STATE OF MICHIGAN

COURT OF APPEALS

KENNETH R. DEYO,

Plaintiff-Appellant,

v

VICKI E. DEYO,

Defendant-Appellee.

UNPUBLISHED
June 17, 2008

No. 274311
Livingston Circuit Court
LC No. 01-030982-DM

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

In this property division dispute, plaintiff appeals as of right the November 3, 2006, trial court order entered on remand from the Supreme Court. In its divorce judgment, the trial court awarded defendant spousal support, the parties' entire marital estate, and a ½ interest in one of five separate properties inherited by plaintiff. This Court subsequently affirmed the judgment. In lieu of granting leave to appeal, the Supreme Court reversed in part and remanded to the trial court for reconsideration of the property division portion of the judgment. On remand, the trial court affirmed the original property division. Plaintiff now argues that the trial court erred in affirming its original judgment and, more specifically, in awarding defendant an interest in his separate inherited property. We affirm.

I. Facts and Procedural History

Plaintiff, age 47 at the time of trial, and defendant, age 44 at the time of trial, were married in July 1977. Plaintiff filed for divorce in March 2001. The parties had been married 25 years by the time the divorce judgment was entered in November 2002. Plaintiff testified that the beginning of the marriage was loving, resulting in the birth of two daughters, ages 21 and 17 at the time of trial. Both parties admitted, however, that during the final ten years of their marriage, they distrusted one another and argued frequently. At times, their arguments involved physical violence.

According to plaintiff, the marriage deteriorated because defendant pulled away from him after the birth of their first child and defendant resented his decision to care for his elderly parents. He further testified that defendant wrongfully accused him of having an affair with his friend Kristine Angelosanto. At trial, plaintiff denied having an affair, but admitted telling others that he had an affair in an attempt to make defendant jealous. Defendant testified that,

prior to 1992 when plaintiff met Angelosanto, the marriage had gone well. But, in December 1992, plaintiff told her that he had found another woman. Defendant further testified that, years before plaintiff filed for divorce, neighbors told her that they were sorry to hear of her divorce because they had met plaintiff's new fiancé. Angelosanto testified that, while plaintiff is one of her best friends and she loves him as a friend, she has never had a sexual relationship with him. Angelosanto admitted, however, that she sent plaintiff a card expressing her undying love for him in May 1993.

During most of the marriage, plaintiff worked as a landscaper and gravedigger, earning approximately $25,000 per year. Defendant worked briefly as a bank teller and, later, as an aide at her daughters' school, but she primarily stayed at home taking care of the home and children Early in the marriage, defendant's mother passed away, leaving defendant an inheritance of approximately $100,000. The parties used most of the inheritance for marital purposes, such as remodeling the marital home and purchasing a vehicle for plaintiff. Although plaintiff later returned some of the inherited funds to defendant's bank account, defendant testified that she viewed the inheritance as a marital asset and the trial court included the funds in defendant's account in the marital estate.

In December 1993, plaintiff took guardianship over his father, Orville Quinney, because Quinney's health was failing due to Alzheimer's disease. At the time, Quinney lived alone on a farm on 11 Mile Road in Lyon Township (hereinafter, 11 Mile Farm). Plaintiff managed Quinney's rental properties and financial affairs. He hired caretakers to look after Quinney for a few years, but the caretakers did not work well. As a result, in March 1996, plaintiff left his regular job and began caring for Quinney full time. Thereafter, plaintiff purchased a home with Quinney's money. The parties and their children lived with Quinney in the house until Quinney's death in October 1997. Plaintiff testified that he cared for Quinney himself, rather than placing him in a nursing facility, because he loved his father and it was economically prudent to care for him at home.

When plaintiff was first appointed as Quinney's guardian in 1993, the guardianship documentation listed both plaintiff and defendant as being responsible for Quinney's care and custody. A hospital consent form, dated shortly before Quinney's death, also listed the parties as Quinney's primary caregivers. But, according to plaintiff, defendant refused to have anything to do with Quinney. Plaintiff admitted, however, that defendant took meals to Quinney before he hired the caretakers. He also admitted that defendant assisted in caring for Quinney in the new house, but maintained that "she didn't like it."

