STATE OF MICHIGAN

COURT OF APPEALS

MELANIE SUE BROLICK,

Plaintiff-Appellant/Cross-Appellee,

v

RICHARD HENRY BROLICK,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
September 15, 2000

No. 217779
Ottawa Circuit Court
LC No. 95-023631-DO

Before: McDonald, P.J., and Neff and Zahra, JJ.

PER CURIAM.

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

The first issue is whether the trial court erred in determining that defendant's forty-five percent interest in Zelenka Nursery was a separate asset, which appreciated $790,106.00 during the marriage. The trial court further determined that the $790,106.00 appreciation was "equitably part of the marital estate." Plaintiff claims the trial court erred in considering only the appreciation of the stock's value during the marriage, and also argues the trial court erred in its valuation of defendant's interest in the company. Defendant argues that the trial court erred in awarding plaintiff any portion of his interest in the company given that it was his separate property and plaintiff did not contribute to its "acquisition, improvement, or accumulation." MCL 552.401; MSA 25.136. Defendant claims that any increase in the value of the company was due to passive appreciation of land owned by the company, and that the value of the company actually decreased during the marriage when one considers inflation. We disagree with both parties and affirm the trial court's decision with respect to this asset.

A determination of whether plaintiff contributed to the property's acquisition, improvement or accumulation is a finding of fact. See *Reeves v Reeves*, 226 Mich App 490, 494-497; 575 NW2d 1 (1997). We 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 a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988).

The trial court made the following findings of fact regarding plaintiff's contributions to the improvements of Zelenka Nursery: (1) that plaintiff undertook tasks to increase the value of the business, including accompanying defendant on sales trips, entertaining business guests, helping out with interviews of key people, providing a sounding board for defendant's ideas, refurnishing a western headquarters and helping to prepare for a national convention; (2) that plaintiff helped Zelenka Nursery through her work at Northland Express; (3) that plaintiff helped to raise defendant's children, but that this endeavor was hardly a full-time calling for plaintiff; and (4) that plaintiff was a member of the board at Zelenka Nursery and signed personal guarantees on some of Zelenka Nursery's notes. The record supports the trial court's findings of fact on this issue.

We review the dispositive ruling of the trial court to determine whether it was fair and equitable in light of those facts. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999). We will grant relief only if we are convinced that we would have reached a different result if we had occupied the position of the trial court or if we are left with the firm conviction that the division was inequitable. *Id.; Spooner v Spooner*, 175 Mich App 169, 172; 437 NW2d 346 (1989).

MCL 552.401; MSA 25.136 grants the trial court discretion to award property "as appears to the court to be equitable under all circumstances of the case." The trial court must consider certain factors when determining an equitable division of property, including "the source of the property; the parties' contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity." *Hanaway v Hanaway*, 208 Mich App 278, 292-293; 527 NW2d 792 (1995). In this case, in view of the record, we conclude that the trial court considered these factors and achieved the goal of equitable distribution with respect to the division of defendant's interest in Zelenka Nursery.

Plaintiff argues that her contributions to defendant were comparable to the plaintiff's contributions in *Hanaway*. We disagree. In *Hanaway*, the plaintiff actively raised the couple's children and kept the couple's household to help ensure the success of defendant's career. *Id*. at 293. Here, two of defendant's children lived with the couple during the marriage; however, the children were about fourteen and twelve years old when plaintiff moved in with defendant, and as the trial court noted, plaintiff's role in raising the children was hardly a full-time endeavor. Thus, plaintiff's parental role was not the same as the role of the plaintiff in *Hanaway*. Further, plaintiff admitted that she did not work outside the home for about seven years, from 1986 to 1993. Collectively, these facts indicate that, as the trial court concluded, although plaintiff's contribution to Zelenka Nursery was more substantial than merely keeping the home fires burning, plaintiff's contribution to the company was still substantially less than defendant's contribution. Thus, the court's distribution of defendant's interest in Zelenka Nursery, which placed only the appreciation of defendant's interest in the marital estate, was fair and equitable in light of all the circumstances in the case.

Plaintiff also argues the trial court erred in its calculation of the appreciation of the Zelenka Nursery stock. Plaintiff argues that the trial court erred by relying exclusively on business valuation appraisals of Zelenka Nursery performed by Corporate Valuation Specialists in 1979 and by Merrill

Lynch in 1995, which were performed to assist the company in valuing its employee stock option plan [hereinafter "ESOP"]. However, plaintiff's argument is without merit.

"A trial court has great latitude in determining the value of stock in closely held corporations, and where a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Thus, because the trial court's valuation was established by the admissible evidence presented by defendant in the appraisals conducted for the ESOP, no clear error was present. See *id.*; see also *Pelton, supra* at 25.

On cross-appeal, defendant also challenges the trial court's division of defendant's interest in Zelenka Nursery. To begin with, defendant argues that any appreciation that occurred with the real property owned by Zelenka Nursery during the marriage was passive appreciation, that is, appreciation that occurred without any efforts from the parties. Defendant argues that, under *Reeves*, this passive appreciation should not be factored in with the appreciation of defendant's interest in Zelenka Nursery in determining what amount should be included in the marital estate.

Defendant's argument is without merit. Unlike the appreciation that occurred to the property in *Reeves*, the appreciation that occurred to the real property owned by Zelenka Nursery was not passive. Both defendant and plaintiff concentrated their efforts during the marriage into the appreciation of Zelenka Nursery, of which the real property was an indistinguishable aspect of the business. Thus, the trial court did not err in failing to distinguish the appreciation that occurred to the company's real property from the appreciation that occurred to the value of the company during the marriage.

Defendant's second argument on cross-appeal is also without merit. Defendant claims that the trial court erred when it failed to adjust for inflation in determining whether Zelenka Nursery appreciated during the marriage. The trial court did not commit clear error in calculating the appreciation of defendant's interest in Zelenka Nursery stock without factoring inflation into the equation. It is clear that defendant's interest in Zelenka Nursery stock was more valuable in 1995 in terms of fair market value than it was in 1979. See *Gregg v Gregg*, 133 Mich App 23; 348 NW2d 295 (1984).

The next issue is whether the trial court's division of the parties' interest in Spectral Enterprises was inequitable because the court ordered the parties to maintain an ongoing business relationship in the company. Again, we review a trial court's dispositional ruling to determine whether it was fair and equitable in light of the facts. *Welling, supra* at 709. On this record, we cannot conclude that the trial court's decision was inequitable. The trial court concluded that Spectral provided "an abundant source of income to support both parties." Plaintiff's concerns regarding defendant's potential to abuse his position as majority shareholder are purely speculative. In any event, her rights are adequately protected against any such actions by defendant under MCL 450.1489; MSA 21.200(489).

Finally, plaintiff claims the trial court erred by granting defendant a greater credit for his premarital property than was established by the evidence. The trial court awarded defendant $324,918 as credit for his premarital property. The court stated that defendant's trial exhibit AA, a list of defendant's premarital assets, established this figure. On appeal, plaintiff asserts that the court's reliance

on exhibit AA was in error because some of the figures in this exhibit directly conflict with figures in defendant's premarital financial statements, which defendant submitted at trial as exhibit C. The specific figures on exhibit AA that plaintiff disputes include (1) the premarital value of defendant's interest in a housing development for migrant workers called Pine Acres/Pine Creek; (2) the premarital value of defendant's home; and (3) the premarital value of defendant's interest in Bremer Sugar.

The trial court did not clearly err in its findings of fact with respect to the premarital value of these assets. As stated above, a court's valuation of an asset is not clear error if it is within the range established by the proofs. *Jansen, supra* at 171. In this case, the trial court's conclusions on the valuation of these assets were supported by defendant's exhibit AA. Further, the figures in exhibit AA were traceable to exhibit C.

In particular, with respect to the value of defendant's home, exhibit AA lists a value of $131,453, which is the same value as shown in exhibit C when taking the cost of the home ($210,000) less the outstanding mortgage ($78,547). Plaintiff argues that the correct value should have been between $96,453 and $121,453, which was the market value of the home ($175,000 to $200,000) less the outstanding mortgage ($78,547). However, because the court's valuation is established by the proofs, we do not find clear error.

Similarly, with respect to the premarital value of the Bremer Sugar stock, exhibit AA lists the book value of the stock, which is $16,456. However, defendant argues that the proper value should have been $12,342, which is listed on exhibit C as the book value less a twenty-five percent discount. However, again, because the trial court's valuation of the stock is established by the proofs, we do not find clear error.

Finally, with respect to the premarital value of Pine Acres/Pine Creek, plaintiff argues that the trial court erred in valuing defendant's interest at $52,554, which is the figure listed on exhibit AA, because exhibit C lists the value of this asset as $1,687. However, as defendant argues, defendant testified at trial that the premarital interest of this asset was approximately $105,000, of which defendant owned half, which is approximately $52,500. Thus, the court's reliance on the value listed in exhibit AA was not clear error because this figure was established by defendant's testimony at trial, and we give special deference to the trial court's findings when they are based on the credibility of a witness. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

Affirmed.

/s/ Gary R. McDonald
/s/ Janet T. Neff
/s/ Brian K. Zahra