STATE OF MICHIGAN

COURT OF APPEALS

FELICIA WILLIAMS,

Plaintiff-Appellee,

v

STEPHEN FARROW,

Defendant-Appellant.

UNPUBLISHED
February 16, 2001

No. 214716
Wayne Circuit Court
LC No. 98-800534-DO

Before: Markey, P.J., and Murphy and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce entered by the trial court. We affirm.

Defendant challenges the trial court's findings of fact and its ruling distributing the marital assets. In a divorce action, the trial court must make findings of fact and dispositional rulings. On appeal, the court's factual findings are to be upheld unless they are clearly erroneous. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996); see also *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). 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. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). This Court gives special deference to a trial court's findings when they are based on the credibility of the witnesses. *Id.*

If the trial court's findings are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sands*, *supra* at 34; *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division of property was inequitable. *McDougal*, *supra* at 87, *Sands*, *supra* at 34; *Sparks*, *supra* at 152 Furthermore, in actions tried without a jury, the trial court must find the facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1). Findings and conclusions as to contested matters are sufficient if brief, definite and pertinent, without over-elaboration of detail or particularization of facts. MCR 2.517(A)(2).

Defendant initially raises two issues regarding the trial court's findings of fact. First, he contends that the trial court erroneously rejected evidence of fault on the part of plaintiff. Fault is

one criterion for the court to consider in its division of marital property. *Welling v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999). Courts are to examine "the conduct of the parties during the marriage," *Sparks*, *supra* at 157, the question being "whether one of the parties to the marriage is more at fault, in the sense that one of the parties' conduct presented more of a reason for the breakdown of the marital relationship than did the conduct of the other." *Welling, supra* at 711.

The evidence in support of defendant's claim of fault included his testimony of physical abuse on the part of plaintiff. Defendant stated that on four or five occasions over their six-year marriage, while plaintiff and defendant were arguing, she pounded on his chest with her fists. However, there was no evidence that he was injured or sought treatment. Defendant also testified that plaintiff stopped sleeping with him during the last year of their marriage, and that she was did not want to have children. In addition, defendant's mother testified to instances of plaintiff belittling defendant in public. With regard to potential fault on the part of defendant, plaintiff testified to his excessive spending habits. Despite an agreement to pay off their debts, and the advice of a financial advisor, defendant continued to incur credit card debt. When bills came due, defendant did not have any money.

However, the bulk of the evidence presented regarding fault focused on defendant's devotion to both his and plaintiff's families, in contrast to plaintiff's apparent lack of concern. Although we believe that this evidence would support a finding that the marriage was exceedingly strained, we cannot say that the trial court committed clear error in determining that the evidence did not rise to the level of fault sufficient to impact the distribution of marital property. *McDougal*, *supra* at 87. Furthermore, though brief, findings are sufficient if the record reflects that the court conscientiously reviewed the testimony and exhibits and attempted to resolve the conflicts presented. *Parrish v Parrish*, 138 Mich App 546, 559; 361 NW2d 366 (1984); see also *Bowers v Bowers*, 198 Mich App 320, 328; 497 NW2d 602 (1993). The court's consideration of this issue was adequate, even if its findings on the question were not.

Next, defendant argues that the trial court erred by failing to make a finding as to the value of the marital home. In connection, he argues that the court abused its discretion in admitting plaintiff's appraisal of the marital home, contending that the appraisal was hearsay evidence. See *Lombardo v Lombardo*, 202 Mich App 151, 154; 507 NW2d 788 (1993).

Plaintiff offered evidence that the home was appraised at $195,000, and later referenced an equity valuation of $115,000. Defendant contended that its value was $135,000, indicating equity of only $55,000.[1] While we agree that the appraisal was inadmissible hearsay, and that it was error for the court to expressly refuse to make a finding on the contested issue of the value of the home, our review of the record leads us to conclude that this error does not mandate reversal. When measuring the comparable value of the assets awarded to each party, it is the equity valuation, not the potential selling price of the home, that is relevant. In this case, regardless of the value of the marital home and the effect of the corresponding equity on the overall property

[1] Defendant's appellate brief references an $80,000 outstanding mortgage, supporting these equity valuations.

split, as discussed below we believe the court's distribution of property was equitable under all the circumstances. See *Chmielewski v Xermac, Inc*, 216 Mich App 707, 710-711; 550 NW2d 797 (1996), aff'd 457 Mich 593 (1998) (reversible error may not be predicated on an evidentiary ruling unless a substantial right was affected).

