

STATE OF MICHIGAN
COURT OF APPEALS

DOYLE EVERETT WARNER,

Plaintiff-Appellant,

v

SUSAN KAY WARNER,

Defendant-Appellee.

UNPUBLISHED

October 26, 2004

No. 249654

Charlevoix Circuit Court

LC No. 02-142219-DO

Before: Murphy, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the June 19, 2003, judgment of divorce, challenging the court's distribution of the marital estate. We affirm.

When deciding a divorce case, the trial court must make findings of fact and dispositional rulings. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996) (citation omitted). On appeal, we must uphold the trial court's factual findings unless they are clearly erroneous. *Id.* A finding of fact is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made after review of the entire record. *Draggou v Draggou*, 223 Mich App 415, 429; 566 NW2d 642 (1997). We "give[] special deference to a trial court's findings when they are based on the credibility of the witnesses." *Id.* "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." *Id.* A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the dispositive ruling was inequitable. *Id.* at 429-430.

Plaintiff argues that the trial court committed clear error when it found that neither party was at fault for the breakdown of the marriage. We disagree. When dividing the estate in a divorce case, a trial court should consider those factors relevant to the disposition of assets, including fault. *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 78; 471 NW2d 631 (1991).

In the present case, each party introduced evidence demonstrating the other party's fault. We need not rehash this evidence here, other than to note that a significant portion of this evidence centered on mutual claims of physical and verbal abuse. Much of this evidence was disputed by the parties. Under these circumstances, and bearing in mind that this Court gives special deference to a trial court's findings when they are based on the credibility of the

witnesses, we are not left with a definite and firm conviction that the trial court erred when it found that neither party was at fault for the breakdown of the marriage.

Plaintiff also argues that the trial court's dispositive ruling with respect to the division of equity in the marital home and in a family boat was inequitable because the court gave too little weight to certain equitable factors, and too much weight to others. Specifically, plaintiff argues that the trial court's ruling was inequitable, because the trial court gave too much weight to the fact that the marital home and the family boat were joint assets, and too little weight to defendant's fault in the breakdown of the marriage, the short duration of the marriage, and plaintiff's substantial contribution to the purchase of the house and the boat. Again, we disagree.

The goal of the court when apportioning a marital estate is to reach an equitable division in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). Each spouse need not receive a mathematically equal share, but significant departures must be clearly explained by the court. *Id.* at 114-115. The equitable factors to be considered in dividing the marital estate include

the source of the property; the parties' contributions toward the property's acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity. [*Hanaway v Hanaway*, 208 Mich App 278, 292-293; 527 NW2d 792 (1995).]

The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. *Byington, supra* at 115.

We do not believe that the trial court placed undue emphasis on the fact that the house and the boat were joint assets. In the first place, in dividing property in a divorce proceeding, a court is required to determine which property is part of the marital estate and which property constitutes separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). It appears with regard to both the house and the boat that the trial court's discussion was merely for purposes of determining whether these items should be included in the marital estate. Further, even if the court's consideration constituted more than a simple determination of the challenged items' status as marital or separate property, the court's actual consideration of this matter appears to have been limited. Indeed, the court devoted no more than a single, conclusory sentence on it in its dispositional ruling.

Moreover, we also do not believe that the trial court gave insufficient weight to the issue of fault, to plaintiff's substantial contribution to the purchase of the house and the boat, or to the length of the parties' marriage. As we have noted, the trial court found neither party to be at fault in the breakdown of the marriage. This being the case, fault was irrelevant to the court's division of the marital estate. Therefore, the court simply could not have given this factor too little emphasis.

With regard to the duration of the parties' marriage, the court explicitly reviewed the parties' relationship, including noting the dates on which the parties were married, separated, reconciled, and separated for a second time. While the court did not explicitly link the length of the parties' marriage in making its dispositive ruling as to the house and the boat, it seems clear from the court's prior discussion of the important dates in the parties' relationship that the court was aware of the length of the parties' marriage when making its dispositional ruling.

With regard to the issue of plaintiff's contributions to the purchase of the home, the court specifically noted that defendant had made only a minimal direct financial contribution toward the purchase of the house. However, the court also noted that by the time the marital home was purchased, defendant had already "contributed substantially to the marital relationship in various ways utilizing her substantial income." For this reason the court, having determined that the house was part of the marital estate, found that defendant was entitled to one-half of the home's equity. Thus, far from giving this factor too little consideration, the court did in fact seriously consider plaintiff's greater actual contribution to the purchase of the home. However, at the same time the court appears to have determined that this fact was offset by defendant's significant financial contributions to the marriage as a whole.

In regard to the boat, other than noting that it was plaintiff who actually purchased the boat, the court did not specifically indicate that it considered the disparity in the amount the parties contributed to the boat's purchase. Nonetheless, in connection with its division of the equity in the marital home, the court explicitly took notice of the fact that defendant had contributed financially and in other ways to the marriage as a whole and that the contribution was significant. It is reasonable to assume that the court also considered this factor when it was determining the division of the equity in the family boat. Moreover, even if such was not the case, we note that the goal in distributing marital assets is to reach an equitable distribution of the property in light of all the circumstances. *Byington, supra* at 114. In the present case, while defendant may not specifically have made payments toward the purchase of the boat, she clearly made significant financial contributions to the marriage, thus freeing plaintiff to put money toward the purchase of the boat. Under these circumstances, regardless of the factors considered by the court, we are not left with the firm conviction that the court's division of the equity in the boat was inequitable.

Plaintiff further argues that the trial court erred when it equally apportioned the debt accrued on credit cards held solely in defendant's name. We disagree. At trial, the parties presented conflicting evidence regarding the source of defendant's credit card debt. As a result, the court's factual finding as to whether this debt constituted marital debt, as opposed to defendant's own personal debt, essentially came down to a question of credibility. As previously noted, we give special deference to a trial court's findings when they are based on the credibility of witnesses. Accordingly, we are not left with the definite and firm conviction that the court erred in finding this debt to be marital.

Moreover, we believe that the court's dispositive ruling as to defendant's credit card debt was equitable. In the first place, substantial evidence was presented that plaintiff had benefited from the purchases that resulted in this debt. Moreover, to the extent that it was clear that plaintiff had not benefited from certain of these purchases, the court subtracted that amount from

the debt for which plaintiff was to be responsible. Furthermore, because plaintiff was in sole possession of the marital home, the vast majority of the items purchased by defendant on these cards remained in plaintiff's possession, to his continuing benefit. For these reasons, we are not left with the firm conviction that the court's dispositive ruling as to defendant's credit card debt was inequitable.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Jane E. Markey