

STATE OF MICHIGAN
COURT OF APPEALS

JANET M. JALOSZYNSKI,

Plaintiff/Counter-Defendant-
Appellee,

v

MICHAEL W. JALOSZYNSKI,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

August 10, 2004

No. 249005

Genesee Circuit Court

LC No. 01-230617-DM

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant appeals of right from a divorce judgment, challenging the court's distribution of the marital estate. We affirm.

"In deciding a divorce case, the circuit court must make findings of fact and dispositional rulings." *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). We will affirm the trial court's factual findings "unless they are clearly erroneous." *Id.* We afford "special deference to a trial court's findings when they are based on the credibility of the witnesses." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). "If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable." *Id.* at 429-430.

Defendant first argues that the trial court erred when it found that plaintiff was not at fault for the breakdown of the marriage. We disagree. "When dividing the estate, the 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." *Byington v Byington*, 224 Mich App 103, 115; 568 NW2d 141 (1997). Therefore, fault is a valid consideration when dividing the marital estate, but the importance of fault as an individual factor "will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise." *Id.*

In the present case, each party introduced evidence demonstrating the other party's fault. We will not rehash this evidence here, other than to note that a significant portion of it centered on the rearing of the parties' children. Each party disputed the fault evidence produced by the

opposition. Under these circumstances, and with due deference for the trial court's credibility determinations, the trial court did not clearly err when it refrained from assigning plaintiff a disproportionate degree of fault for the marriage's dissolution.

Defendant next argues that the trial court clearly erred when it found that the monetary gifts and inheritances he received from his family during the marriage were unidentifiable and, therefore, marital property. We disagree.

When a trial court divides property in a divorce proceeding, it must first categorize the property as marital or separate. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Generally, the court divides the marital estate between the parties and leaves the separate estates undivided. *Id.* at 494. The trial court should include in the marital estate all the property derived from the marriage. *Id.* at 493. Conversely, separate property includes property acquired by one spouse through inheritance or some other economic addition independent of the marriage. *Lee v Lee*, 191 Mich App 73, 78-79; 447 NW2d 429 (1991). However, courts have the discretion to include in the marital estate any property acquired by gift or inheritance if the otherwise separate property was commingled with the marital property or used for joint purposes. *Charlton v Charlton*, 397 Mich 84, 94; 243 NW2d 261 (1976); *Ross v Ross*, 24 Mich App 19; 179 NW2d 703 (1970).

In the present case plaintiff does not challenge that defendant received numerous monetary gifts and inheritances from his family during the course of the marriage. However, defendant himself testified that most of the money received from his parents in 1996 was used to pay down the mortgage on the marital home. He further testified that the money he received from his mother in late 1996 or early 1997 was used to make a payment on the family van and to purchase a home theater system, with the remaining amount placed in the family's bank account. Defendant also testified that he paid for an addition on the marital home's garage, made a further payment on the family van, and paid off the family credit cards with the inheritance he received from his Aunt Helen in 1997. Regarding the \$34,000 inheritance he received from his mother in 2000, defendant testified that he used this money to pay off the family credit cards, buy a family car, and pay for a ski trip for himself and the parties' youngest daughter, with the remainder deposited in a joint bank account. Defendant also asserted that he kept approximately \$20,000 of the inheritance money he received separate, though at various times he contradictorily indicated that it was money from his Aunt Helen's estate and that it was money from his mother's estate. Furthermore, defendant's assertion that this money was kept separate conflicts with his testimony that all of the inheritance and gift money received had been spent on family expenses. In any event, defendant presented no documentation that would support a claim that any money received by him during the course of the marriage was kept separate from the marital estate. Under these circumstances, the trial court did not err when it found that defendant so commingled the gifts and inheritances with family expenses and marital investments that they were no longer traceable or identifiable, and therefore irretrievably incorporated into the marital estate.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell