STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN MARY KLAHN,

Plaintiff-Appellee/Cross-Appellant,

v

GORDON ALAN KLAHN,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
July 28, 2000

No. 217737
Kent Circuit Court
LC No. 96-008589-DM

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. Plaintiff cross-appeals as of right. We affirm.

First, defendant argues that the trial court erred in awarding to plaintiff half of the cattle and equipment given to him by his parents as a gift because (i) his parents intended for the gift to go to him and not the two of them as a couple, (ii) plaintiff did not contribute to the improvement or managing of the farm, and (iii) plaintiff did not show need for the money. We disagree.

When reviewing a property distribution, this Court must first review the trial court's findings of fact under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous if, after reviewing the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the trial court's findings of fact are upheld, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks*, *supra* at 152. The dispositional ruling is discretionary and should be affirmed unless this Court "is left with the firm conviction that the division was inequitable." *Id.*

When dividing property in a divorce proceeding, the trial court's first consideration is the determination of marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Generally, the marital estate is divided between the parties and each party takes his or her own separate estate with no invasion by the other party. *Id.* at 494. However, a party's separate estate can be redistributed to a spouse where 1) the marital property awarded to a spouse is

insufficient for the suitable maintenance and support of that spouse, MCL 552.23(1); MSA 25.103(1); *Reeves, supra* at 494, or 2) the other spouse "contributed to the acquisition, improvement, or accumulation of the property," MCL 552.401; MSA 25.136; *Reeves, supra* at 494-495.

Here, the trial court found that plaintiff should receive half of defendant's interest in the equipment and cattle given to him as a gift because she was a "typical farm wife" who "raised the children, took care of the home, prepared meals, ran errands, answered the phone, all the things that a loyal and dedicated wife would do to contribute to her family." Plaintiff's efforts at home allowed defendant to spend long hours working to run and improve the farm. *Hanaway v Hanaway,* 208 Mich App 278, 293-294; 527 NW2d 792 (1995). In addition, plaintiff testified that she made improvements to the farmhouse and that she helped on the farm by performing tasks such as cleaning the milk parlor, pulling cows, taking dinners to farm workers on the field, and assisting in scheduling workers. We therefore conclude that the trial court did not err in awarding plaintiff half of defendant's interest in the cattle and equipment. MCL 552.401; MSA 25.136; *Reeves, supra* at 494-495; *Schwiesow v Schwiesow,* 159 Mich App 548; 406 NW2d 878 (1987)(court did not abuse its discretion in awarding wife one-third of husband's interest in farm given to husband as gift where parties contributed equally to marriage and marital funds and labor were used to improve farm).

Defendant next argues that the trial court should have used a revised valuation figure of the cattle and equipment made by his accountant rather than an earlier assessment by a certified appraiser. The newer, and lower, figure, defendant argues, takes into account previously unconsidered debt associated with the gift. Defendant further argues that because the gift was required to be put back into the limited liability company as part of the farm, the value of the gift should be the value of defendant's interest in the limited liability company. We disagree. We review the trial court's findings of fact regarding the valuation of assets under the clearly erroneous standard. *Draggoo, supra* at 429.

The trial court did not err in using the higher assessed value for the gift. The accountant who worked for the limited liability company and who made the revised valuation did not testify at trial. The earlier valuation made by a certified appraiser was used in the business papers that created the limited liability company and was used throughout the majority of this litigation by defendant. Moreover, this Court may have found the valuation by the certified appraiser to be a better indication of the value than that of the accountant. *Maake v Maake,* 200 Mich App 184, 188; 503 NW2d 664 (1993). We find no clear error in the trial court's valuation of defendant's interest in the cattle and equipment.

On cross-appeal, plaintiff argues that the trial court should have awarded sanctions and attorney fees to her because of defendant's intentional delay of the proceedings and repeated failure to obey orders of the lower courts. However, the trial court's remarks indicate that, in essence, it granted plaintiff's requests for fees and sanctions. The court recognized that defendant's actions "unnecessarily prolonged this case." Instead of ordering that defendant pay sanctions and fees directly, the trial court ordered that plaintiff would not have to reimburse defendant for cash she had taken from a joint account and from an "electrical reimbursement" and ordered defendant to pay three other debts. Thus, while accepting plaintiff's argument regarding why sanctions and attorney fees were warranted, the trial court awarded her certain funds in lieu of directly awarding fees and costs. We find no error.

Finally, plaintiff argues that the trial court erred when it failed to consider a jointly held trucking business, whose assets were sold by defendant during the course of the divorce, when dividing the marital property. However, plaintiff failed to preserve this issue for review. Before and at trial, plaintiff alleged that defendant sold the truck used in their jointly owned milk hauling business without the permission of plaintiff and without sharing the $3,000 in proceeds. After describing the marital assets and how they should be divided, the trial court stated: "I think I've covered everything. Have I missed anything, Ms. Bryan?" Plaintiff's attorney responded by asking about past due payments of uninsured medical expenses, a revised child support amount, a retroactive start date for an increased child support payment, and the time and method of payment by defendant to plaintiff for past owed debts. Plaintiff did not mention the trial court's failure to address the issue of the trucking business. We therefore conclude that plaintiff waived review of this issue and we decline to review it. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993); *Swartz v Dow Chemical Co*, 414 Mich 433, 446; 326 NW2d 804 (1982).

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark T. Cavanagh