STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM W. ANDERSON,

Plaintiff-Appellant,

V

SHARON T. ANDERSON,

Defendant-Appellee.

UNPUBLISHED
November 16, 2001

No. 226666
Kent Circuit Court
LC No. 98-011433-DO

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Plaintiff-husband appeals as of right from the March 14, 2000 judgment of divorce, challenging provisions relating to property division. We affirm.

The parties were married on December 26, 1955. Plaintiff filed for divorce on November 6, 1998, after forty-four years of marriage. Following a one-day trial during which both parties testified, the court entered a divorce judgment on March 14, 2000. On appeal, plaintiff argues that the trial court's division of the marital property was inequitable.

When reviewing the trial court's property division in divorce proceedings, we review the trial court's findings of fact for clear error, and then determine whether the ultimate dispositional ruling was fair and equitable under the circumstances. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). We will affirm a trial court's property distribution unless we are left with a definite and firm conviction that the division was inequitable. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

> The goal of the court when apportioning a marital estate is to reach an equitable division in light of all the circumstances. Each spouse need not reach a mathematically equal share, but significant departures from congruence must be explained clearly by the court. When dividing the estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstance. The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. [*Byington, supra* at 114-115 (citations omitted).]

On appeal, plaintiff argues that the trial court erred in not dividing defendant's Kent Community Hospital pension plan and Lincoln National Life Insurance Company annuity between the parties.[1]

Under Michigan law, a party's right to a vested pension or annuity shall be considered a part of the marital estate for purposes of property division. MCL 552.18(1); *Boonstra v Boonstra*, 209 Mich App 558, 563; 531 NW2d 777 (1995). However, simply because an individual's right to a vested pension and annuity is considered part of the marital estate does not require the division of that asset between the parties. See *Bone v Bone*, 148 Mich App 834, 839; 385 NW2d 706 (1986). Rather, as the *Boonstra* Court recognized:

> Pension [and annuity] benefits are assets to be considered part of the marital estate subject to distribution *in the discretion of the circuit court*. To hold otherwise would be to restrict the ability of the trial court to reach one of the primary objectives of any divorce proceeding: to arrive at a property settlement that is fair and equitable in light of *all* the circumstances. [*Boonstra, supra* at 563 (emphasis supplied; citation omitted).]

In dividing the marital estate in the instant case, the trial court noted the lengthy duration of the parties' marriage, and concluded that each contributed equally to the marital estate. Observing that the parties were approximately the same age, the court further found that the parties were similarly stationed in life. However, the trial court went on to observe that defendant's arthritis prevented her from working as a registered nurse. In contrast, the trial court found that the record evidence indicated that plaintiff's heart ailment did not prevent him from working.[2] Finally, the trial court concluded that any consideration of fault did not warrant a disproportionate division of the marital estate. Consequently, the court ruled that "the assets of the parties . . . should be [divided] equally."

Ruling from the bench on February 21, 2000, the trial court found the entire marital estate to have a value of $239,734.51. The trial court calculated this amount by factoring in the following assets belonging to the parties: (1) the marital home, valued at $125,000, (2) the parties' recreational vehicle, plaintiff's car, and the mobile home purchased by plaintiff in Arizona, valued at $17,500 (3) plaintiff's life insurance, valued at $5,000, (4) plaintiff's bank accounts and individual retirement accounts (IRAs) valued at $64,712.31, and, (5) furniture in the marital home with a value of $2,000. The trial court went on to divide the sum of $239,734.51 in half, expressing its intention to award each party $119,867.25 worth of assets. Thus, in the divorce judgment the trial court awarded plaintiff the parties' recreational vehicle, his car, the mobile home, various personal items, his accounts and IRAs, and the cash value of

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[1] The specific value of these assets at the time of trial is unclear from the record. However, during trial defendant testified that she received approximately $585 a month from her Kent Community Hospital pension plan, and approximately $970.71 a month from the Lincoln National Life Insurance Company annuity. Exhibits corroborating defendant's testimony in this regard were also admitted into evidence at trial.

[2] According to the record plaintiff suffered from cardiomyopathy, and underwent open-heart surgery in 1997. At the time of trial plaintiff was retired and drawing Social Security benefits.

his life insurance, for a total of $87,212.31. The trial court then awarded defendant her accounts[3] and IRAs as well as the marital home. The trial court imposed a $32,654.94 lien on the marital home, payable to plaintiff. According to the trial court, the lien was necessary to equalize the value of the marital assets received by each party.

Plaintiff's challenge to the division of the marital estate implicates the court's decision to not divide defendant's pension and annuity. Our review of the record indicates that the trial court, after properly weighing the factors to be considered in dividing the marital estate, see *Byington, supra* at 115, concluded that defendant should retain the whole of the pension and annuity because her arthritis prevented her from continuing her employment as a registered nurse. It is well to remember that a trial court's division of the marital estate need not be mathematically equal, only fair and equitable under the circumstances. *Byington, supra* at 114. It would appear that the Court awarded the wife these additional income-generating assets in an effort to equalize the respective incomes of the parties. (The husband's social security and IRA yielded him twice the income of the wife). Under the circumstances, we are not left with a definite and firm conviction that the trial court's division of the marital assets was inequitable. *Id.* at 109.

Plaintiff also argues that the court erred in concluding that defendant's interest[4] in a parcel of real property she inherited from her grandmother in 1976 was separate property.

A trial court's initial consideration when undertaking to divide property in divorce proceedings is to discern whether property is part of the marital estate, or whether it is separate. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Martial property is "property that came to either party *by reason of the marriage . . . .*" *Id.* at 493, quoting MCL 552.19 (emphasis and ellipses in original). Because defendant inherited this interest in real property and kept it separate from the marital estate, it is properly characterized as separate property not subject to distribution. See *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999); *Reeves, supra* at 494. Likewise, we reject plaintiff's argument that the property was subject to distribution because property taxes were paid out of joint marital funds. We agree with the trial court that any contribution by plaintiff to the property was not significant to the extent that it has "a distinct value deserving of compensation." *Reeves, supra* at 495. At best, plaintiff's contribution to the property was indirect and minor in nature. See *Grotelueschen v Grotelueschen*, 113 Mich App 395, 401; 318 NW2d 227 (1982). Nor are we persuaded that plaintiff has demonstrated additional need to the extent that this asset may be invaded. See MCL 552.401; *Reeves, supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Peter D. O'Connell

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[3] As relevant to this appeal, the divorce judgment provided, "specifically, defendant/wife is awarded her Kent Community Pension and her Lincoln Life annuity."

[4] According to the record, defendant shares an interest in the property with her siblings.