

STATE OF MICHIGAN  
COURT OF APPEALS

---

JENNIFER L. SMITH,

Plaintiff-Appellee,

v

STEVEN J. CARRICK,

Defendant-Appellant.

---

UNPUBLISHED

April 24, 2008

No. 274282

Barry Circuit Court

LC No. 05-000387-DO

Before: Wilder, P.J., and Murphy and Meter, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right the May 23, 2006, judgment of divorce, challenging the trial court's division of property. He also appeals the trial court's order denying his motion for new trial or an amended judgment. We affirm in part, reverse in part, and remand.

In reviewing a trial court's property distribution, we first review the trial court's factual findings under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A factual finding is clearly erroneous if we are left with a definite and firm conviction that a mistake was made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). If we uphold the trial court's factual findings, we must decide whether the dispositive ruling was fair and equitable in light of the facts. *Sparks, supra* at 151-152. We will affirm the dispositive ruling unless we are left with a firm conviction that the distribution was inequitable. *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005).

Defendant first claims that the trial court erred in finding the entire value of his 1974 MG motor vehicle to be a marital asset. We agree.

A judgment of divorce must include a determination of the property rights of the divorcing parties. MCR 3.211(B)(3); *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003). In determining the property rights of the parties, the trial court must first determine which, if any, assets are separate and which assets are marital assets. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). Generally, marital assets are divided between the parties, while each party retains his or her separate assets with no invasion from the other party. *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002). Defendant purchased the 1974 MG in 1992, six years before he married plaintiff. Accordingly, the car was not a marital asset. It was not purchased with assets earned during the marriage. See *Byington v Byington*,

224 Mich App, 103, 110; 568 NW2d 141 (1997). The trial court clearly erred when it found the 1974 MG to be a marital asset. *Sparks, supra*.

However, a party's separate estate may be invaded when "the other spouse 'contributed to the acquisition, improvement, or accumulation of the property.'" *Reeves, supra* at 490, quoting MCL 552.401. Defendant admits that the value of the 1974 MG increased during the marriage, and that he invested marital money into it. Accordingly, the increase in the value of this vehicle is a marital asset. See *Korth v Korth*, 256 Mich App 286, 292-293; 662 NW2d 111 (2003). Defendant testified that, when he married plaintiff in 1992, the value of the car was \$8,000, and plaintiff presented no evidence to the contrary. Therefore, because the trial court valued the 1974 MG at \$10,000 at the time of trial, the trial court should only have included \$2,000 of the car's value<sup>1</sup> as part of the marital estate. We reverse the trial court's finding that the 1974 MG was a marital asset, and remand for an appropriate adjustment to the judgment.

Defendant next argues that the trial court erred as a matter of law when it granted plaintiff property adjustments totaling \$24,000. Defendant argues that, had the trial court considered all of the relevant property distribution factors, it would have realized that an equitable distribution of the marital estate required adjustments in his favor.

The trial court's goal in distributing the marital estate is to reach an equitable distribution of the property in light of all the circumstances. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). To reach an equitable distribution, a trial court should consider nine factors:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*Sparks, supra* at 159-160.]

Although each factor will not be relevant to every case, when a factor is relevant, the trial court shall make specific findings of fact regarding it. *Id.* at 159-160.

The record indicates that the trial court knew it should consider the *Sparks* factors because it listed them, and stated that it was required to consider them before making adjustments to the marital property. However, the trial court only made specific factual findings regarding the second factor. Thus, while there was evidence regarding the duration of the marriage, along with the ages, health, life status, necessities and circumstances, and earning abilities of the parties, the trial court made no factual findings regarding these factors. Moreover, from our review of the record, it is clear that the trial court relied on these factors when it

---

<sup>1</sup> We reject plaintiff's argument that, during the course of the parties' marriage, the value of the 1974 MG increased from \$500 to \$10,000. Plaintiff's assertion that, after defendant sold the car's Rover V8 engine for \$7,500, the value of the MG dropped \$7,500 is speculation and conjecture. She presented no evidence to the trial court regarding the value of the MG after the engine was removed.

distributed the marital estate. The trial court stated that, given the financial and physical contributions to the marital home, the length of the marriage, and the *Sparks* factors, an equitable distribution of the marital estate required an adjustment of \$24,000 in favor of plaintiff.

A trial court's distribution of the marital estate is intimately related to its factual findings. *Sparks, supra* at 162 n 31. Without the necessary findings of fact, we cannot reasonably determine whether the trial court's adjustment of \$24,000 in favor of plaintiff was equitable under the circumstances. *McNamara, supra* at 189. Because the trial court failed to make factual findings regarding the relevant *Sparks* factors, we remand for further factual findings. See *McNamara, supra* at 186-187.

Defendant next claims the trial court erred "as a matter of law" in denying his motion for new trial or an amended judgment. We disagree.

We review a trial court's decision on a motion for new trial for an abuse of discretion. *Coble v Green*, 271 Mich App 382, 389; 722 NW2d 898 (2006). An abuse of discretion occurs when the result is outside the range of principled outcomes. *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

Two days after the judgment of divorce was signed by the trial court, defendant allegedly learned at a regularly scheduled employees' meeting that, as of December 31, 2005, the value of the shares in his employee stock ownership program (ESOP) had decreased from \$177 to \$156 per share. In his motion for new trial, defendant requested that the trial court reduce the value of the ESOP assigned to him and, thereby, increase the amount of money plaintiff was required to pay him.

To receive a new trial on the basis of newly discovered evidence, under MCR 2.116(A)(1)(f), a party must prove: "(1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial." *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003) (quotations omitted). "If the facts stated in the motion for a new trial or to amend the judgment do not appear on the record of the action, the motion must be supported by affidavit." MCR 2.611(D)(1).

Defendant's affidavit, along with the May 31, 2006, letter from his employer, Dickinson Press, establish that Dickinson Press did not inform its employees of the reduced stock value until May 25, 2006. However, defendant's affidavit and the letter do not establish when Dickinson Press learned of the reduced value. Defendant failed to present the trial court any affidavit from a Dickinson Press employee with knowledge of the independent audit and valuation, indicating that the valuation had not yet been completed by April 24, 2006, the date of trial. Because defendant did not present the trial court with an affidavit establishing that the decreased stock value was not available at the time of trial, and could not have been obtained by

defendant through contact with his employer,<sup>2</sup> the trial court did not abuse its discretion in denying defendant's motion for new trial. *Coble, supra*. Defendant failed to show that he could not, with reasonable diligence, have discovered and produced the decreased value of his stock at trial. *Cress, supra*.

In his fourth and final issue, defendant argues that the trial court erred "as a matter of law" when it failed to grant him adjustments in his favor under *Sparks*. Because we have determined above to remand to the trial court for further factfinding on the *Sparks* factors, this issue is moot. *Ewing v Bolden*, 194 Mich App 95, 104; 486 NW2d 96 (1992).

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Kurtis T. Wilder  
/s/ William B. Murphy  
/s/ Patrick M. Meter

---

<sup>2</sup> Although defendant's attorney told the trial court at the hearing on defendant's motion that the independent audit and valuation were not completed by the time of trial, the attorney's comments were insufficient to support defendant's motion. The statements were not made in an affidavit, as required. MCR 2.611(D)(1).