

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH R. DEYO,

Plaintiff-Counterdefendant/Appellant,

v

VICKI E. DEYO,

Defendant-Counterplaintiff/Appellee.

UNPUBLISHED

May 25, 2004

No. 245210

Livingston Circuit Court

LC No. 01-030982-DM

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

In this divorce action, plaintiff/counterdefendant appeals by right from a judgment of divorce. We affirm.

In its divorce judgment, the trial court awarded defendant thirty-six percent of the total estate, which included \$714,634 in recognized marital property and \$2,339,133 in property inherited by plaintiff. Plaintiff argues that the trial court erred by including plaintiff's separate inherited property in the property distribution. We disagree.

In a divorce action, this Court first reviews the trial court's findings of fact for clear error. *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* If the findings of fact are upheld, this Court then decides whether, in light of those facts, the disposition was fair and equitable. *Id.* at 670. "A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable." *Id.*

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *Id.*

Plaintiff asserts that the trial court erred by including all of plaintiff's inherited property in the marital estate. We disagree. In distributing property during a divorce proceeding, the trial court must first determine what assets comprise the marital estate. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Generally, marital assets are subject to division between the parties but the parties' separate assets may not be invaded. *Reeves, supra* at 494. However, the trial court may award all or a portion of a party's separate assets to a spouse "if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property." MCL 552.401. Recognizing that principle, the trial court factually determined that defendant's care of plaintiff's ailing father contributed to the inherited estate so that she should share in it:

As the plaintiff's father began to fail over a period of two or three years, the defendant wife was involved in his care, bringing him meals and otherwise attempting to make his final days as comfortable as possible. There is no doubt that both parties were aware that some day there would be a large inheritance from his father, and the defendant wife reasonably expected that after 25 years she would benefit from it. For the most part, defendant did not relate well to her father-in-law, who did not like or trust women (He never married plaintiff's mother and, according to the plaintiff, did not treat her well). Despite her feelings, defendant did assist the father during his decline, and toward the end their relationship was better. . . .

This Court believes that the wife's assistance in caring for the father as well as her continuation in the strained marriage for so many years created a situation whereby she did contribute to the inherited estate.

Based on the testimony at trial of defendant and Deborah Mathes concerning defendant's care of plaintiff's father before and during plaintiff's guardianship, and the trial court's determination that plaintiff's testimony to the contrary was not credible, the trial court's determination that defendant assisted in the care of plaintiff's father was not clearly erroneous.

Further, there is no evidence in the record that plaintiff would have inherited his father's estate without defendant's assistance. Accordingly, we are not left with a definite and firm conviction that a mistake has been made, and the trial court's determination that defendant contributed to the acquisition of the inherited estate is not clearly erroneous.

Plaintiff next asserts that the trial court's award of alimony to defendant in the amount of \$200 per week is an abuse of discretion because defendant needs no further support beyond those assets received in the property distribution. Again, we disagree. Defendant should not have to invade her marital assets to meet daily needs. *Hanaway v Hanaway*, 208 Mich App 278, 296; 527 NW2d 792 (1995). The following language from *Hanaway* is instructive:

In a situation such as this, where both parties are awarded substantial assets, the court, in evaluating a claim for alimony, should focus on the income-earning potential of the assets and should not evaluate a party's ability to provide self-support by including in the amount available for support the value of the assets themselves. Given the length of the marriage, the magnitude of the marital estate, and [plaintiff's] capital position and earning potential after the divorce,

[defendant] should not be expected to consume her capital to support herself.
[*id.*]

The testimony at trial supports the trial court's determination that, during this twenty-five-year marriage, defendant maintained the family and home and, consequently, has few marketable job skills. The testimony likewise strongly supports the trial court's determination that plaintiff was at fault for the breakdown of the marriage through physical abuse and infidelity. Furthermore, we are affirming the trial court's determination that the entire inherited estate should be included in the marital estate, and the subsequent distribution of that estate 64/36 percent in favor of plaintiff, the party at fault, and alimony in an amount designed to *balance* the incomes and needs of the parties is permissible. Based on these circumstances and the factors identified in *McDougal, supra*, we are not firmly convinced that the awarded alimony is inequitable.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald