STATE OF MICHIGAN

COURT OF APPEALS

JOHN EDWARD KRONECK,

Plaintiff-Counter-Defendant-Appellant,

v

MARY ELLEN CLERY-KRONECK,

Defendant-Counter-Plaintiff-Appellee.

UNPUBLISHED
June 18, 1999

No. 207030
Montcalm Circuit Court
LC No. 96-000755 DM

Before: Holbrook, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce entered after a bench trial. We affirm.

On appeal, plaintiff challenges the trial court's property distribution. The appellate standard of review for matters of property distribution is two-fold. First this Court must review the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151-152 (1992). A finding is clearly erroneous if the appellate court, on all of the evidence, is left with a definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805 (1990). Second, if the trial court's findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks*, *supra* at 151-152. The trial court's dispositive ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable. *Id.* at 152.

Plaintiff first contends that the trial court's factual determination that he was sixty-five percent at fault for the breakdown of the marriage was clearly erroneous. We disagree. It is undisputed that plaintiff had an extra-marital affair during his marriage to defendant. The reasons for the breakdown of the marriage cited by plaintiff pale in comparison to his own indiscretion. Accordingly, we are not left with a definite and firm conviction that a mistake was made.

Similarly, plaintiff contends that the trial court clearly erred in its determination of the value of the real property at issue. We disagree. The trial court's valuation of each parcel of property fell within the

values put forth by the parties. Considering the various appraisals for the house, and the price for which the parties had previously agreed to sell the rental property, we are not left with a definite and firm conviction that a mistake was made.

Plaintiff also argues that the trial court's disposition of the marital property was inequitable. We are not persuaded by plaintiff's argument. Our Supreme Court has explained that several factors may be relevant to the determination of an equitable property distribution. Among these factors are: "(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." See *McDougal v McDougal*, 451 Mich 80, 88-89; 545 NW2d 357 (1996), citing *Sands v Sands*, 442 Mich 30, 34-36; 497 NW2d 493 (1993), and *Sparks*, *supra* at 158-160. This list of factors is not exhaustive. *Id.* By the same token, there will be many cases when most of these factors will be irrelevant. *Id.* Where any of the factors are *relevant* to the value of the property or the needs of the parties, the trial court is required to make specific findings of fact regarding *those* factors. *Id.*

Here, the trial court made its property distribution on the basis of its findings regarding the relative fault of the parties. It is clear that fault is a factor that may be considered in the equitable distribution of marital property. See *McDougal*, *supra* at 88, citing *Sparks*, *supra at* 158. Plaintiff argues that the trial court placed a disproportionate emphasis on its findings of fact regarding fault. In so doing, however, plaintiff fails to specifically explain which other relevant factors the trial court overlooked in determining the property distribution. Under the facts of this particular case, if fault was the *only* factor relevant to the unequal property distribution, the trial court's ruling was not erroneous. Because plaintiff failed to apprise this Court of any other relevant factors, we are unable to fully evaluate the merits of his argument. See, e.g., *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997) ("A party may not merely announce a position and leave it to the Court of Appeals to discover and rationalize the basis for the claim."). Thus, we are not left with a definite and firm conviction that the division was inequitable.

Finally, plaintiff argues that the trial court erred in its ruling concerning the division of the parties' retirement benefits. Again, we are not persuaded that the trial court erred.

The Legislature has provided that vested retirement benefits accrued during the marriage *must* be considered part of the marital estate subject to award by the trial court, and that contingent retirement benefits accrued during the marriage *may* be considered part of the marital estate subject to award by the trial court. See MCL 552.18; MSA 25.98. In this case, the trial court specifically ordered that each party was entitled to receive his or her own retirement benefits. The inclusion in the judgment of divorce of a provision dividing the retirement benefits between the parties clearly indicates that the trial court considered the benefits to be part of the marital estate subject to distribution. Accordingly, we reject plaintiff's suggestion that it is "unclear whether the trial court was ignoring the statutory authority to divide retirements as a marital asset." Furthermore, we are not convinced that the trial court's failure to utilize an Eligible Domestic Relations Order (EDRO)[1] necessarily resulted in an inequitable distribution. Considering all of the facts, we are not left with a definite and firm conviction that a mistake was made.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy
/s/ Michael J. Talbot

[1] See MCL 38.1701 *et seq.*; MSA 5.4002(101) *et seq.*