

STATE OF MICHIGAN  
COURT OF APPEALS

---

MURLIN W. WAGNER,

Plaintiff/Counterdefendant-  
Appellee,

v

EVA SUE WAGNER,

Defendant/Counterplaintiff-  
Appellant.

UNPUBLISHED

October 19, 2001

No. 221503

Wayne Circuit Court

LC No. 97-718845-DO

---

Before: Bandstra, C.J., and Whitbeck and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, challenging the trial court's division of property. We affirm.

We review the court's findings of fact for clear error and then determine whether the ultimate dispositional ruling was fair and equitable in light of the facts. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). Reversal is warranted only if we are left with the firm conviction that the distribution was inequitable. *Id.* A finding is clearly erroneous if, after a review of the entire record, we are 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).

Defendant contends that the trial court erred in treating certain assets as plaintiff's separate property because plaintiff failed to adequately establish the existence of these assets or their value at the time the parties were married. We disagree. Defendant's reliance on *Wiand v Wiand*, 178 Mich App 137, 149; 443 NW2d 464 (1989), is misplaced because that case applies to the determination of what assets should be *included* in the marital estate, whereas the issue here concerns assets that were determined to be separate property. In any event, we are satisfied that the evidence sufficiently established the existence of the assets and their values at the time of the marriage.

With respect to the several Individual Retirement Accounts (IRAs) at issue, plaintiff testified that he had held these accounts before the parties' marriage in 1988. Although plaintiff also testified that he was uncertain of the value of those accounts at that time, plaintiff's daughter testified that she had examined plaintiff's financial records and determined their collective value

at the time of the marriage to have been approximately \$54,500. In addition to this testimony, she later submitted a detailed affidavit concerning these IRAs, which indicated specific accounts and amounts. Contrary to defendant's assertion, such evidence was sufficient to establish the existence and value of these accounts at the time of the marriage.

The evidence at trial was similarly sufficient to support the trial court's findings with respect to the home shared by the parties in New Boston. Plaintiff testified that he built the house several years before the parties married, and that he had used "a lot" of a \$76,713 inheritance in its construction. Moreover, although defendant introduced evidence indicating that the home's 1989 state equalized value was \$28,910, it is not disputed that the home was sold for \$140,000 in 1991. Despite defendant's assertion to the contrary, we find that, considering this sale price, the trial court could have reasonably concluded that the house possessed a value of \$120,000 at the time of the parties' marriage in 1988.

Defendant further argues, however, that even if the trial court properly determined that the assets in question were plaintiff's separate property, the court still should have invaded those assets and awarded a portion of them to her. Again we disagree.

Generally, each party takes away from the marriage that party's own separate estate with no invasion by the other party. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). However, a spouse's separate estate can be opened for redistribution if one party demonstrates additional need, or if the other spouse contributed to the acquisition, improvement or accumulation of the property. *Id.*; *Lee v Lee*, 191 Mich App 73, 79; 477 NW2d 429 (1991). Here, defendant does not allege additional need, and we conclude that the testimony did not establish that defendant contributed to the acquisition, improvement or accumulation of the assets. Although, as argued by defendant, plaintiff acknowledged his intent that the couple share in one another's assets during the marriage, neither this fact nor the fact that her paycheck was used to pay various expenses associated with home ownership establishes that she contributed to the "acquisition, improvement or accumulation" of any of the assets awarded to plaintiff. See *Reeves, supra* at 494-495 (defining such contribution as "significant[] assist[ance] in the acquisition or growth of a spouse's separate asset"). To the contrary, the evidence showed that the home had no significant improvements after the parties married. The evidence further showed that at no point did defendant ever contribute to any of the subject IRAs. Accordingly, we find no clear error in the trial court's refusal to invade these assets for defendant's benefit.<sup>1</sup>

We affirm.

/s/ Richard A. Bandstra  
/s/ William C. Whitbeck  
/s/ Donald S. Owens

---

<sup>1</sup> In reaching this conclusion we are aware that, as emphasized by defendant, the judgment awards her only ten percent of the total assets at issue in the lower court proceedings. This fact is, however, irrelevant. What is required is that there be an equitable division of the *marital* estate. *Grotelueschen v Grotelueschen*, 113 Mich App 395, 402; 318 NW2d 227 (1982). Here, the court divided the marital estate equally.