

STATE OF MICHIGAN
COURT OF APPEALS

JIHAD ALI HOMAYED,

Plaintiff-Appellant,

v

MARY JANE HOMAYED,

Defendant-Appellee.

UNPUBLISHED
November 6, 2007

No. 271671
Wayne Circuit Court
LC No. 05-506909-DO

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties were married in August, 1991, and the judgment of divorce was entered in March, 2006. Plaintiff had initially filed a complaint for separate maintenance, but the case was tried as a divorce matter. Following a trial, the trial court entered a judgment which plaintiff now challenges in part. Plaintiff contends that a home in Detroit which was owned at one time by defendant should have been treated as a part of the marital estate and its value divided equally between the parties. Plaintiff further contends that the trial court's assessment of fault to plaintiff, its division of the marital estate, and its award of spousal support to defendant, were all clearly erroneous.

This Court reviews the trial court's findings of fact for clear error. This Court will affirm the trial court's dispositional rulings unless we are left with the firm conviction that the disposition was inequitable. *McDougal v McDougal* 451 Mich 80, 87; 545 NW2d 357 (1996).

Plaintiff argues that the trial court erred "by failing to include the Detroit house in the marital estate." However, the Detroit house was sold in 1997, long before the divorce. Plaintiff is evidently challenging the trial court's characterization of the proceeds of the sale of this home, which the trial court referenced in its discussion of the parties' contributions to the Brownstown property, as defendant's "separate asset." Plaintiff argues that the trial court's finding that the proceeds from the sale were defendant's separate property is clearly erroneous because (1) evidence was introduced that he paid all the monthly bills on the home for 11 years, (2) he paid down the mortgage by \$5,000, and (3) he invested \$30,000 in capital improvements to the home.

The trial court expressly discredited plaintiff's testimony with respect to money spent for remodeling the Detroit home. Although the court did not make specific findings with respect to plaintiff's claims of paying the monthly bills and paying down \$5,000 on the mortgage, the absence of specific findings on these minor points does not entitle plaintiff to relief.

Whether plaintiff paid the monthly bills and whether he paid down the mortgage is immaterial to whether the proceeds of the sale were defendant's separate property. As this Court has held in regard to the increase in value of a premarital asset during the marriage, whether by equity payments or appreciation,

[t]he sharing and maintenance of a marital home affords both spouses an interest in any increase in its value (whether by equity payments or appreciation) over the term of a marriage. Such amount is clearly part of the marital estate. However, the down payment, the equity built up before the parties' marriage, and any appreciation that occurred before the parties' marriage should have been considered defendant's separate estate. [*Reeves v Reeves*, 226 Mich App 490, 495-496; 575 NW2d 1 (1997).]

In this case, the parties did not present evidence of the value of the Detroit home and defendant's equity in that home at the time of the marriage so that the appreciation, if any, could be determined. Without evidence of an increase in value occurring during the marriage, the trial court's characterization of the proceeds of the sale of the home as defendant's separate property was not clear error.

Furthermore, any error would have been harmless. The Detroit property was relevant only as a factor in evaluating the contributions of the parties for the purpose of determining an equitable division of the parties' marital assets. The contribution of each party to the marital estate is one of several factors that a trial court may consider. See *McDougal*, *supra*, p 89. Assuming arguendo that the characterization was not entirely accurate, the inaccuracy would warrant relief only if correction of the mischaracterization of the parties' initial contribution to the Brownstown home would likely affect the court's dispositional ruling. Even if a portion of the proceeds from the sale of the Detroit property should have been considered a joint contribution to the purchase of the Brownstown property, the trial court's explanation of its ruling negates the suggestion that its division of the equity in the Brownstown property at 60 percent to defendant and 40 percent to plaintiff would have been any different.

Plaintiff also argues that the trial court clearly erred in assessing fault to him and awarding 60% of the marital estate to the defendant. We disagree.

The trial court's finding that fault should be assessed to plaintiff is supported by defendant's testimony. Defendant testified that the parties reconciled after plaintiff admitted having an affair and apologized. Subsequent to his apology and during their attempted reconciliation, however, plaintiff admitted that he was again having an affair. In August 2005, after a settlement conference, plaintiff asked defendant to "take him back" and she dismissed the case. After the case was dismissed, however, plaintiff told defendant that he was not coming back for two or three months so that he could be with another woman. The record supports the court's factual finding that plaintiff's relationship with another woman impeded the parties'

efforts at reconciliation, and that fault should be assessed to the plaintiff. Given the evidence, we find no clear error in the trial court's allocation of 60% of the marital estate to defendant.

Lastly, plaintiff claims that the spousal support award was excessive as a matter of law because the court "erred by relying on 'fault' which was not proven and on an arrest which was never prosecuted." Plaintiff is correct that in analyzing the award of spousal support, the court considered his fault in causing the divorce and referenced an arrest that was not prosecuted. However, in determining spousal support, a trial court may consider "the past relations and conduct of the parties," and "a party's fault in causing the divorce." *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003). The arrest, which immediately preceded plaintiff's moving out of the marital home, and the extramarital relationship were appropriately considered by the trial court.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder