

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH AUBREY SHEPHARD,

Plaintiff-Appellant,

v

CHRISTINE MARIE SHEPHARD,

Defendant-Appellee.

UNPUBLISHED

February 26, 1999

No. 202263

Kalamazoo Circuit Court

LC No. 96-001521 DO

Before: Cavanagh, P.J., and Murphy and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment of divorce. We affirm.

Plaintiff argues that defendant was not entitled to half of the increase in value of plaintiff's M&S Development, Inc. (M&S), stock because it was a separate asset that should not have been subject to distribution, and that defendant did not sustain her burden of proving the reasonably ascertainable value of the stock. We disagree.

The distribution of property in a divorce is controlled by MCL 552 *et seq.*; MSA 25.81 *et seq.* *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997). When granting a divorce, the trial court may divide all property that came to either party by reason of the marriage. MCL 552.19; MSA 25.99; *Reeves, supra* at 493. A trial court's first consideration when dividing property is the determination of marital and separate assets. *Reeves, supra* at 494. Generally, each party takes away from the marriage that party's own separate estate with no invasion by the other party. *Id.* However, where either of two statutorily created exceptions is met, a spouse's separate estate can be opened for redistribution. MCL 552.23; MSA 25.103, MCL 552.401; MSA 25.136, *Reeves, supra* at 494. One of these exceptions is met when the other spouse "contributed to the acquisition, improvement, or accumulation of the property." *Reeves, supra* at 494-495.¹

We review a trial court's findings of fact regarding the valuation of marital assets for clear error. *Welling v Welling*, __ Mich App __; __ NW2d __ (Docket No. 203654, issued 2/5/99). We give special deference to a trial court's findings when they are based on the witnesses' credibility. *Id.* If we uphold the findings of fact, we then determine whether the ultimate dispositional ruling was fair and

equitable in light of the facts, reversing only if left with the firm conviction that the distribution was inequitable. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997).

M&S was formed in 1987, before the parties married in August 1989. Plaintiff bought fifty percent of the outstanding stock and James Murphy bought the remaining fifty percent. The corporation's sole asset is a strip mall located at Milham Road and Sprinkle Road. Plaintiff, a master plumber, testified that he worked at the mall about fifteen to twenty hours a year doing various maintenance jobs, mostly plumbing, and a yearly yard cleanup, but that he did not do any of the paperwork, collect rent or make the mortgage payments. However, defendant testified that plaintiff and Murphy met regularly to talk about the business, and estimated that defendant spent roughly twenty-five hours a month doing so. Defendant testified that she did not know precisely how much of this time plaintiff and Murphy actually spent on M&S business because they were friends as well as partners and she was not always present, but that it was more than fifteen to twenty-five hours a year because that was how much time she herself spent working for the strip mall, doing typing and other tasks.

The trial court could have concluded based on the parties' testimony that plaintiff's interest was not "wholly passive" and that plaintiff actively participated in M&S. *Reeves, supra* at 495-497. The trial court could also have concluded that plaintiff's interest in M&S "appreciated because of [plaintiff's] efforts, facilitated by [defendant's] activities at home" as well as at plaintiff's other business, Shephard Plumbing, at which defendant worked full-time. The court could also have concluded that defendant contributed to the improvement of M&S by working there at least fifteen to twenty-five hours a year. *Id.*; *Hanaway v Hanaway*, 208 Mich App 278, 293-294; 527 NW2d 792 (1995). Accordingly, we find no error in the trial court's inclusion of the increase in value of plaintiff's M&S stock in the marital estate.

We also disagree with plaintiff's argument that defendant failed to carry her burden of proving the reasonably ascertainable value of the increase in plaintiff's M&S stock and that the trial court's valuation of the stock was speculative and clearly erroneous.

The general rule applicable to the valuation of marital assets is that the party seeking to include the interest in the marital estate bears the burden of proving a reasonably ascertainable value. *Wiand v Wiand*, 178 Mich App 137, 149; 443 NW2d 464 (1989).

Defendant was awarded \$25,000, representing half of the increase in value of plaintiff's M&S stock. Defendant offered into evidence plaintiff's personal financial statement dated January 2, 1992, which stated that his portion of the present market value of M&S was \$350,000 and his portion of the liabilities was \$175,000. From this evidence and defendant's testimony the trial court could have concluded that plaintiff's interest in M&S was valued at \$175,500. Plaintiff provided the court with M&S financial statements, including statements from December 31, 1989, and December 31, 1995, which the court used to arrive at its valuation. The 1989 financial statement states that the building and the land, the principal assets of M&S, were valued at \$397,947 and the liabilities totaled \$435,173 [assets minus liabilities = -\$37,226]. The 1995 financial statement states that the building and land were valued at \$433,720 and the liabilities totaled \$330,325 [assets minus liabilities = \$103,395]. The trial court concluded that the value of M&S had increased by approximately \$100,000, attributing \$50,000

of the increase to plaintiff because plaintiff owned fifty percent. We conclude that defendant satisfied her burden of proving a reasonably ascertainable value and that the trial court did not err in valuing the increase in plaintiff's M&S stock at \$50,000. The court's award of \$25,000 to defendant was thus proper. *Wiand, supra* at 149.

We conclude that the trial court's ruling awarding defendant \$25,000, representing half of the increase in value of plaintiff's interest in M&S, was fair and equitable in light of the facts. *Hanaway, supra* at 292.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Helene N. White

¹ We do not address plaintiff's argument that the trial court's award of half the increase in value of plaintiff's stock was not justified on the basis that other assets awarded her were insufficient for suitable support and maintenance, as the trial court made no mention of suitable support and maintenance.