STATE OF MICHIGAN

COURT OF APPEALS

LINDA KAY LUTZKE, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED October 11, 2002
v	No. 233746 Kalkaska Circuit Court
JEFFREY SCOTT LUTZKE, Defendant/Counter-Plaintiff-Appellant.[1]	LC No. 99-006764-DM

Before: Hood, P.J., and Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Defendant appeals as of right the findings and property distribution incorporated into his judgment of divorce. We affirm in part, reverse in part, and remand.

I. Valuation.

Defendant first challenges the trial court's valuation of his construction company. Specifically, defendant argues that the court erred in basing its valuation on an untrustworthy loan application and including a provision for goodwill in the valuation when the parties stipulated that the valuation be based on the value ascribed to the tools and equipment. We disagree.

Generally, trial courts are required by law to include a determination of the property rights of parties in a judgment of divorce. MCR 3.211(B)(3); *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). Before making a property division, the trial court must make specific findings on the value of the property being awarded. *McNamara v Horner*, 249 Mich App 177, 186; 642 NW2d 385 (2002). In making its findings, the trial court may base its findings of value on expert testimony, *Young v Young*, 354 Mich 254, 257; 92 NW2d 328 (1958), lay testimony, *Lee v Lee*, 191 Mich App 73, 75-76; 477 NW2d 429 (1991), or the parties' own testimony, *Sullivan v Sullivan*, 175 Mich App 508, 511; 438 NW2d 309 (1989). When arriving at a valuation, a trial court's determinations are not erroneous where they are within the range of proofs presented. See *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

[1] Defendant also filed a countercomplaint for divorce.

Likewise, the parties' stipulation to a value is also a sufficient basis on which the court may base its valuation. *Beckett v Beckett*, 186 Mich App 151, 153; 463 NW2d 211 (1990).

On the record presented, the lower court's valuation is plausible because it was within the range of proofs presented; therefore, it was not erroneous. *Jansen*, *supra* at 171. Moreover, the valuation was based on a determination of the relative credibility of the witnesses, and this Court gives great deference to a trial court's findings in that regard. *Stoudemire v Stoudemire*, 248 Mich App 325, 339; 639 NW2d 274 (2001).

Likewise, because the trial court's valuation of the tools and equipment was supported by the proofs, we need not reach defendant's associated argument regarding inclusion of "goodwill" in the valuation. See generally *Shahan v Shahan*, 74 Mich App 621, 623; 254 NW2d 596 (1977). The valuation of tools and equipment was independently supported by the proofs and the court's fleeting reference to "goodwill" does not warrant a contrary conclusion.

II. Hunting Property

Defendant next alleges the trial court erred in including the full value of hunting property on Rosebush Road in the martial estate. We agree.

As a preliminary matter, the trial court correctly held that the initial transfer of the property – from defendant's mother to defendant and his brother – was effective, vesting title with defendant and his brother. Defendant's mother possessed the intent to transfer title gratuitously – there was actual delivery of the deed and acceptance at time of delivery. *Schmidt v Jennings*, 359 Mich 376, 382; 102 NW2d 589 (1960). The delivery of the deed created the presumption of equal estates in defendant and his brother unless rebutted by competent proof. *Id*.; *Taylor v Taylor*, 310 Mich 541, 544-545; 17 NW2d 745 (1945). Because there was no proof to the contrary, we conclude that defendant was gifted a half interest in the property.

In determining the parties' property rights in a judgment of divorce, the trial court should seek to reach an equitable distribution in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). "In granting a divorce, the court must divide all property that came 'to either party by reason of marriage . . . .'" *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997), quoting MCL 552.19 (emphasis omitted). Significantly, assets acquired or inheritances received by one party during the course of the marriage or after filing – where the asset was given solely to one party and not commingled or treated as a marital asset – are also considered separate property. See *Van Tine v Van Tine*, 348 Mich 189, 192; 82 NW2d 486 (1957); *Grotelueschen v Grotelueschen*, 113 Mich App 395, 399-400 n 2; 318 NW2d 227 (1982).[2]

Here, contrary to the lower court's position, defendant's share of the Rosebush Road property was a separate asset. Although a share of the Rosebush Road property was gifted to defendant during the course of the marriage, it remained separately titled and there was no evidence of commingling or treatment as a marital asset. *McNamara*, *supra* at 184-185.

[2] See also *Lee*, *supra* at 78-79; *Polate v Polate*, 331 Mich 652, 654; 50 NW2d 190 (1951); *Dart v Dart*, 460 Mich 573, 585; 597 NW2d 82 (1999).

Even so, separate assets may be invaded whenever equity so requires, for example, in cases where assets are "insufficient for the suitable support and maintenance" of the claimant and any children in the claimant's care. MCL 552.23(1); see also *Charlton v Charlton*, 397 Mich 84; 243 NW2d 261 (1976). Likewise, where one spouse significantly assists in the acquisition or growth of the other's separate asset, the court may consider the contribution as having a distinct value deserving of contribution. MCL 552.401; *Reeves*, *supra* at 495; *Hanaway*, *supra* at 294. The consideration is whether the marital estate is insufficient for suitable support and maintenance, and whether the spouse contributed to the asset's acquisition, improvement, or accumulation. *Reeves*, *supra* at 495; *Lee*, *supra* at 79.

On review of the record, we are unable to conclude that the lower court clearly erred in considering the Rosebush Road property part of the marital estate and the property distribution award. See *Beason v Beason*, 435 Mich 791, 805; 405 NW2d 07 (1989); *McNamara*, *supra* at 182-183. The Rosebush Road property was gifted to defendant during the marriage and defendant paid property taxes from the marital account and from his company account. See *McNamara*, *supra*, 249 Mich App at 184-185 (premarital retirement funds and tax-deferred annuities were marital assets in part due to commingling during marriage). However, the trial court should have only considered one-half the value of the property because defendant only owned half – his brother owned the other half. Accordingly, we remand with instructions to the trial court to correct the property schedules to equitably divide defendant's one-half of the Rosebush Road property.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Harold Hood
/s/ William C. Whitbeck
/s/ Peter D. O'Connell