STATE OF MICHIGAN

COURT OF APPEALS

SCOTT W. KRUEGER,

Plaintiff-Appellant,

v

JULIE K. KRUEGER,

Defendant-Appellee.

UNPUBLISHED
March 28, 2000

No. 213668
Saginaw Circuit Court
LC No. 97-019035-DM

Before: Talbot, P.J., and Gribbs and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from a post-divorce property distribution in which the trial court awarded sixty percent of the marital estate to defendant and forty percent of the marital estate to plaintiff. We affirm.

Plaintiff first argues that the trial court erred in assessing fault to him based on an extramarital affair with a coworker. Plaintiff contends that his relationship with the coworker began after he filed for divorce and therefore could not serve as the basis for assessing fault. We review a 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, after a review of the entire record, [we are] left with a definite and firm conviction that a mistake has been made." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

We disagree that the trial court clearly erred in concluding that plaintiff's affair commenced before he filed for divorce and led to the breakdown of the marriage. Defendant testified that (1) she suspected, based on plaintiff's behavior, that plaintiff was having an affair in December 1996, five months before he filed for divorce in May 1997; (2) plaintiff admitted kissing the coworker in December 1996; (4) plaintiff refused to speak with defendant beginning in January 1997; (4) plaintiff told defendant in February 1997 that he did not love her anymore and wanted to date the coworker; (5) plaintiff admitted to sleeping with the coworker in February 1997;[1] and (6) the coworker professed love for plaintiff around the same time the divorce complaint was filed. This testimony amply supported the conclusions that plaintiff began seeing the coworker before filing for divorce and that this affair led to the

breakdown of the marriage. Although plaintiff testified otherwise, we must give special deference to a trial court's factual findings when based on witness credibility. *Draggoo, supra* at 429.

Plaintiff additionally argues that in deciding whether to assess fault to plaintiff because of the extramarital affair, the court should not have considered defendant's testimony that plaintiff referred to the coworker as "candy." Plaintiff argues that this testimony lacked probative value on the issue of fault, and thus should have been excluded from trial, because plaintiff did not become involved with the coworker until after he filed for divorce. However, plaintiff failed to object to the testimony at trial, and "objections to the admission of evidence may not be raised for the first time on appeal absent manifest injustice." See *In re Forfeiture of $19,250*, 209 Mich App 20, 32; 530 NW2d 759 (1995). Here, we find no manifest injustice, since, as explained *supra*, the record amply supported the trial court's finding that the relationship between plaintiff and the coworker began before plaintiff filed for divorce.

Next, plaintiff argues that the trial court erred in concluding that a $24,000 gift from plaintiff's godmother was part of the marital estate. Plaintiff argues that this gift was not intended for use by both parties but was intended for him alone. Defendant, however, testified that the godmother invited both parties to the bank when depositing the money and said the money was to benefit their family. In light of this testimony, the trial court's conclusion that the money was part of the marital estate was not clear error. See *Sparks, supra* at 151 (trial court's factual findings reviewed for clear error). Instead, it was a determination of credibility that we treat with special deference. *Draggoo, supra* at 429.

Next, plaintiff argues that the court erred when it refused to believe his testimony that the parties owed $10,000 to his parents. Although defendant did not testify to the contrary, the trial court explicitly found plaintiff's testimony to be incredible. Plaintiff's testimony was the only evidence he offered to support this claim. Again, we decline to upset the trial court's determination of plaintiff's credibility, and we therefore find no clear error in the court's conclusion that no $10,000 loan existed. See *Draggoo, supra* at 429 (trial court's credibility determinations treated with special deference), and *Sparks, supra* at 151 (trial court's factual findings reviewed for clear error).

Plaintiff additionally argues that the trial court erred by failing to consider various other debts and payments when calculating the value of the marital estate. However, plaintiff failed to adequately brief this issue, and he did not raise this issue in the statement of questions presented on appeal. Accordingly, review is inappropriate. See *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996).

Finally, plaintiff argues that the trial court erred by refusing to reopen the proofs to allow plaintiff to present evidence of the value of his tools. The reopening of a case after the evidence is completed is within the sound discretion of the trial court. *Graham v Inskeep*, 5 Mich App 514, 522; 147 NW2d 436 (1967). We conclude that the trial court did not abuse its discretion by refusing to reopen the proofs, since plaintiff did not make a convincing argument in the trial court regarding why he did not have the appraisal available at trial.[2]

Plaintiff additionally suggests that the trial court assigned an arbitrary value to his tools and erroneously failed to consider the value of certain personal property awarded to defendant. Again,

however, plaintiff failed to adequately brief this issue, and he failed to raise this issue in the statement of questions presented on appeal. Accordingly, review is inappropriate. *Marx, supra* at 81.

Affirmed.

/s/ Michael J. Talbot
/s/ Roman S. Gribbs
/s/ Patrick M. Meter

[1] Defendant testified that when speaking with plaintiff in October 1997, she questioned him as follows:

> I asked him when did [the affair] start because he told me before he was kissing her in December and he said it was like candy in front of me in February. He says I went to bed with her for the first time because it was just like candy to me. I mean, what am I supposed to do? Am I suppose[d] to resist?

A reasonable interpretation of this testimony is that plaintiff admitted to sleeping with the coworker in February 1997.

[2] Plaintiff testified that the appraisal was unavailable at trial because the appraiser "had to check on prices" and "[would not] return [plaintiff's] call."