

STATE OF MICHIGAN
COURT OF APPEALS

BRENT L. KRONK,

Plaintiff/Counterdefendant-
Appellant,

v

KAREN K. KRONK,

Defendant/Counterplaintiff-
Appellee.

UNPUBLISHED

June 15, 2001

No. 224490

Barry Circuit Court

LC No. 98-000225-DO

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

PER CURIAM.

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

I

Plaintiff argues that the court erred in refusing to set aside the real property settlement that resulted from a consent agreement. Plaintiff contends that his consent was influenced by circumstances of severe stress and pressure, and as a result, he did not understand the nature and terms of the settlement. We disagree.

“Courts will uphold the validity of property settlements reached through negotiation and agreement by the parties in a divorce action in the absence of fraud, duress or mutual mistake. This rule applies whether the settlement is in writing and signed by the parties or their representatives, or whether the settlement is orally placed on the record and consented to by the parties, even though not yet formally entered as part of the divorce judgment by the lower court.” *Howard v Howard*, 134 Mich App 391, 394-395; 352 NW2d 280 (1984). A trial court’s determination concerning the validity of the parties’ consent to a settlement agreement placed on the record will not be overturned absent a finding of abuse of discretion. *Id.* at 396-397.

The *Howard* case, upon which plaintiff relies for the proposition that “relief from a property settlement may also be appropriate where the consent was influenced by circumstances of severe stress which prevented the party from understanding, in a reasonable manner, the nature and effect of the act in which he is engaged,” is distinguishable from the present case. When the

consent agreement was placed on the record, plaintiff did not suggest that he did not understand any aspect of the agreement. To the contrary, he specifically told the court that he understood the terms of the agreement and found them acceptable. Moreover, when the real estate division is reviewed objectively, there is no indication that it is unconscionable. See *id.* at 400, citing *Tinkle v Tinkle*, 106 Mich App 423, 428; 308 NW2d 241 (1981).

II

Next, plaintiff argues that irregularities in the proceedings deprived him of his due process rights, such that the property settlement should be set aside. We disagree.

In a divorce case, this Court must first review the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Findings of fact, such as a trial court's valuations of particular marital assets, will not be reversed unless clearly erroneous. *Id.*; *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). 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, supra* at 429. This Court gives special deference to a trial court's findings when based on the credibility of the witnesses. *Id.*

If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.* at 429-430, citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993) and *Sparks, supra* at 151-152.

The parties do not dispute that due process rights apply in a divorce action. See *In re LaFlure*, 48 Mich App 377, 385; 210 NW2d 482 (1973) (due process applies to any adjudication of important rights). See also *In re Brock*, 442 Mich 101, 110; 499 NW2d 752 (1993). However, plaintiff's argument is simply his first issue recast as a due process violation.

Plaintiff argues that the court questioned plaintiff excessively, thereby preventing the proper presentation of plaintiff's case, and interjecting undue interference and impatience, and demonstrating a severe attitude, in violation of the Code of Judicial Conduct. Our review of the record reflects no such violation. Instead, the record indicates that the trial judge found himself in settlement negotiations in a case where the parties took issue with various personal property items that were neither inventoried nor valued before trial. As the judge noted, he was placed in the difficult position of attempting to forge a precise and equitable division from each party's vague references to "stuff" they desired.

Plaintiff relies upon *Dobrzenski v Dobrzenski*, 208 Mich App 514, 515; 528 NW2d 827 (1995), for his contention that irregularities in the proceedings deprived him of his due process rights. To the contrary, we conclude that the court's intervention assisted the parties in focusing on achieving an equitable settlement in a contentious divorce. We disagree with plaintiff's characterization of the proceedings, and disagree that any "irregularities" occurred. Accordingly, we find no denial of due process that warrants setting aside the property settlement.

III

Next, plaintiff contends that the court's findings of fact regarding the values of personal property were unsupported by the evidence. Again, we disagree.

