

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL H. WOLF,

Plaintiff-Appellant,

v

FRANCES MARY WOLF,

Defendant-Appellee.

UNPUBLISHED

November 12, 1999

No. 211651

Charlevoix Circuit Court

LC No. 96-076418 DM

Before: O’Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, disputing the trial court’s division of property, classification of property, and alimony award. We affirm.

First, plaintiff claims that the trial court made erroneous findings of fact with respect to his dividend income and his income-earning potential, and erred in classifying the entire value of his life insurance policies and his interest in Grand Traverse Investments as marital property. He contends that these two assets should have been deemed separate property to the extent they were acquired before the marriage. There is no merit to this issue.

We review the trial court’s findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous if, on review of all the evidence, this Court is left with a definite and firm conviction that a mistake has been made. *Thames v Thames*, 191 Mich App 299, 301-302; 477 NW2d 496 (1991). A trial court’s findings are not clearly erroneous if they are supported by the record. *Jansen v Jansen*, 205 Mich App 169, 170; 517 NW2d 275 (1994). We will affirm a trial court’s dispositional rulings unless we are left with a firm conviction that the marital property division is inequitable. *Sparks, supra* at 151-152.

We first find no error in the trial court’s findings with respect to plaintiff’s dividend income or imputed income. Although the trial court referred to plaintiff’s after-tax dividend as \$52,000, the factual findings, considered as a whole, indicate that this was merely a misstatement. The trial court concluded that “[i]f we use an average of \$30,000 imputed income before tax and the \$52,000 passive

income[,] he should be able to earn at least \$82,000 pre-tax income.” There is no indication that the trial court actually treated the \$52,000 as post-tax income.

In imputing income of \$30,000, the trial court first concluded that plaintiff could potentially make \$20,000 to \$40,000 per year. This is supported by the record. Plaintiff testified that he had made as much as \$1,200 in one week while working in the gaming industry during the 1980’s, and that his average income had been \$100 to \$120 per night from tips, plus \$3.50 per hour wages, five nights per week. Even more significantly, when asked, plaintiff agreed that he could conceivably make \$20,000 to \$40,000 per year, and he acknowledged that he had not applied for work at any of the local casinos because he hoped to find an even better opportunity through his numerous community contacts. In addition, there was evidence on the record that plaintiff had marketable computer skills. The trial court’s conclusion that plaintiff could earn \$30,000 per year was therefore supported by the evidence.

The distribution of property in a divorce is controlled by statute. MCL 552.1 *et seq.*; MSA 25.81 *et seq.*; *Charlton v Charlton*, 397 Mich 84, 92; 243 NW2d 261 (1976). Those assets earned by a spouse during the marriage are properly considered part of the marital estate. MCL 552.19; MSA 25.99; *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). Generally, the parties’ separate assets should not be invaded; however, a spouse’s separate estate can be distributed as part of the marital estate when one of two statutorily created exceptions is met. *Charlton, supra* at 92-94. The relevant exception here allows invasion of separate property where, if after division of the marital assets, “the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party.” MCL 552.23; MSA 25.103. In other words, invasion is allowed when one party demonstrates additional need. *Charlton, supra* at 94.

Regardless whether the disputed assets were acquired during the marriage, the trial court expressly stated that the marital estate, if split equally, would be insufficient for defendant’s support and maintenance. In light of this finding, it was within the trial court’s discretion to include both disputed properties and defendant’s stock holdings in the marital property division. *Charlton*, at 92-94. This was fair and equitable under the circumstances.

Plaintiff next contends that the trial court failed to take into consideration that he contributed to the entire marital estate, making it inequitable to award defendant significantly more of the marital estate and \$1,000 per month alimony. We do not agree.

The well established goal in distributing marital assets in Michigan is to reach an equitable distribution of property in light of all the circumstances, and any significant departure from congruence must be supported by a clear articulation of the court’s rationale. *Byington, supra* at 114-115. In determining an equitable distribution of marital property, the following factors are to be considered where relevant:

- (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. [*Sparks, supra* at 159-160.]

The trial court here recognized that the marriage lasted ten years, and that the parties' income and assets were almost entirely the result of plaintiff's contributions. Thus, the trial court did not, as plaintiff claims, fail to take these factors into consideration. The trial court considered the parties' life status, their necessities and circumstances, and their earning abilities, noting that plaintiff provided defendant a certain lifestyle that neither would be able to continue after the divorce. See MCL 552.23; MSA 25.103.

The trial court found that defendant could reasonably be expected to make \$20,000 per year, while plaintiff could expect income of at least \$82,000 per year, with a dividend income that will likely increase substantially over the next few years. We have consistently recognized that this factor can weigh in favor of a greater portion of the marital assets being awarded to the lower-income partner. *Byington, supra* at 114-115.

We will not substitute our judgment for that of the trial court in a decision to award alimony unless convinced we would have reached a different result. *Kurz v Kurz*, 178 Mich App 284, 295; 443 NW2d 782 (1989). The main objective of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). In determining whether to award alimony, the following factors are to be considered where appropriate:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. [*Thames, supra* at 308.]

Although the trial court did not expressly state that plaintiff caused the breakup of the marriage, the trial court did appear to recognize that plaintiff's behavior, including "severe drug and alcohol problems before and during the marriage," was a significant cause of the breakdown of the marital relationship. Alimony may be enhanced where the trial court finds that one party was more at fault than the other for the breakdown of the marriage. See, e.g., *Zecchin v Zecchin*, 149 Mich App 723, 727; 386 NW2d 652 (1986); *Davey v Davey*, 106 Mich App 579, 581; 308 NW2d 468 (1981). We find no error in the trial court's findings and we are not convinced that the award in this case was inequitable.

Affirmed

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Brian K. Zahra