Contrary to plaintiff's testimony, defendant testified that she assisted in caring for Quinney before plaintiff hired the caretakers and then in between caretakers.[1] While Quinney lived alone, defendant typically checked on him three to four times a day and cooked his meals.

[1] There is a discrepancy in defendant's testimony regarding the time period that she assisted in caring for Quinney. But, it is apparent from the record that defendant based her testimony on plaintiff's earlier evidence about hiring Quinney's caretakers. There is no indication that defendant was attempting to mislead the trial court regarding the timing of her care.

She also cared for Quinney when they lived together in the new house. Deborah Mathes, a friend of both plaintiff and defendant, described defendant's relationship with Quinney as "a little bit rocky," but noted that Quinney became dependent on defendant before he died. Mathes testified that, after the caretakers were hired, defendant would oversee their care. According to Mathes, defendant gave Quinney more care than plaintiff did, explaining that defendant "was mainly there. She gave him breakfast, lunch and dinner." Mathes testified that, when Quinney would get upset, she witnessed defendant intervene and calm him.

During most of the marriage, the parties lived quite frugally. Defendant purchased most of the furnishings for the marital home at garage sales and all of her clothing at second-hand stores. While the parties maintained a frugal lifestyle, Quinney accumulated an estate worth over two million dollars, including stocks, bonds, securities, the 11 Mile Farm, and other income-producing properties, which plaintiff inherited when Quinney died in October 1997. After Quinney's death, the parties' income increased dramatically, rising from $36,600 in 1997 to $197,824 in 1998. In 2001, the year plaintiff filed for divorce, he filed a separate income tax return and received a deduction for allegedly paying $10,000 in spousal support. His reported income that year was $71,000. After Quinney's death, the parties used the inherited funds and additional income to remodel the marital home and to purchase vehicles, a commercial lawn mower, and a rental property.

Following trial, the court instructed the parties to submit written closing arguments. Plaintiff allegedly argued that the court should award him all of his separate inherited property, including the 11 Mile Farm, but if the court found him at fault, it could award defendant all of the marital property and spousal support. Defendant argued for an even distribution of the entire estate, including plaintiff's inheritance.

In October 2002, the trial court issued an opinion and order concerning the property division. After listing plaintiff's suggested division between marital and separate property, the trial court noted defendant's care of Quinney, stating, in part:

> As the plaintiff's father began to fail over a period of two or three years, the defendant wife was involved in his care, bringing him meals and otherwise attempting to make his final days as comfortable as possible. There is no doubt that both parties were aware that some day there would be a large inheritance from his father, and the defendant wife reasonably expected that after 25 years she would benefit from it. For the most part, defendant did not relate well to her father-in-law, who did not like or trust women. (He never married plaintiff's mother and, according to the plaintiff, did not treat her well). Despite her feelings, defendant did assist the father during his decline, and toward the end their relationship was better. The parties lived a relatively humble existence until the husband's father died and left his son several million dollars.
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> This Court believes that the wife's assistance in caring for the father as well as her continuation in the strained marriage for so many years created a situation whereby she did contribute to the inherited estate. Nevertheless, even if this were not the case, the Court believes that there are ample other reasons that she should share in the entire estate.

The trial court then considered the factors listed in *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992), recognizing that, while both parties are in relatively good health, defendant was not employed for most of the 25-year marriage and has no marketable skills. The court further found plaintiff at fault for the breakdown of the marriage, noting the evidence of his physical violence toward defendant and his infidelity. It then awarded defendant all of the property initially identified by plaintiff as marital property and a ½ interest in the 11 Mile Farm. Plaintiff received all of the remaining property, totaling 64 percent of the entire estate. In addition, the court awarded defendant $200 a week in spousal support. At a subsequent hearing regarding the divorce judgment, the trial court specifically noted that the 11 Mile Farm was income producing and could be used to support defendant following the divorce.

Plaintiff subsequently appealed to this Court, arguing that the trial court erred in awarding defendant the entire marital estate, a share in the 11 Mile Farm, and unending spousal support. This Court affirmed the divorce judgment in a split decision. *Deyo v Deyo*, unpublished opinion per curiam of the Court of Appeals, issued May 25, 2004 (Docket No. 245210). In lieu of granting leave to appeal, the Supreme Court reversed in part and remanded to the trial court for reconsideration of the property division. *Deyo v Deyo*, 474 Mich 952; 707 NW2d 339 (2005). The Court stated, in part:

> . . . in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals and REMAND this case to the Livingston Circuit Court for reconsideration of the property division portion of the judgment of divorce. The Circuit Court properly recognized that invasion of the plaintiff's separate inherited property is permitted only if the court specifically determines that the defendant "contributed to the acquisition, improvement, or accumulation of the property[,]" MCL 552.401, or that defendant's award is insufficient for her suitable support and maintenance, MCL 552.23(1), see *Dart v Dart*, 460 Mich 573 (1999), and *Reeves v Reeves*, 226 Mich App 490 (1997). However, the circuit court's finding was insufficient to support either statutory basis. If, upon reconsideration, the Livingston Circuit Court alters the property division, it may, if necessary, amend the spousal support award. The court may conduct additional proceedings or evidentiary hearings as it deems appropriate. [*Id*.]

Justice Corrigan, joined by Justices Kelly and Weaver, dissented, stating that the trial court properly included plaintiff's inherited property in the marital estate because defendant "contributed to the acquisition, improvement, or accumulation of the property" under MCL 552.401. *Id*. at 952-954 (Corrigan, J., dissenting).

On remand, the trial court affirmed the original property division, finding that defendant "contributed to the acquisition, improvement, or accumulation" of the 11 Mile Farm under MCL 552.401, and that invasion of plaintiff's separate property was necessary to provide defendant a suitable income under MCL 552.23(1). The court stated that defendant contributed to the inherited estate by caring for Quinney "under trying circumstances," moving her family into a larger home to accommodate Quinney's needs, and managing the larger household and children while plaintiff cared for Quinney full time, thereby avoiding the expense of a nursing home. In regard to defendant's financial need, the court noted that its initial judgment provided defendant with spousal support, plus $2200 per month in rental income, for an average yearly income of $36,720. The court further stated that, considering "that the parties were enjoying the fruits of a

$3 million estate ($2.34 million of which was the inherited estate), it does not seem excessive to assure the ex-wife an income of $36,720 a year by invading the inherited property to award her half of the 11 Mile Road property. That appears to be a suitable and by no means extravagant income for a wife abandoned after 24 years by a millionaire husband."[2]

II. Analysis

Plaintiff argues on appeal that the trial court erred in awarding defendant an interest in the 11 Mile Farm. We disagree.

We review findings of fact made in relation to the division of marital property for clear error. *Sparks*, *supra* at 151; *Stoudemire v Stoudemire*, 248 Mich App 325, 336-337; 639 NW2d 274 (2001). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002). The trial court's dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993), quoting *Sparks*, *supra* at 151-152 (quotations omitted); *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005).

A trial court's first consideration when dividing property in a divorce proceeding is the determination of marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). "Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party." *Id*. at 494. Property received by a married party as an inheritance, but kept separate from marital property, is generally considered to be separate property. *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999). There are, however, two statutorily-created exceptions to the doctrine of noninvasion of separate estates. MCL 552.23(1) permits the trial court to invade a

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[2] In calculating defendant's income, the trial court relied on plaintiff's assertion on remand that, "Mrs. Deyo received spousal support in the amount of $860/month and receives $2,200.00/month in rental property income." If defendant receives $860 per month in spousal support and $2,200 per month in rental income, her yearly income would be $36,720, as the trial court stated. But, the source and amount of defendant's income must be clarified. In its initial judgment, the trial court awarded defendant the entire marital estate, including two income-producing rental properties – the parties' former marital home on Johns Road and their rental property on Steinacker Road. Plaintiff testified that the Johns Road property generates $1200 per month and the Steinacker Road property generates $1000 per month, for a total of $2200 per month, or $26,400 per year. The trial court also awarded defendant $200 per week, or $10,320 per year, in spousal support and a ½ interest in the 11 Mile Farm. Plaintiff testified that the house on the 11 Mile Farm generates $1,000 per month and defendant alleges on appeal that the additional leases on the property generate $1300 per month. If the 11 Mile Farm does, in fact, generate that amount of income, each party would receive $1150 per month, or $13,800 per year, from the property. Therefore, if defendant receives $10,320 per year in spousal support, $13,800 per year from the 11 Mile Farm, and $26,400 per year from her additional rental properties, her yearly income is approximately $50,520.

spouse's separate property when "the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party . . . ." *Reeves*, *supra* at 494 (internal quotations omitted). The second exception, MCL 552.401, permits invasion of separate property when the other spouse "contributed to the acquisition, improvement, or accumulation of the property." *Id*. at 494-495 (internal quotations omitted). Courts of this state have consistently recognized that invasion of separate inherited property is permitted only if MCL 552.23(1) or MCL 552.401 applies. See, e.g., *Dart*, *supra* at 585 n 6; *Charlton v Charlton*, 397 Mich 84, 92-94; 243 NW2d 261 (1976); *Reeves*, *supra* at 494-495; *Hanaway v Hanaway*, 208 Mich App 278, 293-294; 527 NW2d 792 (1995); *Demman v Demman*, 195 Mich App 109, 112-113; 489 NW2d 161 (1992).

In this case, it is undisputed that the 11 Mile Farm was plaintiff's separate inherited property. The trial court found, however, on remand from the Supreme Court, that both statutory bases for invasion of separate assets applied. First, the trial court found that defendant contributed to the inherited estate under MCL 552.401. We agree. It is undisputed that in December 1993, plaintiff's father Quinney became ill and the parties began caring for him, managing his income-producing properties, and handling his financial affairs. Plaintiff hired caretakers to look after Quinney for a short period of time, but the caretakers did not work well. In March 1996, plaintiff quit his regular job to care for Quinney full time. Thereafter, Quinney moved into a new house with the parties and their children. The parties continued to care for Quinney in the new house until Quinney's death in October 1997.

Defendant testified that although her relationship with Quinney was strained, she cared for him before plaintiff hired the caretakers and then in between caretakers. When Quinney lived alone, defendant typically checked on him three to four times a day and cooked his meals. Specifically, defendant stated, "My children started to resent me for [checking on him]. I would get up every morning; I would go and get him breakfast. I would then go to school and work at school. I would finish up there at 1:00 o'clock. I would come back and fix him lunch. I would then go to my home and I would take care of things there. Go back down and fix him dinner. And I would check on him last thing at night before I went to bed." Defendant further testified that she continued caring for Quinney while he lived with the parties in the new house. Mathes confirmed defendant's testimony, stating that defendant brought Quinney three meals a day over several years and supervised his caretakers when they were present. According to Mathes, defendant gave Quinney more care than plaintiff did and Quinney became dependent on defendant before he died. Even plaintiff admitted that defendant took Quinney meals when he lived alone and then assisted in caring for Quinney in the new house. He further admitted that the parties cared for Quinney themselves, in part, because it was economically prudent to do so.

In *Hanaway*, *supra*, the defendant's father gifted stock in the family business to the defendant. *Id*. at 281, 283. This Court found that the plaintiff contributed to the growth of the business by managing the parties' household and caring for their children, enabling the defendant to invest long hours and efforts in the business. *Id*. at 293-294. The Court concluded that the business "appreciated because of defendant's efforts, facilitated by plaintiff's activities at home," and instructed the trial court to award the plaintiff an equitable share in the business. *Id*. at 294.

