

STATE OF MICHIGAN
COURT OF APPEALS

MARILYN J. KARAMANIAN,

Plaintiff-Appellee,

v

EDWARD KARAMANIAN,

Defendant-Appellant.

UNPUBLISHED

January 30, 2001

No. 211876

Oakland Circuit Court

Family Division

LC No. 96-523829-DO

Before: Kelly, P.J., and White and Wilder, JJ.

KELLY, P.J. (concurring in part and dissenting in part.)

I concur with the majority's holding that the trial court did not abuse its discretion in awarding plaintiff attorney fees, but that its findings of fact regarding the amount of fees awarded are inadequate and that this matter must be remanded to the trial court to make appropriate factual findings regarding the amount of fees incurred by plaintiff as a result of defendant's conduct.

With regard to the majority's conclusion that the post office property was part of the marital estate, I respectfully dissent.

The trial court granted the parties a divorce in 1998, after thirty years of marriage. Included in the marital estate was a parcel of property in which defendant has an interest. The property (the "post office property") had been leased to the Lathrup Village Post Office since before defendant and his parents acquired it in 1972. Defendant's father purchased the post office property in 1972. The deed included defendant's name, as well as his parents' names. However, payment for the property was made by defendant's father. Until 1983, when defendant's father entered a nursing home, the income and expenses for the post office property were included in defendant's father's tax returns. Until that time, the rental proceeds went into an account that was in defendant's father's name. Defendant assumed responsibility for the rent when his father entered the nursing home, putting his name on the bank account with his mother's name and reporting the income on the parties' joint tax return. In 1987, the account was in his name only. In 1996, defendant added his sister's name to the account. Defendant testified that he used the rental money to pay his parents' bills, taxes and supplies. Over the years, defendant gave his mother one or two hundred dollars a month out of the rental income.

Defendant testified that, when his father became ill, defendant took over the management responsibilities for the property. He denied any involvement by plaintiff. According to defendant, plaintiff's involvement with the property was minimal in that she would prepare the tax bill. However, in more recent years, plaintiff did draft some correspondence.

According to plaintiff, defendant played a part in the purchase of the post office property, although there is no indication that his role was financial. Plaintiff claims that she typed all correspondence regarding the leases, which had five-year terms, and handled all the transactions between the tenant and the family from the time the property was purchased. She completed correspondence six or seven times a year.

Plaintiff testified that she and defendant used the funds from the post office rental income for the children's education, a trip to Europe, an addition of a sun room to their home and the purchase of a boat. She admitted that these funds were kept in an account separate from the family accounts. She also admitted that defendant gave his mother money from the rental income.

The trial court included the post office property in the marital estate based on the property's appreciation during the marriage, the use of rental proceeds for marital expenses, defendant's management of the property with plaintiff's assistance, and the inclusion of the rental proceeds in the parties' taxable income. Defendant claims on appeal that the trial court erroneously considered this property a marital asset. I agree.

In a divorce action, this Court reviews a trial court's factual findings for clear error. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). A factual finding is clearly erroneous if, after reviewing the entire record, this Court is left with the definite and firm conviction that the trial court made a mistake. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999). The trial court's dispositional ruling will not be disturbed unless the reviewing court has a firm conviction that it was inequitable. *McDougal, supra*. In making a property disposition in a divorce case, the trial court may divide all property that came "to either party by reason of the marriage." MCL 552.19; MSA 25.99. The property that may be apportioned between the parties is the property that makes up the marital estate, and it is referred to as "marital property." *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). Included in the marital estate are assets earned by a spouse during the marriage. *Id.* The trial court's goal in apportioning a marital estate is to divide the marital assets equitably in light of all the circumstances. *Id.* at 114. The court should consider "increases in marital assets 'that may have occurred between the beginning and the end of the marriage.'" *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997).

Although defendant's father purchased the property, with no financial assistance by defendant or plaintiff, defendant was an owner of the property, as evidenced by his name on the deed. Until his father's death, the rental income was used by defendant's father or was used to provide for his father's care. After the death of defendant's father, defendant distributed some of the rental income to his mother for her personal use. It is undisputed that some of the rental income was brought into the parties' marriage and used for marital expenses. The parties

included the rental proceeds as taxable income. That same income was used to pay taxes on the post office property.

The acquisition of the property by defendant's father and his designation of defendant on the deed convinces me that the interest in the post office property is a separate asset. That the parties used the rental income for marital expenses and included that income on the joint tax returns supports a finding that the *income* could be considered a marital asset. Indeed, the trial court included the rental income account in the marital estate, awarding it to defendant. This particular disposition has not been challenged. However, the use of the rental income does not affect the nature of the separate asset: the ownership interest in the post office property. I would find that this interest is defendant's separate estate.

Next, plaintiff asserts that the post office property should be included in the marital estate. Specifically, plaintiff argues that the post office property should be included in the marital estate because she contributed to its acquisition, improvement or accumulation. I disagree.

Plaintiff relies in part on *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995). In that case, this Court found the plaintiff wife was entitled to a portion of the defendant husband's separate asset of stock in his family's corporation. The Court found that the plaintiff administered the household and cared for the parties' children. The defendant devoted himself to the company, working long work weeks. The business prospered during the parties' marriage. This Court found that the financial yield and increased value of the interest in the corporation "necessarily reflected [the] defendant's investment of time and effort in maintaining and increasing the business, an investment that was facilitated by [the] plaintiff's long-term commitment to remain at home to run the household and care for the children. *Id.* at 293. It found that the company stock was a marital asset.

In *Reeves supra*, the defendant husband had an interest in a shopping center, which he acquired before the parties' relationship began. Despite the appreciation of the shopping center during the parties' relationship, the interest was passive. The evidence did not show that the property appreciated because of the defendant's efforts or that the plaintiff wife's activities facilitated the defendant's efforts. The interest was found to be a separate asset, which should not be included in the marital estate. *Id.* at 497.

Here, plaintiff argues that her work in relation to the post office property draws the property into the marital estate. I disagree. Plaintiff's performance of administrative responsibilities was minimal. The evidence does not establish that defendant invested a great deal of time and effort into the property to increase its value. In fact, this investment appears to be more of a passive investment, such as that in *Reeves*. Unlike the plaintiff in *Hanaway*, plaintiff did not assume responsibility for household and family matters in order to facilitate defendant's efforts to build this investment. Plaintiff did care for the home and children, but there is no indication that she did this to support defendant's efforts with regard to the post office property.

I would find that the trial court erred in considering the post office property part of the marital estate. Accordingly, I would reverse in part and remand for reconsideration of the division of the marital estate to achieve the equitable result intended by the trial court.

/s/ Michael J. Kelly