

STATE OF MICHIGAN
COURT OF APPEALS

KEITH ROBERT MCLEAN,

Plaintiff-Appellee,

v

TRINA MCLEAN,

Defendant-Appellant.

UNPUBLISHED

April 27, 2001

No. 223757

Berrien Circuit Court

LC No. 98-002997-DO

Before: Hoekstra, P.J., and Whitbeck and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce entered by the trial court on November 3, 1999. We affirm.

Plaintiff husband and defendant wife were married in 1990. In 1991, defendant's mother and uncle executed a quitclaim deed, to defendant and her mother as joint tenants with rights of survivorship, for a home and its surrounding property. The property formerly belonged to defendant's grandfather. The house became the marital home of plaintiff and defendant. In 1992 plaintiff, defendant, and defendant's mother signed a mortgage on the house for which plaintiff and defendant received \$44,600. Approximately \$10,000 of the mortgage was used to pay off plaintiff's debts, and the rest of the proceeds were placed in the parties' checking and savings accounts. By October, 1993, all of the remaining money from the mortgage had been spent.

The parties separated in mid-1997, and plaintiff filed for divorce in late 1998. At the time of trial, there remained \$30,000 left to pay on the mortgage. The parties stipulated to an \$87,000 appraisal of the home at trial.

Additional debt of the parties included a \$15,000 debt that was consolidated under plaintiff's name alone. Defendant and her mother also testified that the parties had borrowed more than \$18,000 from defendant's parents. The court determined that it was unclear whether plaintiff promised to repay those funds. There was no formal acknowledgment regarding the terms of the money given to the parties by defendant's parents. Plaintiff had also received \$12,000 of life insurance proceeds upon the death of his mother.

The main focus at trial dealt with the amounts of debt and which party would be required to pay it. The court determined that the house was marital property and that plaintiff had an

equitable interest in it, despite the fact that it was held by defendant and her mother as joint tenants with rights of survivorship. The court granted all of plaintiff and defendant's interest in the property to defendant. Defendant was also ordered to pay the remaining balance on the mortgage. Plaintiff was ordered to pay the \$15,000 debt and to pay \$2,900 to defendant for cleanup of construction waste that was left on the property.

On appeal defendant asserts that the division of property was inequitable because the home, owned jointly with her mother with rights of survivorship, should not have been considered marital property. Thus, the appraisal relied upon by the court did not adequately represent the value of defendant's legal interest in the home. We disagree.

This Court reviews the trial court's findings of fact for clear error. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). Then we "determine whether the ultimate dispositional ruling was fair and equitable in light of the facts, reversing the disposition only if we are left with the firm conviction that the distribution was inequitable." *Id.*

"[T]he trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Generally, the marital estate is divided between the parties, and each party takes that party's own separate estate without any invasion by the other. *Id.* at 494. However, invasion of a spouse's separate assets is allowed when the other spouse "contributed to the acquisition, improvement, or accumulation of the property." MCL 552.401; MSA 25.136.

In *Reeves*, one piece of property examined by this Court was a condominium that was purchased by the defendant before marriage and served as the marital home throughout the parties' three-year marriage. *Reeves, supra* at 495-496. This Court determined that "[t]he sharing and maintenance of a marital home affords both spouses an interest in any increase in its value (whether by equity payments or appreciation) over the term of a marriage. Such amount is clearly part of the marital estate." *Id.*

In the case at hand, the house was acquired during the marriage and it was held as the marital home. Additionally, both parties worked and contributed toward building the equity in the home. Based on the reasoning in *Reeves*, we find that both parties had an interest in this marital home. Consequently, the trial court did not err in its determination that plaintiff had an equitable interest in the property.

Some of the factors that may be considered in the disposition of marital property include:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996) (citation omitted).]

Fault is also a relevant factor when a court is determining an equitable property settlement. *Id.* at 90; *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992). The trial court has broad

discretion in fashioning its rulings, and there are no strict mathematical formulas for the trial court to follow. *Sparks, supra* at 158-159. Further, even though the division need not be equal, it must be equitable. *Id.* at 159.

The trial court specifically considered several of the nine *McDougal* factors. The court determined that plaintiff had not made a bona fide effort to make the marriage work, that plaintiff began an extramarital affair with one of defendant's friends before they were separated, and that the primary source of property was defendant's family. Those factors support the court's decision to give all of plaintiff's interest in the marital home to defendant.

In the judgment of divorce, plaintiff lost all of his interest in the marital home, was required to pay off \$15,000 of debt, and was required to pay \$2,900 for cleanup of the marital property, minus an amount that he should have received as credit on prior taxes. Additionally, defendant received all of the parties' interest in the marital home and was required to assume the \$30,000 debt remaining on the mortgage.

While defendant argues that the \$87,000 appraisal of the property did not accurately reflect the nature of her interest held jointly with rights of survivorship, she failed to present evidence or articulate an alternate formula for valuation. Despite the fact that the trial court did not assign a specific dollar amount to plaintiff or defendant's interest in the property, we find that defendant has received an overall gain in this property division.

If defendant later acquires the property by quitclaim deed or survivorship, she will receive the full \$87,000 value of the home, with its \$30,000 mortgage, which will leave her with \$57,000 in equity. Additionally, if defendant sells the property with her mother, defendant will have a gain of no less than \$13,500 if she pays the mortgage out of her half of the proceeds. Even if defendant predeceases her mother, this property division has given her a life estate in the property.

Plaintiff, on the other hand, in addition to losing his interest in the marital home, was required to pay the \$15,000 debt that had been consolidated into his name. He was also required to pay defendant \$2,900, less an amount equaling the deduction he would have received on his taxes for interest paid on the home, for removal of construction debris from the marital home's property.

We find that the trial court properly considered the factors for property division. Moreover, defendant retains a positive interest in the property despite the mortgage. The trial court reached a fair and equitable result in light of the circumstances of this case.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Jessica R. Cooper