

STATE OF MICHIGAN
COURT OF APPEALS

HARRY SALEH,

Plaintiff-Appellant,

v

MALAKE F. SALEH,

Defendant-Appellee.

UNPUBLISHED

October 5, 1999

No. 208582

Wayne Circuit Court

LC No. 96-640509 DM

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

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

Plaintiff met defendant during a month-long visit to Lebanon where the parties were married on January 7, 1991. The parties lived in Dearborn during their marriage and had three children. On September 17, 1996, plaintiff filed a complaint for divorce. On December 5, 1997, the trial court entered its judgment of divorce, dissolving the marriage and dividing the marital estate.

Plaintiff first argues on appeal that the trial court erroneously included plaintiff's separate property in the marital estate that was divided. We disagree. When a party challenges a trial court's division of property pursuant to a divorce, this Court must first review the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Findings of fact, such as a trial court's valuations of particular marital assets, will not be reversed unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). A finding is clearly erroneous if, after a review of the entire record, this Court is left with the definite and firm conviction that a mistake has been made. *Beason, supra* at 805; *Draggoo, supra* at 429. 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); *Sparks, supra* at 151. 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* at 34; *Sparks, supra* at 151-152.

Plaintiff claims that the property divided in the judgment of divorce was property that he acquired prior to his marriage to defendant or property that was purchased with money that plaintiff accumulated prior to the marriage. Generally, marital assets are subject to division between the parties, but the parties' separate assets may not be invaded. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). Assets earned during the marriage are properly considered part of the marital estate. *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997).

The trial court stated that it considered plaintiff's argument that the property at issue was his separate property, but found the argument meritless because plaintiff lacked credibility. At trial, plaintiff admitted that he did not disclose his ownership interest in a house on MacDonald Street in Detroit or his receipt of rental income from that property in his answers to defendant's interrogatories. There was also testimony suggesting that plaintiff owned property in Hollywood, Florida and Lebanon that plaintiff failed to disclose during discovery. Special deference is given to a trial court's findings when they are based on the credibility of the witnesses. *Draggoo, supra* at 429. Accordingly, the trial court's finding that the property at issue was marital property was not clearly erroneous.

Moreover, the trial court's division of the marital property was not inequitable. The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Byington, supra* at 114. 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 any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks, supra* at 158-160. The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *Id.* at 159. Several witnesses testified that plaintiff surrendered his ownership interest in Albert's Furniture, Inc., to have the opportunity to manage a new Albert's Furniture store with his brother, Joe Saleh, in Eastpointe, Michigan. It was not clear error for the trial court to find that plaintiff received a valuable ownership interest in the Eastpointe store as a result of that exchange. According to an expert accountant who submitted a report on the valuation of assets relevant to the divorce, the business that operated from the Eastpointe store was worth between \$115,876 and \$465,876, depending on whether a \$350,000 mortgage was bona fide. Witnesses' testimony at trial differed with respect to whether plaintiff and Joe Saleh owed a \$350,000 debt. It was for the trial court to determine which witnesses to believe. The trial court's finding that twenty-five percent of plaintiff's business was worth \$105,000 was not clearly erroneous.

Testimony at trial indicated that plaintiff sought to conceal his ownership interests in several pieces of real property. A party's attempt to conceal assets is a relevant consideration in determining an equitable division of property, but does not result in automatic forfeiture. *Sands, supra* at 36. Although it is undisputed that defendant did not bring meaningful assets into the marriage and did not earn an income during the marriage, defendant acted as a homemaker for plaintiff and the parties' three children for more than five years which allowed plaintiff to work at his furniture business. Defendant spoke limited English and had no work experience in the United States. Evidence suggested that plaintiff discouraged defendant from pursuing employment or attending school during their marriage. Plaintiff

admitted that he spent large sums of money gambling.¹ Based on the foregoing equitable circumstances, we are not left with a firm conviction that the trial court's ruling was inequitable. Accordingly, the trial court did not abuse its discretion in dividing the marital property.

Plaintiff also argues that the trial court erred in awarding \$6,000 in attorney fees and \$1,500 in costs to defendant. A court may impose just sanctions under MCR 2.313(B) if it finds that a party failed to seasonably supplement responses to interrogatories. MCR 2.302(E)(2). The decision whether to impose discovery sanctions is within the trial court's discretion, and will be reviewed on appeal for an abuse of discretion. *Traxler v Ford Motor Co*, 227 Mich App 276, 286; 576 NW2d 398 (1998).

During trial, plaintiff admitted that he did not disclose his ownership interest in a house in Detroit or disclose his receipt of rental income from that property in his answers to defendant's interrogatories. There was also testimony indicating that plaintiff's name was on a deed to a house in Hollywood, Florida and that plaintiff had an ownership interest in a condominium in Lebanon, neither of which were disclosed during discovery. Defendant presented records to the trial court indicating that she was prejudiced by the delay and that additional investigation was necessitated by plaintiff's nondisclosures. Accordingly, the trial court did not abuse its discretion in imposing sanctions in the form of attorney fees and costs.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Kathleen Jansen

¹ We also observe that there was substantial evidence that plaintiff was at fault for the breakdown in the marital relationship. Plaintiff admitted that he had an extramarital affair that resulted in the birth of a child during his marriage to defendant. Defendant testified that plaintiff drank heavily and smoked marijuana during the marriage and physically abused her on several occasions. Fault may properly be considered when determining the distribution of assets pursuant to a divorce. *McDougal, supra* at 89.

We recognize, however, that in the instant case, the trial court announced that it would not consider fault in relation to the property distribution. In this regard, we reject plaintiff's assertion that he was prejudiced because he presented limited proofs on the issue of fault in reliance on the court's statements, but the court considered fault nevertheless. In fact, the court mentioned fault only in regard to the alimony issue.