

STATE OF MICHIGAN  
COURT OF APPEALS

---

KRISTIN ENDERS,

Plaintiff-Appellee,

v

PETER JAMES ENDERS,

Defendant-Appellant.

---

UNPUBLISHED

June 4, 2002

No. 229714

Kent Circuit Court

LC No. 99-002500-DO

Before: Wilder, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right from the trial court's order granting judgment of divorce. Defendant challenges the trial court's distribution of property and its failure to award defendant alimony. We reverse and remand.

On appeal, defendant first argues the trial court's judgment of divorce orders an inequitable property settlement. Specifically, defendant claims that the trial court erred in failing to recognize defendant's contribution to plaintiff's separate property, i.e., plaintiff's inherited farm, and in failing to evenly divide the household furniture and furnishings.

In a divorce action, we review the trial court's factual findings for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *McNamara v Horner*, 249 Mich App 177, 182; 642 NW2d 385 (2002).

A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. If the trial court's findings of fact are upheld, we then must decide whether the dispositive ruling was fair and equitable in light of those facts. A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. [*McNamara, supra* at 182-183 (citations omitted).]

The trial court's goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution in view of the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). This Court recently explained:

In reaching an equitable division of the marital estate, the trial court is to consider the following factors whenever 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. [*Sparks, supra* at 159-160.]

See also *Welling* [*v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999)], quoting *Byington, supra* at 115. Because of the wide array of factual circumstances involved in a divorce proceeding, the determination of relevant factors varies depending on the case. *Sparks, supra* at 160. Hence, there is no rigid framework for applying the relevant factors. *Id.* at 158-159. Nonetheless, where any of these factors are relevant to the value of the property or to the needs of the parties, the trial court must make specific findings of fact regarding those factors. *Id.* at 159. In so doing, the trial court must not assign disproportionate weight to any one circumstance. *Id.* at 158. [*McNamara, supra* at 185-186.]

Generally, assets that one party inherits, but keeps separate from the marital property, are considered separate property and are not subject to distribution absent special circumstances. *Dart v Dart*, 460 Mich 573, 585; 597 NW2d 82 (1999); *McNamara, supra* at 183. Separate property such as an inheritance should not be distributed as part of the marital estate unless “the remaining property was insufficient for the suitable support and maintenance of [the non-owning spouse], MCL 552.23, or if [the non-owning spouse] contributed to its acquisition, improvement, or accumulation, MCL 552.401.” *Lee v Lee*, 191 Mich App 73, 78-79; 477 NW2d 429 (1991).

Although the trial court found that the farm was never “co-mingled” and that “there is no way, based on the evidence, that the [c]ourt can divide the personal property,” the findings of fact in general are insufficient for appellate review. The trial court’s opinion does not demonstrate what it considered when awarding the marital property and plaintiff’s separate property.<sup>1</sup> On the basis of the record before us, we are unwilling to engage in an analysis that the trial court was required to undertake, but of which we have no record. *Sparks, supra* at 151-152; *McNamara, supra* at 186. Thus, remand is necessary for further findings by the trial court concerning the property distribution.

Defendant also argues that the trial court erred “in utterly ignoring defendant’s claims of need when it failed to award him alimony, a share of plaintiff’s separate property, or a greater share of the marital estate.”

---

<sup>1</sup> We do note that the trial court’s findings of fact include that the parties’ have no children and were married for seventeen years, but in the present case, these general findings alone are insufficient to base a property, or for that matter an alimony, determination, especially where the trial court gave no explanation of these findings’ import.

“The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party.” *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Further, “[a]limony is to be based on what is just and reasonable under the circumstances of the case.” *Id.* Factors to be considered when determining if alimony is appropriate include:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. [*Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).]

In addition, a court may consider a party's fault in causing the divorce, *Thames, supra*, and the effect of cohabitation on a party's financial status, *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993).

In the present case, the trial court declined to award spousal support or to reserve the issue of spousal support. However, from our review of the record, we find no findings of fact regarding any relevant factors in the consideration whether alimony should be awarded,<sup>2</sup> nor do the parties point to any. Because the trial court made no acknowledgment of the relevant factors nor made findings of fact concerning facts considered when denying alimony, the record is insufficient for our review, *Sparks, supra* at 151-152; *Ianitelli, supra* at 643, and thus we are unable to determine whether the dispositional ruling was fair and equitable. Again, remand is necessary for factual findings with respect to whether alimony is appropriate.

Reversed and remanded. We do not retain jurisdiction.

/s/ Kurtis T. Wilder  
/s/ Richard A. Bandstra  
/s/ Joel P. Hoekstra

---

<sup>2</sup> See n. 1, *supra*.