As defendant points out, the court cannot be held responsible for what was clearly a lack of preparation on the part of the attorneys or their clients. The court cannot be faulted for basing its findings on the limited testimony and a lack of documentary evidence regarding personal property. As discussed above, the trial involved numerous references to plaintiff's and defendant's "stuff," without established monetary values. It appears that the court reasonably divided the personal property on an equitable basis.

Furthermore, there was no appraisal evidence regarding the value of the jewelry, and only conflicting and vague estimations by the parties. As plaintiff points out, "[t]here was no testimony regarding the circumstances of the various purchases for the Court to know circumstances of the purchases." The parties appeared to make self-serving statements about the jewelry, and the record is unclear concerning the specific jewelry that existed at the time of trial. It cannot be said that the court clearly erred in assigning the jewelry a value of \$2,000, in part on the basis that it found some of the jewelry to be gifts.

Regarding the court's division of other miscellaneous personal property, no value was assigned to many of the items, and the court, of necessity, divided the personal property on the basis of available evidence to achieve an equitable division, accommodating the parties' wishes to the extent possible. The parties had ample opportunity to present evidence and express their views regarding the disposition of their personal property. We conclude that plaintiff's assertion that the court erred by failing to value various, specific personal property items is without merit.

Plaintiff also argues that the court failed to explain the \$2,000 set-off payment to defendant. We disagree, as the court specifically explained that the contents of the marital home, awarded to plaintiff, were worth more than the personal property awarded to defendant, which was the reason for the offset. It was not clear error for the court to award defendant an additional \$2,000.

Finally, plaintiff argues that the court failed to consider the \$13,000 that defendant was awarded in her bank account. The court awarded the parties their respective financial accounts. The record reflects that the court was aware of the parties' estimates of the accounts. Therefore it cannot be said that the court failed to consider defendant's account in dividing the property.

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). Furthermore, findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Given the evidence and the court's reasoning on the record, the court's findings of fact cannot be said to be clearly erroneous. After a review of the entire record, we are not left with the definite and firm conviction that a mistake has been made, especially in light of the fact that this Court gives special deference to a trial court's findings

when based on the credibility of witnesses. *Draggoo, supra* at 429. Furthermore, the dispositive ruling was fair and equitable in light of the findings; thus, the dispositional ruling is affirmed. *Sands, supra* at 34, 36.

IV

Next, plaintiff argues that the court exceeded its authority by adjudicating the rights of third parties. We disagree.

By ordering that defendant receive possession of certain property items that both parties concede were used by defendant's children or "belonged" to the children during the marriage, the court was not determining who had an ownership interest in such items or adjudicating any "third party" rights. Thus, the legal framework that plaintiff would have us apply is inapplicable.

V

Finally, plaintiff argues that the court's personal property division was unfair and inequitable, again raising the issue of the jewelry valuation and the court's decision to award plaintiff a truck and defendant the jewelry. Plaintiff also revisits the issue of consent. As discussed above, we find no clear error in the court's factual findings and have resolved these specific issues. We conclude that the personal property division was fair and equitable. Furthermore, to the extent that the court did not heavily weigh plaintiff's testimony regarding alleged "fault" on the part of defendant, the court properly determined which factors were relevant, and thus worthy of consideration in this case. *Sparks, supra* at 158-159.

A trial court has broad discretion in fashioning an equitable property division, and in determining what factors are relevant and worthy of consideration:

We hold that the following factors are to be considered wherever they are relevant to the circumstances of the particular case: (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. [*Id.* at 159-160.]

"The determination of relevant factors will vary depending on the facts and circumstances of the case." *Id.* at 160.

Although plaintiff alleged excessive drinking and infidelity on the part of defendant, we note that he also admitted that defendant had a personal protection order against him. The court was not without basis in failing to weigh fault against either party. Furthermore, unlike in *Sparks*, the court did not fail to make findings of fact essential to a proper resolution of the legal question, did not give undue weight to any fault consideration, and the resulting property division was equitable.

Affirmed.

/s/ Janet T. Neff

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder