

STATE OF MICHIGAN
COURT OF APPEALS

JANET D. HEINS,

Plaintiff-Appellee,

v

RONALD O. HEINS,

Defendant-Appellant.

UNPUBLISHED

December 19, 2000

No. 217789

Lapeer Circuit Court

LC No. 98-025476-DO

Before: Wilder, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Defendant appeals as of right from that portion of the judgment of divorce dividing the parties' marital assets. We affirm.

Defendant contends that the trial court erred in awarding plaintiff the majority of the marital assets based in large part on its finding that defendant was at fault for causing the breakdown of the marital relationship. We disagree.

When reviewing a trial court's distribution of marital assets in a judgment of divorce, this Court must first review the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). A finding is clearly erroneous if, after reviewing the entire record, this Court is left with the definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1989); *Draggoo, supra* at 429. This Court gives special deference to the trial court's findings that are based on the credibility of the witnesses. *Draggoo, supra* at 429. If the trial court's factual findings are upheld, this Court then decide whether the dispositive ruling was fair and equitable in light of those facts. *Id.* The dispositional ruling is discretionary and should be affirmed by this Court unless, upon review, it is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Draggoo, supra* at 429-430.

The goal of distributing marital assets in a divorce proceeding is to reach an equitable distribution of the marital assets in light of the surrounding circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The property division does not need to be a mathematically equal share; however, any significant departure from congruence should be

supported by a clear exposition of the court's rationale. *Id.* at 114-115. In reaching an equitable division of the marital assets, 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 and past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks, supra* at 158-160. The fault of one or both of the parties in causing the breakdown of the marital relationship is a factor to be considered by the trial court in the distribution of the parties' assets. *McDougal, supra* at 80. However, fault is only one of the factors to be considered and it must not be used as a punitive basis for an inequitable division of the property. *Id.*; *Sparks, supra* at 144, 163.

After reviewing the record, we conclude that while the trial court found that fault was "a huge factor" in this case, it did not place undue weight on defendant's fault. The trial court did not find defendant's extramarital affair to be a significant factor because it occurred twenty years before the breakdown of the parties' relationship. However, the trial court considered defendant's second-degree criminal sexual conduct conviction a significant factor because it was a serious felony, it involved the family members (the victim was defendant's daughter's friend), and it was devastating to defendant's family.¹ Indeed, defendant admitted his fault in the breakdown of the marriage by committing the sexual assault. The trial court further found that plaintiff's decision not to seek a divorce until shortly before defendant was released from prison was insignificant because plaintiff had no need to get a divorce while defendant was incarcerated.

The trial court also considered other relevant factors in deciding the property distribution. The trial court found that the parties had a long-term marriage (thirty-six years), they had four children who were adults at the time of the trial, plaintiff was fifty-three years old and defendant was fifty-six years old, plaintiff was in good health, and defendant was seeking treatment for heart problems but there was no evidence that defendant was unable to work or that he would be unable to receive social security or disability benefits. The trial court further found that plaintiff worked on and off during the marriage, but she was primarily a homemaker and at the time of trial she made approximately \$220 a week. On the other hand, defendant worked for General Motors for thirty years, received a pension of \$1,890 a month at the time of trial, and had the ability to earn additional wages in the future. The trial court found that there was a disparity in the parties' ability to earn income and noted that plaintiff may have to seek full-time employment in the future.

On this record, we find that the trial court did not base its property distribution solely on defendant's fault in causing the breakdown of the marital relationship; rather, the trial court properly considered all the relevant factors and made a fair and equitable distribution of the assets under the circumstances.

¹ On January 25, 1993, defendant pleaded guilty to second-degree criminal sexual conduct and sexually abusive activity with a child. The victim was a friend of the parties' daughter. Defendant was sentenced to concurrent terms of five to fifteen years for the CSC II conviction, and five to twenty years for the sexually abusive activity conviction.

Next, defendant contends that the trial court erred in refusing to allow defendant to question plaintiff regarding her use of defendant's pension while defendant was in prison. We disagree. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999).

Plaintiff testified that while defendant was in prison, defendant gave her a power of attorney so she was able to receive his pension check. From this pension check, plaintiff made payments in the amount of \$300 per month to the State of Michigan and \$100 per month to defendant. Plaintiff further testified that she disclosed all her assets, bank accounts and her safe deposit box which contained her inheritance and wages at trial. Defendant presented no evidence or testimony to substantiate his allegation that plaintiff squandered or embezzled the parties' assets. The trial court found that plaintiff was a credible witness and that she had not hidden or embezzled assets from defendant. This Court gives deference to the trial court's determinations of the credibility of the witnesses. See *Draggoot, supra* at 429. On this record, we find that the trial court did not abuse its discretion in curtailing defendant's repetitive questioning of plaintiff regarding her use of defendant's pension and other marital assets while defendant was in prison.

Finally, defendant contends that the trial court erred by finding that his inheritance, which included real property in Warren, Michigan, was part of the marital estate, and ordering him to pay one-half of the inheritance to his sister out of his portion of the property division. Again, we disagree.

Normally, property received by one marital party as an inheritance and kept separate from the marital property is not included in the distribution of the marital estate upon the parties' divorce unless needed for support and maintenance. *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999); *Lee v Lee*, 191 Mich App 73, 79; 489 NW2d 161 (1992). However, in this case, the inheritance was treated as marital property since its acquisition in 1984 and was properly included in the marital estate subject to distribution. Defendant and his sister, who was mentally disabled, received their inheritance in 1984. Defendant's sister immediately removed her name from the deed and defendant then deeded the property to himself and plaintiff. At that point, the property became a marital asset belonging to both parties until the time of their divorce. Because the parties treated the property as a marital asset throughout their marriage, the trial court did not err in including defendant's inheritance in the marital estate. See *Dart, supra*.

Further, contrary to defendant's contention, the trial court did not order defendant to pay half of the inheritance to his sister out of his portion of the property division. Rather, the trial court merely suggested in its oral opinion that defendant give his sister her portion of the inheritance to which she is entitled.² It is well settled that courts speak through their written

² The trial court stated as follows with respect to the inheritance defendant and his sister received:

orders and not through their opinions. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Waple v Waple*, 179 Mich App 673, 675 n 1; 446 NW2d 536 (1989). We find no error.

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.³

/s/ Kurtis T. Wilder

/s/ Donald E. Holbrook, Jr.

/s/ Gary R. McDonald

As to the inheritance of the defendant, your testimony was that the property came from his family. It was designed for him and his sister and I think the parties all agree that certainly half of those assets that are remaining should be the sister's. I can't make that award as part of the judgment but I will give those assets to the defendant so that he can take care of that himself but the other half portion I believe is a marital asset. It was received some 10 or 15 years ago. Was placed in the joint names without any effort to segregate or separate those assets and I have no evidence on it but I assume that the parties had intended that they [sic] would be a joint marital asset. So that's how I'm treating them [sic].

³ We decline plaintiff's request to award her additional damages for defendant having filed a vexatious appeal because we are not convinced that the appeal was taken for purposes of hindrance or delay or without any reasonable basis to believe that there was meritorious issue to be determined on appeal. MCR 7.216(C). See *Dragoo, supra* at 431.