

STATE OF MICHIGAN  
COURT OF APPEALS

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DEBRA A. ETTERMAN,

Plaintiff-Appellee,

v

DANIEL D. ETTERMAN,

Defendant-Appellant.

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UNPUBLISHED

September 13, 2002

No. 229151

Muskegon Circuit Court

LC No. 99-006712-DM

Before: Murphy, P.J., and Hood and Murray, JJ.

PER CURIAM.

Defendant Daniel D. Etterman appeals as of right the judgment of divorce entered by the trial court and disputes the distribution of marital property. We affirm.

First, defendant argues that the trial court incorrectly concluded that money and property defendant inherited during the marriage was marital property. Specifically, defendant argues that the trial court incorrectly concluded that \$18,000 used mainly to improve the marital home, a \$40,000 certificate of deposit (“CD”), defendant’s interest in Etterman’s Supermarket, a mutual fund, and the White River property were marital property. Instead, defendant argues that the trial court should have concluded that this money and property were defendant’s separate property.

The decision to include an inheritance as part of the marital estate is discretionary. *Demman v Demman*, 195 Mich App 109, 112; 489 NW2d 161 (1992). However, generally, property received as an inheritance by a married party and kept separate from marital property is deemed separate property. *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 87 (1999). Pursuant to MCL 552.401, an inheritance can be awarded to the non-inheriting party if the non-inheriting party contributed to the acquisition, improvement, or accumulation of the property, or, pursuant to MCL 552.23, if the award was otherwise insufficient to maintain the non-inheriting party. *Charlton v Charlton*, 397 Mich 84, 94; 243 NW2d 261 (1976); *Lee v Lee*, 191 Mich App 73, 78-79; 477 NW2d 429 (1991).

The trial court found the property on which Etterman’s Supermarket was situated and the supermarket itself was marital property. The trial court explained:

The property was deeded to the three sons shortly after the parties were married. This enabled the sons to continue the family business and to be able to afford to raise and support their own families while trying to continue the

Etterman tradition as family grocers. It appears that for the last many years the business, even when operating rent-free, for all intents and purposes, could not support the family. Mrs. Etterman had to work in order to afford the family a respectable life style. The Court sees the gift from the defendant's parents as a gift to the sons and their families. Given the long period of the marriage, during the entire time of which both parties worked hard for the benefit of [the] entire family, they should share in this asset equally. Had it not been for the defendant's dedication to the store and the tradition, which the wife supported, it is reasonable to believe that, given the defendant's intelligence and drive, he most likely would have been more financially successful in another line of work. The business had no value. All of the value is in the real estate. The Court finds it to be a marital asset subject to distribution.

We agree with the trial court's conclusion. Defendant acquired this property during the marriage and plaintiff certainly contributed to the improvement and acquisition of this property through her own employment and support of defendant's work in the family business. Moreover, it appears that the property was given for the benefit of both plaintiff and defendant.

In addition, the \$18,000 in home improvements, the White River property, the \$40,000 CD, and the mutual fund were also properly determined to be marital property. As the trial court noted, the Harrison Street property and the other properties given to defendant from his mother's estate were separate property because they were never commingled with marital assets. In contrast, the \$18,000 in home improvements and the money used to purchase defendant's brother's interest in the White River property were commingled with marital assets, namely, the marital home and the parties' existing interest in the White River property, which were both purchased with marital funds. Moreover, defendant admitted that the \$10,000 mutual fund, which had a current value of \$6,500, was in both parties' names. Further, the \$40,000 CD was also in both parties' names and had already been divided equally between the parties before the divorce. It is true that defendant argued that plaintiff agreed to repay this amount after the divorce was final. However, the trial court without addressing that argument, apparently concluded that such an award was necessary to maintain plaintiff's lifestyle. Indeed, the trial court recognized that MCL 552.23 allowed such an award. Thus, we do not believe that the trial court abused its discretion by including property and money inherited by defendant as part of the marital estate.

Second, defendant argues that the trial court failed to make the appropriate factual findings after consideration of the relevant factors before it distributed the marital property. We disagree.

Defendant is correct that the court should consider the following factors: the duration of the marriage, contributions to the marital estate, age, health, life status, necessities and circumstances, earning abilities, past relations and conduct, and general principles of equity. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). The determination of factors will vary depending on the facts and circumstances of the particular case. *Id.* The court should make specific findings of fact if any of the factors are relevant. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992). This is necessary to provide for consistency and "more effective and meaningful appellate review." *Id.*

Here, the trial court made extensive factual findings in the June 9, 2000 opinion. While the trial court did not explicitly state that it was required to consider the factors or even list the factors to be considered, the trial court did engage in the appropriate fact finding. Thus, defendant's argument fails.

Third, defendant argues that the trial court's distribution of marital property was unfair and inequitable. Again, we disagree.

We first review the trial court's findings of fact. *Sparks, supra* at 151. Findings of fact, such as a trial court's valuations of particular marital assets, will not be reversed unless clearly erroneous. *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). If the trial court's findings of fact are upheld, we must decide whether the dispositional ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152. The dispositional ruling is discretionary and should be affirmed unless we are left with the firm conviction that the division was inequitable. *Id.* at 152; *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997).

"The goal of the court when apportioning a marital estate is to reach an equitable division in light of all the circumstances." *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court." *Id.* at 114-115.

In this case, the trial court awarded plaintiff the marital home located at 4824 West Bard. Plaintiff testified that she believed the value of the marital home was \$179,000. Plaintiff also testified that the remaining balance on the mortgage was \$50,000. In contrast, defendant testified that the value of the marital home was \$205,000, and the trial court agreed. The trial court awarded plaintiff the marital home with a net value of \$155,000, or \$205,000 minus the \$50,000 mortgage. Further, plaintiff was awarded the Ford Explorer valued at \$5,000, the home furnishings valued at \$5,000, her pension, the horses, tack, and trailer valued at \$7,000, and \$20,000 of the CD. Thus, plaintiff was awarded \$192,000 of the marital estate.

In contrast, defendant was awarded his interest in Etterman's Supermarket valued at \$112,500, his home furnishings and tools valued at \$900, his Dodge truck valued at \$14,500, the \$10,000 mutual fund with a present value of \$6,500, and \$20,000 of the CD. Defendant was also awarded the White River property, which the trial court found was marital property. It is true that the trial court did not determine the value for this property. However, plaintiff valued the property at \$40,000 and defendant valued the property at \$25,000. Therefore, even if we accept defendant's much lower valuation, defendant was awarded \$179,400 of the marital estate. Further, defendant was awarded the Harrison Street home and the other parcels of land valued at \$73,500, which the trial court found was defendant's separate property. Thus, after consideration of the relevant factors, we find the trial court's disposition of the marital property was fair and equitable.

Affirmed.

/s/ William B. Murphy  
/s/ Harold Hood  
/s/ Christopher M. Murray