STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN DOLORES KROHN,

Plaintiff-Appellee,

v

GILBERT ROY KROHN,

Defendant-Appellant.

UNPUBLISHED
February 24, 2004

No. 244696
St. Clair Circuit Court
LC No. 00-001993-DO

Before: Smolenski, P.J. and Saad and Kelly, JJ.

PER CURIAM.

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

Defendant first argues that the trial court erred in determining the parties' incomes and entered an inequitable alimony award based on this. We agree.

This Court reviews the trial court's factual findings regarding an award of alimony for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The findings are presumptively correct, and the burden is on the appellant to show clear error. *Beason v Beason*, 435 Mich 791, 804; 460 NW2d 207 (1990). A finding is clearly erroneous if this Court "is left with a definite and firm conviction that a mistake had been made." *Moore*, *supra* at 654-655. Here, the trial court made the following findings of fact regarding the parties' incomes:

> As previously stated, Kathleen Krohn has the ability to earn approximately $18,981 annually from the Northshore Resort. *This will be reduced by the financing costs of paying the debt to Mr. Krohn.* Still, she could reasonably earn $12,000 annually as long as she did all the work and had little need for hired help. Continuance on this basis for long is not reasonable due to her age and capacity.
>
> Mr. Krohn is a resourceful person and has some ability to earn income despite his health problems. He has worked for his son and can earn rental income on assets awarded to him.

> The real disparity of income beyond each of their respective capacity to earn income involves the social security benefit.
>
> This is a strong case for permanent spousal support.
>
> As stated, both parties receive social security. She receives $64.00 each week and he receives $213.46 per week. The defendant will be required to pay spousal support in the amount of $57.00 each week until the death or remarriage of the plaintiff. (Emphasis added.)

Although there was ample evidence presented to support the trial court's findings regarding defendant's ability to work and earn income from assets awarded to him, there was no evidence presented regarding the financing costs of plaintiff paying the $61,438 debt to defendant. Therefore, we conclude that the trial court's findings of fact regarding plaintiff's income are clearly erroneous to the limited extent there was no evidence to support the amount of financing costs.

Plaintiff also argues that the trial court should have ruled that the $62,500 from the sale of the Orville Drive home was separate property and, therefore, not part of the marital estate. We disagree.

The trial court's first consideration when dividing assets in a divorce proceeding is the determination of marital and separate assets. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). In determining marital assets, the trial court should include all property that came "to either party by reason of the marriage." *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997), quoting MCL 552.19.

It is clear that defendant is not solely responsible for the $62,500 down payment on the North Shore Resort. Although defendant built the Orville Drive house in 1954, both parties lived together at the house for sixteen years. Plaintiff sold her own house when the couple married and purchased the things necessary to run the household. The parties then sold the Orville Drive home and used the money as a down payment on the North Shore Resort. Plaintiff proceeded to pay the remainder of the mortgage with proceeds from rentals on the property. Where separate property has been commingled with marital property or used for joint purposes, courts may include that property in the marital estate. See *Ross v Ross*, 24 Mich App 19, 30-31; 179 NW2d 703 (1970); *Polate v Polate*, 331 Mich 652, 654-655; 50 NW2d 190 (1951). Therefore, the trial court did not err in concluding that the down payment for the North Shore Resort was a marital asset.

Defendant also claims that the trial court erred by concluding that the Carrigan Road lot deeded in his son's name was marital property. We disagree. Evidence was presented that defendant had purchased the Carrigan Road lot with marital funds, the parties paid the taxes on it every year, and the son never spent any funds on the property. In fact, the son had never been provided with a copy of the deed to the property before trial. Therefore, there was sufficient evidence presented to justify the trial court's finding that the Carrigan Road lot should be charged as a marital asset.

In conclusion, because we find that the trial court erred in calculating plaintiff's alimony award to the extent the amount of the Northshore Resort financing costs are not supported by the record, remand on this limited issue is necessary. On remand, the trial court must determine the proper amount of alimony based on further findings of fact regarding the financing costs only. In all other respects, the trial court's judgment is affirmed.

Affirmed in part, and reversed and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kirsten Frank Kelly