

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICIA LYNN HOSEA,

Plaintiff-Appellee,

v

TEDDY LEE HOSEA,

Defendant-Appellant.

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UNPUBLISHED  
September 13, 2002

No. 231683  
Genesee Circuit Court  
LC No. 93-175911-DM

Before: Meter, P.J., and Saad and R.B. Burns\*, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, and we affirm.

I. Procedural History

After signing an antenuptial agreement, plaintiff and defendant married on June 18, 1986. In December 1993, plaintiff filed a complaint for divorce. Thereafter, defendant filed a motion for summary disposition under MCR 2.116(C)(10) and argued that there is no genuine issue of material fact regarding the enforceability and validity of the antenuptial agreement. The trial court denied defendant's motion and, in a written opinion and order, ruled that the antenuptial agreement is unenforceable. The trial court subsequently entered a consent judgment of divorce on September 11, 1995.

Defendant filed an appeal and argued that the trial court erred by denying his motion for summary disposition. This Court agreed and, in *Hosea v Hosea*, unpublished opinion per curiam of the Court of Appeals, decided March 7, 1997 (Docket No. 189276), slip op, p 4, ruled that the antenuptial agreement is valid and enforceable. Accordingly, this Court "vacate[d] the trial court's opinion and order and remand[ed] for entry of summary disposition in favor of defendant and for any appropriate modification of the divorce judgment necessitated by this decision." *Id.*

On remand, the trial court entered an order granting summary disposition to defendant on the enforceability of the antenuptial agreement. The trial court then held a bench trial to divide the parties' assets in light of the antenuptial agreement, the changes in the value and ownership of certain marital assets, and the changed circumstances of the parties.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

## II. Analysis

### A. Law of the Case Doctrine

Defendant contends that the trial court erred by failing to apply the law of the case doctrine.

“Whether law of the case applies is a question of law subject to review de novo.” *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). “The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals as to that issue.” *Waatti & Sons Elec, Inc, v Shaya Const Co, Inc, (After Remand)*, 249 Mich App 641, 648; 644 NW2d 383 (2002). “Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case.” *Ashker, supra* at 13.

Here, defendant maintains that, instead of holding a bench trial, the trial court should have simply modified the divorce judgment to reflect that he is entitled to the property located at 1190 Alton Avenue in Flint, as reflected in the antenuptial agreement. While defendant correctly notes that he is entitled to this property under the agreement, the trial court was not precluded from determining an equitable property distribution on remand.

The property division in the 1995 divorce judgment was based, in part, on the trial court’s erroneous ruling that the antenuptial agreement is invalid and not binding on the parties. Therefore, this Court directed the trial court to make “any appropriate modification of the divorce judgment” in light of this Court’s holding that the antenuptial agreement is valid. While this Court’s order on remand is not a model of clarity, it certainly did not preclude the trial court from equitably dividing those assets not covered by the antenuptial agreement. Moreover, and contrary to defendant’s assertion, an “appropriate modification of the divorce judgment” did not simply entitle him to a grant of the Flint property in addition to, among other things, all interest in the couple’s business and related equipment. Rather, the trial court, in its discretion, determined that a bench trial was necessary to establish the existence and value of the parties’ assets, particularly those relating to the parties’ now-defunct billiards hall and game business, Hit-N-Run, Inc. In addition, at the bench trial, the parties introduced evidence regarding custody of their minor child, child support, spousal support and other issues not contemplated in the antenuptial agreement.

On remand, the trial court also discovered that plaintiff incurred substantial mortgages on the Alton Avenue property. Therefore, the trial court determined that a resolution of the case that was fair to both parties necessitated a trial to determine the property distribution in light of this Court’s decision and plaintiff’s incurred indebtedness.

We further note that the trial court was entitled to consider whether “the facts and circumstances changed since the agreement was executed, so as to make [the antenuptial agreement’s] enforcement unfair and unreasonable,” an issue not considered or decided by this Court in its prior opinion. See *Booth v Booth*, 194 Mich App 284, 289; 486 NW2d 116 (1992), modified by *Eddie v Eddie*, 201 Mich App 509 (1993). Further, while the trial court correctly found that the Alton Avenue property is defendant’s separate property under the antenuptial

agreement, as the trial court observed, our Supreme Court stated in *Reeves v Reeves*, 226 Mich App 490, 495-496; 575 NW2d 1 (1998):

The sharing and maintenance of a marital home affords both spouses an interest in any increase in its value (whether by equity payments or appreciation) over the term of a marriage. Such amount is clearly part of the marital estate. However, the down payment, the equity built up before the parties' marriage, and any appreciation that occurred before the parties' marriage should [be] considered defendant's separate estate.

As set forth in the trial court's opinion and order, the court gave effect to the antenuptial agreement by ruling that those assets listed as separate property in the agreement remain the separate assets of the parties. Further, pursuant to *Reeves*, the trial court could not, and did not, consider the payments or value increase of the home prior to the marriage. *Reeves, supra* at 495-496. Further, the trial court specifically credited the amount of mortgage indebtedness plaintiff incurred on the property, \$69,000.

