

STATE OF MICHIGAN  
COURT OF APPEALS

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RONALD R. HATCH,

Plaintiff-Appellee,

v

EDNA F. HATCH,

Defendant-Appellant.

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UNPUBLISHED

January 26, 2001

No. 218972

Washtenaw Circuit Court

LC No. 96-004948-DM

Before: Bandstra, C.J., and Hood and Cavanagh, JJ.

PER CURIAM.

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

Defendant first argues that the trial court erred in failing to distribute Hatch Stamping Company (HSC) as a marital asset when “the parties” dedicated twenty years to nurturing the family business. We disagree. In a divorce action, the trial court’s findings of fact are reviewed under the clearly erroneous standard. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999), quoting *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* We defer to the trial court’s findings of fact when based on the credibility of the witnesses. *Id.* When dividing property in a divorce action, the trial court must first determine whether the property is a marital or separate asset. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). Each party generally leaves the marriage with their own separate estate without invasion from the other party. *Id.* However, invasion into a separate estate may occur if the estate and effects of either party is insufficient for suitable support and maintenance, MCL 552.23; MSA 25.103, or if the other spouse contributed to the acquisition, improvement, or accumulation of the property, MCL 552.401; MSA 25.136. *Reeves, supra* at 494-495.

In the present case, plaintiff presented documentary evidence and testified that his family distributed assets to him and his siblings. The stock assets received by plaintiff were in his name only. While plaintiff acquired stock in and became president of HSC, a trust was set up for the benefit of plaintiff’s siblings. Plaintiff was excluded from a monetary family transfer to the siblings because of the transfer of the stock interests in HSC. Plaintiff testified that he managed HSC, but had to spend extended periods of time dealing with defendant’s mental condition and

suicidal ideation. To the contrary, defendant testified that she advised plaintiff regarding business matters, including the creation of the company policy on alcohol, and signed loan documents involving the business. The trial court concluded that the HSC interest was plaintiff's sole property, and neither exception applied. Specifically, the trial court held that the stock in HSC was transferred to plaintiff as his sole property, that there were sufficient assets available to defendant, and that defendant's contributions to the family business were modest, contrary to her testimony. The documentary evidence and testimony support plaintiff's contention that the HSC stock was separate property, and the trial court concluded that defendant's testimony regarding her extensive participation in the business was not credible. Accordingly, we cannot conclude that the trial court's distribution of this asset was clearly erroneous. *Welling, supra*.

Defendant next argues that the trial court erred in ordering limited spousal support when defendant did not have the resources or mental stability to support herself.<sup>1</sup> We disagree. A trial court has discretion to award just and reasonable alimony. *Magee v Magee*, 218 Mich App 158, 162; 533 NW2d 363 (1996). Factors for the court to consider include the length of the marriage, the parties' ability to pay, the past relations and conduct of the parties, age, need, ability to work, health, fault, and any other circumstances of the case. *Id.* Review of the record reveals that the trial court awarded defendant \$4,800 payable monthly for a period of six years. However, the trial court reserved the right to continue alimony payments under appropriate terms and conditions. We cannot conclude that the trial court abused its discretion in determining the alimony award. *Magee, supra*. The trial court was aware of defendant's age, mental condition, ability to pay, lifestyle, and marketable skills. However, the independent medical examination and the testimony of individuals overseeing defendant's care revealed that, as a part of her treatment, defendant needed to take responsibility for her own expenses in order to overcome her mental illness. The foundation for the alimony decision was the testimony that financial independence would aid defendant in overcoming her mental illness, and we cannot conclude that this was an abuse of discretion.

Defendant next argues that the trial court erred in awarding plaintiff credits for marital expenses based on the disparity of income and erred in allowing credit for a loss on a home. We disagree. The trial court's goal in apportioning a marital estate is to reach an equitable division in light of all of the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). If findings of fact are upheld, we must decide whether the trial court's dispositive ruling was fair and equitable in light of those facts. *Welling, supra*. Based on our review of the record, we cannot conclude that any loss on a sale by plaintiff was imposed on defendant. Furthermore, we conclude that the one-half credit extended to plaintiff for payment of mortgages for marital property, travel costs to visit the minor child, and the care costs for defendant were fair and equitable under all facts and circumstances. *Welling, supra; Byington, supra*.

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<sup>1</sup> Defendant also raises the issue of payment of attorney fees in the statement of questions presented, but fails to brief or support the issue with legal authority in the discussion section. Accordingly, the issue of attorney fees has been abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (2000).

Defendant next argues that the trial court erred in holding defendant responsible for a percentage of the minor child's expenses for uninsured health care and education expenses. We disagree. However, at oral argument, defendant indicated that the parties had reached an agreement as to Kristie, who is now eighteen years of age, and this issue was withdrawn.

Defendant next argues that the trial court failed to exercise independent discretion when it essentially adopted plaintiff's position regarding distribution of the marital estate and deprived defendant of the right to object to the divorce judgment. We disagree. Following a thorough review of the record, we conclude that the trial court's judgment in this case was based on the evidence presented, the credibility of the witnesses, and the interests of the parties. See *Bush v Beemer*, 224 Mich App 457, 466; 569 NW2d 636 (1997). The trial court did not merely adopt the position of plaintiff in ruling on the distribution of the marital estate, but performed its fact finding role, then disposed of the issues in accordance with the factual findings. *Beason v Beason*, 435 Mich 791, 798; 460 NW2d 207 (1989). While the trial court did not enter the divorce judgment in accordance with MCR 2.602(B), defendant was able to challenge the entry of the judgment and other issues pursuant to a motion for new trial, MCR 2.611. The trial court denied the motion for new trial. Irrespective of the procedural deficiencies of MCR 2.602(B), the trial court found that the judgment comported with its findings of fact and conclusions of law set forth in its written opinion. Accordingly, any irregularity in the entry was addressed at the time of the motion for a new trial and rendered moot by the trial court's decision.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Harold Hood  
/s/ Mark J. Cavanagh