

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA ANN BODRIE,

Plaintiff-Counter-Defendant-
Appellee,

v

ROBERT LEE BODRIE,

Defendant-Counter-Plaintiff-
Appellant.

UNPUBLISHED

May 25, 2001

No. 224637

Chippewa Circuit Court

LC No. 99-004265-DO

Before: McDonald, P.J., and Smolenski and K.F. Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right from the judgment of divorce entered November 10, 1999. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the distribution of property was inequitable where the trial court erroneously included his separate property in the marital estate. We disagree.

A judgment of divorce must include a determination of the property rights of the parties. *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). When determining property rights, the court may apportion all property that has come to either party by reason of the marriage. *Id.* This marital property constitutes the marital estate. Assets received during the marriage are property considered part of the marital estate. *Id.*

Normally, property received by a married party as an inheritance, but kept separate from marital property, is deemed to be separate property not subject to distribution. *Dart v Dart*, 460 Mich 584-585; 597 NW2d 82 (1999). Under certain circumstances, a spouse's separate assets may be included in the marital estate. *Id.* at n 6. When apportioning the marital estate, the court must first determine which assets are marital in character and which assets constitute separate property. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997).

In this case, defendant failed to present evidence to establish that the annuities at issue were separate property. Although defendant held the annuities in his name only, the documentary evidence indicated that the majority of the annuities were obtained during the course of the marriage. Thus, the court could properly determine that the annuities were marital

assets. Additionally, defendant failed to present any documentary evidence to otherwise establish that defendant received an inheritance from his father that he maintained as separate property. In the absence of such evidence, there is no showing that the court erred by including all assets in the marital estate, and making a roughly equal distribution of those assets. *Byington, supra*, 109.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly