

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMIE L. GITRE,

Plaintiff-Appellee/Cross-Appellant,

V

MARTIN JAMES GITRE,

Defendant-Appellant/Cross-  
Appellee.

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UNPUBLISHED  
December 6, 2002

No. 233075  
Emmet Circuit Court  
LC No. 99-005201-DM

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

PER CURIAM.

Defendant appeals as of right, challenging the trial court’s rulings addressing property distribution and valuation in the amended judgment of divorce. Plaintiff cross-appeals the trial court’s rulings addressing separate assets and the denial of alimony. We affirm.

Plaintiff and defendant married on July 4, 1993, and separated on January 18, 1999, when defendant left the marital home. During the marriage the parties had one child, born April 12, 1994. On February 3, 1999, plaintiff filed a complaint for divorce, citing irreconcilable differences. When the complaint was filed, the issues before the court were parenting time, support for the child, division and valuation of property, and plaintiff’s request for alimony and attorney fees. However, before the commencement of trial, the parties reached an agreement relative to child custody and support. The parties also agreed to an equal division of the marital estate. Despite the agreement of equal division, the parties proceeded to trial for a determination of which assets and liabilities should be considered marital property, the value of such property, and plaintiff’s request for alimony and attorney’s fees. Both now appeal the trial court’s rulings on property valuation and distribution, and plaintiff challenges the denial of alimony.

Defendant first alleges that the trial court erred by including a \$50,000 lump sum payment that he made to plaintiff in May 1999, as an asset of the marital estate, resulting in an overstatement of the value of the marital estate and increasing plaintiff’s award by \$25,000. We disagree. Because defendant failed to raise this issue before the trial court, we review the issue for plain error affecting his substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). “To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the

plain error affected substantial rights.” *Id.*, citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Contrary to defendant’s cursory argument, there was no evidence in the record, and none has been presented on appeal, addressing the source of the \$50,000 payment. Accordingly, there was no evidence that the payment derived from defendant’s 1999-2000 income, or that it was otherwise “double counted.” A party may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). We also note defendant’s concession in his appeal brief that all of the parties’ marital assets, with the exception of the marital home and some cash, were in defendant’s sole possession and control during the pendency of the divorce. Under the circumstances, it would be injudicious to presume that the \$50,000 was paid from defendant’s income, without any evidentiary support. Accordingly, defendant failed to demonstrate a plain error in this regard. *Kern, supra*.

Defendant next alleges that the trial court erred by excluding a \$20,000 payment made to plaintiff, while the divorce was pending, when computing the marital estate, resulting in an increased award to plaintiff. We disagree. When reviewing dispositional rulings in a divorce case, this Court first reviews the trial court’s findings of fact for clear error and then reviews the dispositional ruling de novo to determine whether it was fair and equitable in light of the facts. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). If the trial court’s findings of fact are upheld, the reviewing court should affirm the trial court’s ruling unless it is left with the firm conviction that the division was inequitable. *Sparks, supra*; *Ianitelli v Ianitelli*, 199 Mich App 641, 642; 502 NW2d 691 (1993).

The trial court concluded that this payment was properly excluded from consideration when dividing the marital estate because of the failure to provide a valuation of the stock options. We cannot conclude that this finding was clearly erroneous. *Sands, supra*. A review of the record demonstrates that it was undisputed that defendant purchased stock options, while the divorce was pending, and made a \$20,000 payment to plaintiff as an offset for the purchase. Also, in defendant’s trial brief, he acknowledged that, in September 1999, he made a \$20,000 payment to plaintiff as a partial property settlement, and that he received \$20,000 in Rite-Aid stock options. Indeed, stock options are divisible marital assets. See *Everett v Everett*, 195 Mich App 50, 51-52; 489 NW2d 111 (1992). Defendant’s sole retention of the stock options was not disputed, and during trial, there was no evidence regarding the value of such stock options. Consequently, defendant cannot now challenge the payment he chose to make to plaintiff as an offset for his purchase of stock options. *Farm Credit Services PCA v Weldon*, 232 Mich App 662, 683-684; 591 NW2d 438 (1998). We also note that defendant failed to identify the source of the \$20,000 payment, and failed to present any evidence, beyond conjecture, that plaintiff’s award was “artificially inflated.” Accordingly, we reject defendant’s claim of error.

Defendant next alleges that the trial court did not abide by the parties’ agreement to equally divide the marital estate by failing to credit defendant with a \$68,958 payment toward the parties’ tax liability, thereby artificially increasing plaintiff’s award. We disagree. The trial court determined that the division was nonetheless equitable due to the lack of proofs regarding the source of the payment and defendant’s primary responsibility. We cannot conclude that this finding was clearly erroneous or inequitable. *Sands, supra*. A proper distribution should be fair and equitable in light of all the circumstances. *Welling v Welling*, 233 Mich App 708, 710;

592 NW2d 822 (1999). Defendant failed to document the source of the \$68,958 sum. As indicated previously, a party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *Wilson, supra*. Indeed, in the absence of supporting evidence, it would be inequitable to presume that the payment was made out of defendant's 1999-2000 income, particularly because defendant had possession and control of the majority of the marital assets while the divorce proceeding was pending. Accordingly, we conclude that the trial court's ruling in this regard was neither clearly erroneous nor inequitable.

Defendant next argues that the trial court's valuation of the Alabama real property at its purchase price was clearly erroneous. We disagree. Where there is competing evidence of value, the trial court has broad discretion to reject the testimony of both parties and make its own determination of value. See *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Moreover, if the trial court sets the value of a marital asset within the range of the proofs introduced at trial, no clear error can be found. *Id.* Given the evidence presented, the trial court did not clearly err in valuing the Alabama property at the purchase price. It is undisputed that defendant purchased the subject property for \$441,915, in late 1997, for commercial development. Although sales were not consummated for various reasons, defendant received purchase offers of \$670,000 in 1998, \$269,000 in 1999, and \$625,000 in 2000.<sup>1</sup> However, neither party presented expert testimony regarding the value of the property or an appraisal of the property. As noted by the trial court, defendant's willingness to sell the property at a level below his purchase price does not prove that the property declined in value. Because the trial court set the value of the property in the range of the evidence presented, there was no clear error. *Id.*

On cross-appeal, plaintiff alleges that the trial court erred in awarding defendant the Flexible Controls Corporation stock as his separate property. We disagree. A trial court's first consideration when dividing property is the determination of marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Generally, the marital estate is divided between the parties, but the parties' separate assets may not be invaded. *Id.* at 494. A party's separate assets may be invaded for distribution when the other party contributed to the acquisition, improvement, or accumulation of the property, or when a division of the marital assets alone is insufficient for suitable support and maintenance. MCL 552.23 and MCL 552.401; *Reeves, supra*.

The trial court's finding that the stock was defendant's separate property was not clearly erroneous. In determining that the stock was defendant's separate property, the court noted the intent of the donor. See *Darwish v Darwish*, 100 Mich App 758, 773-774; 300 NW2d 399 (1980). During trial, defendant's father, the owner of the company, testified that he gave the stock as a gift to defendant, individually, and purposely chose not to give any stock to plaintiff. The gift of stock made to defendant is akin to an inheritance, which generally is considered separate property. See *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999). Further, when the stock distributions were received, defendant placed them in a business account, and the amount of the distributions were equivalent to the projected tax liability for the stock's earnings. Moreover, as the trial court noted, the mere fact that defendant chose to pay family expenses out

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<sup>1</sup> We note that, following trial, defendant submitted an affidavit to the trial court, averring that he sold the subject property in October 2000, for \$225,000.

of the same business account was insufficient to characterize the stock as a marital estate or any intention to share ownership of the stock with plaintiff. Plaintiff failed to demonstrate that she contributed to the acquisition, improvement, or accumulation of the property or that the division of marital assets was insufficient for suitable support and maintenance. *Reeves, supra*. Accordingly, the trial court did not clearly err in awarding the Flexible Controls stock to defendant as his separate property.

Finally, plaintiff alleges that the trial court erred in denying her request for alimony. We disagree. The main objective of alimony is to balance the needs of the parties in a manner that will not impoverish either party. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Alimony is to be based on what is just and reasonable under the circumstances of the case. *Id.* A trial court should consider certain factors including: (1) the length of the parties' marriage; (2) the abilities of the parties to work; (3) the source and amount of property available in the division; (4) the parties' ages; (5) the parties ability to pay alimony; (6) the present situation of the parties; (7) the parties' needs; (8) the parties' health; (9) fault; (10) support of others; and (11) other general principles of equity. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

We cannot conclude that the trial court's decision to deny alimony was clearly erroneous. The marriage was of a short duration. However, during that time, defendant's income dramatically increased because of his real estate ventures. Plaintiff received a one-half interest in these successful ventures. Additionally, plaintiff received more than \$100,000 while the divorce was pending. Plaintiff had a college education and work experience. She had no physical problems that prevented her from working. Although plaintiff cared for two young children, she received \$3,700 per month in child support. While defendant had profited from his business venture with Rite-Aid, the opportunity was no longer available. Therefore, defendant's future income was contingent upon the success of his new condominium venture. Moreover, apart from general and unsupported allegations, plaintiff failed to offer any evidence that the property award was insufficient, or otherwise unjust or unreasonable. *Moore, supra*. In light of the trial court's factual findings, we conclude that the denial of alimony was fair and equitable.

Affirmed.

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