

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH R. DEYO,
Plaintiff-Appellant,

UNPUBLISHED
June 17, 2008

v

VICKI E. DEYO,
Defendant-Appellee.

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

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

MURRAY, J. (*concurring*).

Although I agree with all that is contained within the majority opinion regarding the substantive merits of the trial court's ruling, I write separately to address plaintiff's facially appealing argument that the trial court's opinion on remand was inconsistent with, and was essentially contrary to, the Supreme Court's order in this case.

As plaintiff correctly points out, under the law of the case doctrine, an appellate court's decision on a particular issue binds both the lower court and any other appellate panels in subsequent appeals. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). In the present case, the Supreme Court's order reversing in part and remanding the issue of property division as it applies to the inherited property, and in particular the Eleven Mile farm property, is binding on the trial court and this Court. However, the trial court's opinion on remand was not identical to its first opinion, and as the majority amply demonstrates, contained sufficient findings that satisfied an invasion of separate property under the controlling statutes.

In its original opinion and order, the trial court concluded that defendant was entitled to a one-half share of the Eleven Mile farm because (1) defendant helped care for plaintiff's father during his prolonged illness, (2) the *Sparks* analysis warranted the invasion, and (3) defendant remained committed to a strained marriage, all of which contributed to "the inherited estate":

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.^[1]

On appeal, our Court affirmed in a two to one opinion. But, as noted, the Supreme Court reversed in part and remanded. In doing so, the Court concluded that the trial court had to reconsider its award respecting the Eleven Mile road property, because the trial court's initial findings were insufficient to justify invasion of the separate property. See *Dart v Dart*, 460 Mich 573; 597 NW2d 82 (1999) and *Reeves v Reeves*, 226 Mich App 490, 494-495; 575 NW2d 1 (1997), both of which applied MCL 552.401 and 552.23.

Three justices dissented from the partial reversal and remand. In doing so, Justice Corrigan opined that the trial court's reliance on defendant's assistance with the care of her father-in-law justified invasion of the separate property:

Second,^[2] the trial court correctly concluded that the inheritance should be included as part of the marital estate because defendant helped care for plaintiff's sick father. A spouse's separate assets may be included in the marital estate if the award is 'insufficient for the suitable support or maintenance' of the other party, MCL 552.23(1), or the other party 'contributed to the acquisition, improvement, or accumulation of the property,' MCL 552.401. *Reeves v Reeves*, 226 Mich App 490, 494-495; 575 NW2d 1 (1997). The parties decided not to put plaintiff's father in a nursing home because it was more economical to care for him themselves. Plaintiff quit his regular job to care for his father, became the conservator of his father's estate, and the parties supported themselves with plaintiff's father's money while he was alive. Defendant was involved in caring for plaintiff's father, which included bringing him meals and making him comfortable. By helping with the care of plaintiff's father, defendant assisted in keeping him out of a nursing home. In *Reeves, supra* at 495, the Court of Appeals explained that a spouse's separate property can be invaded under these type of circumstances:

[I]n *Hanaway v Hanaway*, 208 Mich App 278, 294; 527 NW2d 792 (1995), this Court held that the defendant's inherited stock in a family-owned company was available for invasion because plaintiff's handling of child-rearing and domestic duties had freed the defendant to concentrate on building up that company. The *Hanaway* Court found that the defendant's stock

¹ The court then went on to discuss the general factors for dividing marital property under *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992), which are not relevant to deciding whether separate property should be invaded. *Reeves, supra* at 494-495.

² The first reason was Justice Corrigan's view that the parties commingled the inherited property. The trial court made no mention of this point on remand.

had ‘appreciated because of defendant’s efforts, facilitated by plaintiff’s activities at home.’ *Id.* at 294.

Similarly here, defendant’s efforts to care for plaintiff’s father preserved the father’s fortune by saving the costs associated with a nursing home. Additionally, the money saved by caring for plaintiff’s father at home presumably accrued interest, allowing the estate to appreciate in value. Thus, when plaintiff’s father died, the inheritance was larger because of defendant’s efforts. Defendant thus ‘contributed to the acquisition, improvement, or accumulation’ of the inherited property under MCL 552.401.^{3]}

On remand, however, and likely taking a cue from Justice Corrigan’s thoughtful opinion, the trial court added to its findings by being more specific regarding how defendant contributed to the improvement of the inherited property, and avoided reference to irrelevant considerations. In particular, the trial court ruled:

In this Court’s written opinion, it found that the defendant stayed at home and cared for her husband’s father under trying circumstances (feeding him and taking care of his hygiene as his physical and mental condition deteriorated). *This Court further finds on remand that this care avoided the expense of a nursing home, a cost which would have reduced the size of the father’s estate. Clearly that was a contribution of the kind contemplated by the statute. By helping to preserve that inherited estate and allow it to grow in value, she contributed to the improvement of those inherited properties.*

In *Hanaway v Hanaway*, 208 Mich App 278, 294 (1995), the wife’s decision to stay home and take care of the household and children was deemed sufficient to free up the husband’s time to allow him to improve the value of the family-owned business, thus justifying an award of part of the value of the business to the wife. *Certainly in this case, the care provided by the wife is enough to allow an award of half of the so-called 11 Mile Road property to her.*

Additionally, it should be noted that the parties had moved into a larger home so that the wife could assist in caring for the husband’s father. The husband quit his job and began managing his father’s affairs, while the wife provided day-to-day care for the father. *Working together they managed and preserved the father’s estate.* The father died in October of 1997. At that point, the couple had between them an estate of more than \$3 million.

However, five months later the husband filed for divorce and argued that the wife should not receive any part of the inherited estate. This Court awarded the wife \$860 a month in spousal support. According to plaintiff’s post-remand brief, the wife was also awarded properties that gave her an additional \$2200 a

³ Justices Kelly and Weaver joined in Justice Corrigan’s dissent.

month income, for a total yearly income of \$36,720. Taking into consideration 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. [Emphasis added.]

The rationale to invade this separate asset is consistent with *Hanaway*, and is not inconsistent with, or otherwise in derogation of, the Supreme Court's order in this case. Plaintiff's well-written argument that the majority must have rejected Justice Corrigan's views is simply incorrect, and is actually just plain speculation. Indeed, it is equally plausible that the majority determined that the trial court's reliance on impermissible factors (staying in a troubled marriage and the *Sparks* factors), and only articulating one sentence about assisting the father-in-law, was simply insufficient.

Additionally, because the Court's primary task was to review the lower courts' opinions, it is quite possible that the Court simply rejected the sufficiency of the trial court's rationale (that is what it said, after all), rather than rejecting what Justice Corrigan stated in her opinion, which was significantly different than what was in the trial court's initial opinion. For example, although in favor of denying leave (and therefore upholding the trial court's property rulings), Justice Corrigan's opinion was more detailed and limited than the trial court's opinion in describing why, under these facts, an invasion was proper. For instance, it was more detailed because after acknowledging that invasion was proper if defendant contributed to the improvement or acquisition of the inherited estate, Justice Corrigan *explained* how defendant's acts did so with respect to the inherited property. Unlike the trial court, Justice Corrigan did not rely on (and thus was more limited than the trial court) the fact that defendant stuck with a troubled marriage, and made no mention of the *Sparks* factors that were inapplicable to the invasion issue. Had the trial court initially explained its holding in a manner similar to that done by Justice Corrigan, perhaps the Court would not have reversed and remanded. It is anyone's guess. What is not guesswork is the conclusion that the trial court's opinion on remand was more detailed, avoided improper considerations, and should be affirmed.

/s/ Christopher M. Murray