

STATE OF MICHIGAN
COURT OF APPEALS

DAVID W. BURGESS,

Plaintiff-Appellee,

v

DEBORAH J. BURGESS,

Defendant-Appellant.

UNPUBLISHED

January 15, 2008

No. 273862

St. Clair Circuit Court

LC No. 05-000490-DM

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, asserting that the trial court erred in treating plaintiff's interest in The Lakes, a manufactured home community in which plaintiff held a 30-percent interest, as his separate property, and by failing to award her spousal support. We affirm.

In reviewing a trial court's property division in a divorce case, this Court must first consider the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). The trial court's findings of fact will not be reversed unless they are clearly erroneous, i.e., this Court is left with the definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). If this Court upholds the trial court's findings of fact, it must then decide whether the dispositional 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. *Draggoo, supra*, 223 Mich App at 429-430.

The trial court did not err in treating plaintiff's interest in The Lakes as his separate property. Assets earned by a spouse during the marriage are generally considered part of the marital estate and subject to division, but if a party receives an inheritance during the marriage and keeps it separate from marital property, that inheritance is deemed separate property not subject to division. *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999); *Korth v Korth*, 256 Mich App 286, 291; 662 NW2d 111 (2003); *Lee v Lee*, 191 Mich App 73, 78-79; 477 NW2d 429 (1991). Separate assets may not be invaded unless one of two statutory exceptions apply. *Korth, supra* at 291. Whether an inheritance is included in the valuation of the marital estate is to be based on the circumstances of each case. *Demman v Demman*, 195 Mich App 109, 112; 489 NW2d 161 (1992).

The evidence showed that plaintiff received his interest in The Lakes as part of his father's estate plan. Plaintiff's father's estate plan gifted interests in The Lakes to plaintiff and his two brothers. Plaintiff's father testified that in planning his estate, it was not his intent to make a gift to defendant.

After receiving his interest in the Lakes from his father, plaintiff in 2000 transferred \$117,975 in marital funds to that asset. Plaintiff conceded that this amount was a marital asset and the trial court considered it as such in making its distribution. Under the facts and circumstances presented, we conclude the trial court did not clearly err in treating the asset as plaintiff's separate property, except for the \$117,975 cash distribution that was transferred from marital assets.

Nonetheless, invasion of a spouse's separate estate is permissible when the other spouse "contributed to the acquisition, improvement, or accumulation of the property." *Korth, supra* at 291-292; MCL 552.401. Under this exception, when a spouse significantly assists in the acquisition or growth of a spouse's separate asset, the court may consider the contribution as having a distinct value deserving of compensation. *Korth, supra* at 292. When this exception applies, the trial court may include in the property distribution such assets as appear to the court to be equitable under all the circumstances of the case. *Id.*

Plaintiff's reliance on *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995), is misplaced. The facts presented here are markedly different from the facts at issue in *Hanaway*. In *Hanaway*, this Court determined that the plaintiff's substantial contributions to the marital relationship justified invasion of the defendant's separate property. In this case, the evidence showed that plaintiff was not actively involved in the management of The Lakes, did not invest long hours toward this asset, and defendant did not contribute to the growth of this asset during the marriage. Under the circumstances, the trial court did not clearly err in finding that invasion of this asset was not justified.

The trial court also did not err by denying defendant's request for spousal support. An award of spousal support is within the discretion of the trial court and is to be based on what is just and reasonable under the circumstances of the case. *Thames v Thames*, 191 Mich App 299, 307; 477 NW2d 496 (1991). This Court reviews an award of spousal support de novo, but must accept the trial court's factual findings unless they are clearly erroneous. *Id.* at 308. The burden is on defendant to persuade this Court that a mistake was made. *Id.*

The main objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. Support is to be based on what is just and reasonable under the circumstances of the case. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Among the factors that should be considered are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).

The record discloses that the trial court considered each of the relevant factors in deciding that spousal support was not justified under the circumstances. The court concluded that only two factors favored an award of spousal support, those being the length of the marriage and the parties' ages. Among the factors militating against an award of spousal support were plaintiff's poor health, and his bleak and uncertain future employment prospects. Conversely, defendant was in good health and was able to work full time, but made no effort to do so. The court also found that defendant was at fault for the breakdown of the marriage by engaging in an extramarital affair. The court commented that it did not reduce defendant's share of the property division because of her fault, but found that her fault in the breakdown of the marriage weighed against an award of spousal support. Defendant received a significant cash award of \$415,069 as part of the property distribution, whereas plaintiff's share of the marital estate was not easily convertible to cash. The court also found that defendant, who was then living with the man with whom she had an affair, did not present any evidence showing a particular need for spousal support. Under the circumstances, the trial court did not abuse its discretion in denying defendant's request for spousal support.

Affirmed.

/s/ Michael J. Talbot

/s/ Brian K. Zahra

/s/ Patrick M. Meter