For these reasons, the trial court did not violate the law of the case doctrine in holding a trial on remand. Rather, the trial court properly allowed the parties to present proofs regarding the value of assets in light of the antenuptial agreement and this Court's ruling.<sup>1</sup>

#### B. Property Distribution

Defendant also contends that the trial court erred in dividing the marital property. A trial court's findings of fact, including its findings in determining valuation of marital assets, are reviewed under a clearly erroneous standard. *Sullivan v Sullivan*, 175 Mich App 508, 510; 438 NW2d 309 (1989). "A finding is clearly erroneous only if, after review of the entire record, we are left with the definite and firm conviction that a mistake has been made." *Id.* at 510. This Court reviews a lower court's dispositional ruling "to determine if it was fair and equitable in light of the facts presented." *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Quade v Quade*, 238 Mich App 222, 224; 604 NW2d 778 (1999). "This dispositional ruling is discretionary and should be affirmed unless this Court is left with a firm conviction that the division was inequitable." *Id.* at 224.

The distribution of marital property by the trial court is governed by statute. MCL 552.19; *Reeves, supra* at 493. MCL 552.19 provides:

Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.

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<sup>1</sup> The record also reflects that, before holding a trial, the trial court gave the parties ample opportunity to negotiate a settlement following this Court's decision.

“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.’” *Reeves, supra* at 493; quoting *Bone v Bone*, 148 Mich App 834, 838; 385 NW2d 706 (1986).

Here, defendant asserts that the trial court erred in valuing the parties’ business, Hit-N-Run, Inc., at \$150,000 at the time of the divorce. In assessing its value, the trial court observed that neither party presented an offer of proof regarding valuation. This Court has held that when no offer of proof is presented by expert testimony, professional appraiser, or a request to supplement the record, the parties cannot complain that a valuation made by the trial court was erroneous. *Sullivan, supra* at 511. “Moreover, the trial court had the best opportunity to view the demeanor of the witnesses and to weigh their credibility.” *Id.* Accordingly, we cannot conclude that the trial court erred in its valuation of the business.<sup>2</sup>

### C. Spousal Support

Defendant further asserts that the trial court erred in granting spousal support. A trial court has the discretion to grant spousal support pursuant to MCL 552.23. *Ianitelli v Ianitelli*, 199 Mich App 641, 642; 502 NW2d 691 (1993). MCL 552.23, states in pertinent part:

(1) Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage as are committed to the care and custody of either party, the court may further award to either party the part of the real and personal estate of either party and *spousal support* out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case. [Emphasis added.]

In deciding whether to grant spousal support, the trial court should consider “the length of the marriage, the parties’ ability to pay, their past relations and conduct, their ages, needs, ability to work, health, and fault, if any.” *Ianitelli, supra* at 643. The trial court should make a factual determination whether spousal support should be awarded based upon the facts and circumstances in each particular case. *Id.*<sup>3</sup>

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<sup>2</sup> We also reject defendant’s claim that the trial court did not consider the \$69,000 of mortgage debt incurred by plaintiff on the Alton Avenue property. As noted, in its opinion and order, the trial court specifically deducted the \$69,000 from plaintiff’s part of the marital estate. Therefore, the trial court did not abuse its discretion on this issue.

<sup>3</sup> “Although findings of fact in divorce cases are reviewed under a clearly erroneous standard, dispositional rulings such as whether and how much alimony to award are reviewed de novo.” *Ianitelli, supra* at 642. “If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts.” *Id.*, quoting *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). A finding of fact is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Ianitelli, supra* at 642.

Here, the trial court found that: (1) the parties' "long and stormy" relationship began seven years before they were married and that they were married for nine years; (2) both parties worked extremely long hours to open and operate their business; (3) plaintiff was responsible for the day-to-day care and custody of their minor child; (4) defendant's extensive business background, network of customers, and sole ownership of a video game and rental pool table enterprise provides him a greater earning capacity than plaintiff who is limited by virtue of her education and experience; (5) defendant is in a far better position to pay spousal support because plaintiff does not have the capacity to pay her current living expenses and indebtedness; (6) defendant assaulted and verbally abused plaintiff during the marriage and, at times, humiliated plaintiff in front of customers and employees, flirted with other women in plaintiff's presence and had at least one affair.

A review of the record shows that the trial court did not clearly err in making these findings of fact. Furthermore, we hold that the trial court's relatively small grant of alimony in gross in the amount of \$5,200, was fair and equitable in light of these facts.

#### D. Attorney Fees

Defendant avers that the trial court abused its discretion in granting plaintiff \$10,000 in attorney fees.

In a divorce action, the trial court has discretion pursuant to MCL 552.13, to award attorney fees. MCL 552.13; *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001). Therefore, this Court reviews the award of attorney fees for an abuse of discretion. *Stoudemire, supra* at 344.

A trial court in a divorce action may require either party "to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency." MCL 552.13(1). MCR 3.206 provides:

(1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay.

Moreover, attorney fees "may also be awarded when the party requesting payment has been forced to incur them as a result of the other party's unreasonable conduct in the course of the litigation." *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997), quoting *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992).

The trial court recognized that plaintiff claimed unverified attorney fees of approximately \$30,000. Plaintiff also admitted that she was deeply in debt at the time of trial and testimony showed that defendant owed plaintiff \$7,198.32 in child support. The trial court also attributed the lengthy remand proceedings to defendant's concealment of assets and further recognized that at least some of the attorney fees could be attributed to plaintiff's violation of court orders in

incurring substantial debt against the marital house. Accordingly, the trial court did not abuse its discretion in awarding plaintiff \$10,000 in attorney fees.

Affirmed.

/s/ Patrick M. Meter  
/s/ Henry William Saad  
/s/ Robert B. Burns