With regard to the disputed assets, the trial court ordered that "each party is awarded his or her own annuities, mutual funds, and all other investment income, individual retirement accounts, or retirement plans – whether vested or unvested, accumulated or contingent – as his or her own sole and separate property." The court awarded defendant the marital home.

When apportioning a marital estate, the division need not be mathematically equal, but rather, must be equitable in light of all the circumstances. *Welling*, *supra* at 710. Though the division of property in a divorce is not governed by any set rules, certain principles nonetheless apply. *Sparks*, *supra* at 159. Among the equitable factors to be considered are 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). The determination of relevant factors will vary depending on the facts and circumstances of the case. *Sparks*, *supra* at 160.

The contested disparity in the property split involves the parties' investment and retirement accounts. The court's order, in addition to awarding defendant the house, allowed each party to keep whichever accounts were in his or her name. The record demonstrates that although initially holding at least one joint account, by their own agreement the parties maintained entirely separate accounts during the latter portion of the marriage. Additionally, though earning commensurate salaries of approximately $130,000 at the time of their divorce, during the marriage plaintiff had generally been on a higher salary than defendant. In part due to this difference in salaries, but also attributable to defendant's alleged profligacy, as of the valuation date established at trial the combined total of plaintiff's accounts was approximately double that of defendant's — somewhere in the neighborhood of $400,000 versus $200,000.[2]

---

[2] The record is ultimately unclear as to the precise amounts held in the parties' various accounts at the critical time. Plaintiff filed for divorce on January 7, 1998. A valuation date of December 7, 1997 appears to have been agreed on by the parties during trial. With respect to defendant, his testimony included assertions that in December 1997 his various retirement accounts totaled approximately $140,000, and that by the time of trial in July 1998 those accounts totaled approximately $170,000. Defendant also testified that as of December 1997 he had approximately $35,000 in other savings accounts. However, statements referenced at trial appeared to indicate that in January 1998 defendant's varied accounts, both retirement and other savings, totaled almost $200,000. With respect to plaintiff, her testimony included assertions that at the time she filed her complaint her holdings totaled approximately $425,000, and that when she answered interrogatories in April 1998 her holdings totaled approximately $480,000. Records and statements referenced at trial reflect that in January 1998 approximately $200,000 was held in plaintiff's various retirement funds, with another $205,000 in various mutual funds and emergency savings accounts.

This difference was of course lessened somewhat by the court's award of the marital home to defendant, through which, as indicated above, he realized an additional $55,000 to $115,000 in equity.

Notwithstanding the remaining mathematical disparity in the value of assets awarded, we find no inequity. In reaching its result, the court considered the relevant criteria. It noted the six-year plus duration of the marriage, and recognized that both parties were in their late thirties and in good health. It also noted that both parties are physicians with high income potential, and that at the time of disposition their earning abilities were approximately equal. Defendant's argument that the trial court's ruling was inequitable rests mainly on his allegations of fault. As discussed, however, we reject his claim of error regarding the lack of a finding of fault. In light of the record evidence concerning the other relevant criteria, specifically that regarding the parties' station in life, their different spending and saving habits during the relationship, and the fact that they agreeably maintained separate accounts for the latter portion of the marriage, we conclude that the court's ruling was not inequitable. This Court will not reverse or modify a property division in a divorce case unless we are convinced that we would have reached another result had we occupied the position of the trial court. *Parrish*, *supra* at 558. We are not so convinced.

Lastly, defendant argues that the trial court's rulings evince bias against him. Claims that a judge was biased must be preserved in the trial court by a motion to disqualify. MCR 2.003(C); *Vicencio v Ramirez*, 211 Mich App 501, 509; 536 NW2d 280 (1995). Defendant failed to so move for disqualification. Moreover, with one exception the allegations of bias defendant presents center on the complaints raised regarding the court's evidentiary rulings and its findings of fact and dispositional ruling.[3] Our resolution of these issues was not favorable to defendant, and our review of the record did not uncover any reflection of partiality or hostility toward either party by the trial judge. A party claiming bias must overcome a heavy presumption of judicial impartiality. *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 728; 591 NW2d 676 (1998). Defendant has not.

Affirmed.

/s/ William B. Murphy
/s/ Jeffrey G. Collins

[3] The only new issue that defendant raises in support of bias is the trial court's refusal to hear elaborative testimony from defendant regarding the amount of time he spent with his mother and plaintiff's family. This evidence was cumulative, as the trial court entertained much testimony regarding defendant's devotion to his family and plaintiff's family.