hearings and trials in domestic relations actions. The rule provides that the trial court must make findings of fact as set forth in MCR 2.517. MCR 2.517(A) provides:

(1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

(2) Brief, definite, and pertinent findings and conclusions of the contested matters are sufficient, without overelaboration of detail or particularization of facts.

On the initial appeal, this Court determined not that defendant was automatically entitled to a greater share of the marital estate, but that the lower court needed to substantiate its reasons for distributing the property in plaintiff's favor where evidence at trial showed that defendant was the primary contributor to the estate. Essentially, this Court's instruction to the lower court on remand was not necessarily to award defendant a greater share, but rather, to make specific findings either to support the original distribution or amend the distribution. The court, on remand, did not in fact make a specific finding regarding the value of the rental properties. Instead, it appears that the court attempted to dispose of the case by awarding defendant a share in the equity of the marital home. The court did not make a determination of the value of the rental properties even though this Court had determined that the court's earlier valuation was clearly erroneous. However, this alone does not mean that the court did not consider the value of such properties when awarding defendant an interest in the marital home. The difference in valuation was approximately \$28,000. The court, by granting defendant an additional \$21,000, may not have specifically enumerated the value of the properties, however, it is clear that on remand the court considered those elements it was required to by this Court:

In making this decision, the Court has considered the Court of Appeals finding that the defendant brought most of the assets to the marriage, provided the majority of support during the marriage, and the payment by the defendant of the marital debts estimated by the defendant [sic] at \$9,474, and by the defendant as \$19,867.

Because the trial court "was aware of the issues in the case" and because appellate review would not be facilitated by requiring the court to further explain its decision regarding distribution, the factual findings were adequate and there is no reason to remand the case for further factual findings as to the valuation of the rental properties and the redistribution. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995); MCR 7.216(A)(7). Clearly, the court's goal was an equitable distribution of the marital property considering the contribution of each party to the marital estate. *Byington, supra*, 224 Mich App 114-115. The court did not violate the law of case because its findings were not in contravention with this Court's ruling on any issue. *Driver, supra*, 226 Mich App 558.

As to defendant's arguments regarding certain personal items and past rent payments due him, it is clear that the court considered the facts available to it when making its ruling. The court awarded defendant \$1,946.96 for the security deposit and balance of defendant's share of the rental property. This amount was about half what defendant requested. However, the trial court explained that it offset the amount defendant requested with the amount plaintiff argued she had paid on defendant's behalf for credit cards, water, electricity and telephone bills. Similarly, with regard to defendant's personal items, the court concluded that defendant had an opportunity on an earlier occasion to retrieve certain items from the home and that he picked up his snowmobile and trailer prior to trial. Again, it is clear that the court chose to adopt plaintiff's version of the facts. The court was required to make credibility determinations from the record and decided accordingly. Such questions of credibility are generally left to the trier of fact and will not be upset on appeal. *In re Forfeiture of \$25,505*, 220 Mich App 572, 581; 560 NW2d 341 (1996).

Affirmed.

/s/ Michael J. Kelly  
/s/ Harold Hood  
/s/ Jane E. Markey