

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH S. FLORA,

Plaintiff-Appellee,

v

BRUCE NEAL FLORA,

Defendant-Appellant.

UNPUBLISHED

June 21, 2002

No. 229446

Newaygo Circuit Court

LC No. 99-001293-DO

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm in part, reverse in part, and remand.

In a divorce action, the trial court makes findings of fact and dispositional rulings. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). We review a trial court's factual findings in a divorce action for clear error. *Id.* A finding is clearly erroneous when the this Court is left with the clear and firm conviction that a mistake was made. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999). However, a trial court's dispositional rulings will be affirmed on appeal unless this Court is left with the firm conviction that they were inequitable. *McDougal, supra* at 87.

Defendant first argues that the trial court erred by including premarital assets in the marital estate and then dividing that amount between the parties. We agree.

The trial court found that defendant had contributed \$26,078 in premarital assets and plaintiff had contributed \$36,255 toward the construction of the marital home.¹ However, rather than award the parties their respective amounts, the trial court set off those amounts, and awarded plaintiff \$10,177. The remainder was characterized as marital assets and divided between the parties. Defendant now asserts that by failing to award each party their individual share of premarital assets, the trial court impermissibly subjected premarital assets to an equitable division.

¹ Neither party disputes these amounts.

As stated in *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997):

[i]n granting a divorce, the court may divide all property that came “to either party *by reason of the marriage . . .*” When apportioning marital property, the court must strive for an equitable division of increases in marital assets “that may have occurred between the *beginning* and the end of the marriage.” Thus, the trial court’s first consideration when dividing property in divorce proceedings is the determination of marital and separate assets. This distinction between marital and separate estates has long been recognized in this state. Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party’s own separate estate with no invasion by the other party. [Citations omitted, emphasis in original.]

By failing to award plaintiff and defendant their respective premarital contributions, the trial court exaggerated the value of the marital assets subject to an equitable division. As a result, the trial court subjected premarital assets to an equitable division in contravention of *Reeves, supra*. Therefore, we reverse this aspect of the divorce judgment.

Furthermore, defendant claims that the trial court erred by charging him with the cost of the stained glass equipment and inventory. We disagree.

The trial court clearly ruled that plaintiff should receive possession of all of the property, with the exception of some tools and certain personal items, and that defendant would receive his share of the marital estate in cash. Because defendant was to receive the stained glass equipment and inventory, the trial court reduced the amount of cash he was to receive by the value of the property. Defendant fails to show how this ruling is either erroneous or inequitable. Therefore, we affirm this portion of the trial court’s ruling.

Defendant also maintains that the 60/40 property division is inequitable because the trial court based its decision on defendant’s fault in an attack on plaintiff. We disagree.

In *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992), the Supreme Court recognized that fault remained an appropriate factor to consider in a property settlement. The Court further stated that:

[i]t is not desirable, or feasible, for us to establish a rigid framework for applying the relevant factors. The trial court is given broad discretion in fashioning its rulings and there can be no strict mathematical formulations. But, as we have recognized before, while the division need not be equal, it must be equitable. Just as the final division may not be equal, the factors to be considered will not always be equal. Indeed, there will be many cases where some, or even most, of the factors will be irrelevant. But where any of the factors delineated in this opinion are relevant to the value of the property or to the needs of the parties, the trial court shall make specific findings of fact regarding those factors. It is hoped that this requirement will result in greater consistency and provide for more effective and meaningful appellate review. [*Id.* at 158-159 (citations omitted).]

The *Sparks* Court listed the following factors as relevant in determining an equitable division of property:

(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 Court predicted that there may be other factors germane to a particular case. *Id.* at 160. However, the Court in *Sparks* reversed a property settlement predicated solely on the basis of fault, ruling that the trial court assigned disproportionate weight to this one factor. *Id.* The Court noted that the trial court made findings of fact related to four factors, but based its ruling on the fact that the marriage suffered as a result of the plaintiff's infidelity. *Id.* at 162.

In the instant case, considerable evidence elicited at trial focused on defendant's assault on plaintiff. As stated in the *Sparks*, some factors may not be relevant to all situations. *Id.* at 159. Indeed, there was little testimony relating to any of the other factors set forth in *Sparks*. Considering the testimony at trial, we find that defendant's fault was the relevant factor for the equitable division of property.

Defendant's assertion that the trial court placed excessive weight on his fault is also flawed. To the extent that *Sparks* suggests that a trial court should not place undue weight on one factor, it is factually dissimilar. Indeed, the trial court in *Sparks* divided the marital property on a 75/25 basis because of one party's infidelity. *Id.* at 160. Whereas, in this case, the division of property was a more equitable 60/40 split based on a serious assault in which defendant threatened plaintiff's life and fired a gun at her. Given the facts in this case,² we are not left with a firm conviction that the property division was inequitable. *McDougal, supra* at 87. Accordingly, we affirm this portion of the trial court's order.

Because the trial court clearly announced its formula for the division of marital property, we are able to determine the correct property division. The trial court determined that plaintiff's contributed \$36,255 in premarital assets, while defendant contributed \$26,078. According to *Reeves, supra*, each party should be credited that amount, which leaves \$36,835 remaining as marital assets subject to the 60/40 division. Plaintiff would receive \$22,101 and defendant should receive \$14,734 of the marital assets, which results in an award of \$40,812 for defendant. This award should be reduced by \$5,580.74 for the value of the stained glass inventory and equipment and by \$4,176 for plaintiff's medical expenses and lost wages. Because the trial court determined that plaintiff would retain all of the marital property, plaintiff should be required to give defendant \$31,055.26, his share of the premarital and marital property.

² We note that defendant initially pointed a handgun at plaintiff's face and when she tried to slap the gun away it discharged. When plaintiff tried to leave defendant hit her in the head with his hand and told her he was going to kill her, as she "was nothing but flesh to him."

Therefore, we remand to the trial court for entry of an order consistent with this opinion.
We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ David H. Sawyer

/s/ Jessica R. Cooper