In this case, defendant managed the parties' household, cared for their children, and assisted in caring for plaintiff's ailing father over a period of several years. In fact, the parties moved into a larger home and plaintiff quit his regular job so that they could care for Quinney

full time. By caring for Quinney themselves, the parties avoided the cost of a full-time caretaker or nursing facility. Defendant's work in the home also enabled plaintiff to manage Quinney's income-producing properties and financial affairs. In this way, defendant helped to preserve plaintiff's inheritance and enabled the inheritance to grow in value. Accordingly, we find that the trial court properly invaded plaintiff's separate inherited property under MCL 552.401.

Next, the trial court held that invasion of plaintiff's separate property to award defendant ½ of the 11 Mile Farm was necessary to defendant's suitable support and maintenance under MCL 552.23(1). Again, we agree with the trial court. During most of the parties' 25-year marriage, the family lived quite frugally. While plaintiff was working, he earned approximately $25,000 per year. Defendant primarily stayed at home taking care of the home and children. Upon Quinney's death, however, plaintiff inherited an estate worth over two million dollars and the parties' annual income increased dramatically. Between the time of Quinney's death in October 1997 and their divorce in November 2002, the parties used the inherited funds and additional income to remodel the marital home and purchase vehicles, commercial equipment, and a rental property. It is undisputed that defendant, who was 44 at the time of trial in 2002, had not been gainfully employed in years and has limited marketable employment skills. Additionally, defendant testified that she spends a minimum of $3200 per month, or $38,400 per year, on living expenses. Defendant indicated that she spends her monthly income on regular expenses, such as food and utilities, as well as clothing, medical bills, counseling for she and her daughter, and home maintenance. Defendant further alleges on appeal that her monthly income is used to operate and maintain her rental properties.

The trial court awarded defendant 36 percent of the total estate, including all of the property initially identified as marital property by plaintiff and a ½ interest in the 11 Mile Farm, which is income producing. The court also awarded defendant $200 per week in spousal support. All together, the award provided defendant with an average yearly income of $50,520. On the other hand, plaintiff received 64 percent of the entire estate and, in 2001, earned over $70,000. Given the parties' standard of living during the four years before the divorce, defendant's age, and her lack of marketable employment skills, it is not unreasonable to award her an average yearly income of $50,520. Without her interest in the 11 Mile Farm, defendant would be left with only 23 percent of the total estate and a yearly income of $36,720, which according to her testimony, would be insufficient for her suitable support and maintenance. Therefore, we affirm the trial court's invasion of a portion of plaintiff's inheritance under MCL 552.23(1).

Additionally, plaintiff asserts that in affirming the original property division, the trial court ignored the Supreme Court's direction regarding his separate inherited property. But, contrary to plaintiff's assertion, the Supreme Court did not require the trial court to award plaintiff the 11 Mile Farm on remand. Rather, the Supreme Court instructed the trial court to *reconsider* the property division portion of the judgment of divorce in light of the two statutory bases for invasion of separate assets. In other words, the Supreme Court's instruction did not preclude the trial court from affirming its original property division and invading plaintiff's separate property if the court articulated sufficient reasons for doing so under MCL 552.23(1) or MCL 552.401 on remand. We find that, on remand, the trial court sufficiently articulated its reasons for invading plaintiff's separate property and awarding defendant a ½ interest in the 11 Mile Farm under both statutory bases for invasion.

The Supreme Court further instructed that, "*if*, upon reconsideration, the Livingston Circuit Court alters the property division, it *may*, if necessary, amend the spousal support award." *Deyo v Deyo*, 474 Mich 952; 707 NW2d 339 (2005) (emphasis added). Because the trial court properly affirmed the original property division, we need not address the trial court's distribution of the marital estate and award of spousal support.

Affirmed.

/s/ Alton T. Davis
/s/ Jane M. Beckering