

STATE OF MICHIGAN
COURT OF APPEALS

SONIA MANSHARAMANI,

Plaintiff-Appellee/Cross-Appellant,

v

CHANDU MANSHARAMANI and SAVITRI
BHAMA,

Defendants-Appellants/Cross-
Appellees.

UNPUBLISHED

July 10, 2008

No. 277038

Macomb Circuit Court

LC No. 2005-003067-DO

Before: Owens, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Defendants Chandu Mansharamani and Savitri Bhama appeal as of right from a judgment of divorce.¹ Plaintiff Sonia Mansharamani has filed a cross appeal, challenging the trial court's failure to award her a portion of defendant's pension. We affirm in part and remand for further proceedings.

The parties were married in August 1989, but have lived apart since August 1991. Plaintiff filed this action in 2005. At the time of trial, defendant was 77 years old. He was retired and received a monthly pension of \$1,464 and social security benefits of \$1,500 a month. Plaintiff was 63 years old and employed as a cashier at a 7-Eleven store. Her take-home pay averaged \$250 a week, and she received approximately \$533 a month in social security benefits. She had an IRA account worth approximately \$8,000, but no pension.

Soon after the parties married, they purchased and lived in a condominium. Defendant initially provided \$17,000 toward the purchase of the condominium, including a \$5,000 down payment paid before the marriage, and the property was titled in his name alone. Bhama provided some of the furniture for the condominium. When the parties separated in 1991, defendant moved out of the condominium and plaintiff continued to live there. Defendant

¹ Bhama is Chandu's sister. She was a party to this action because she claimed an interest in some of the disputed assets. In this opinion, the singular term "defendant" refers to Chandu only.

continued to pay the mortgage payments and condominium association fees, but plaintiff paid the maintenance and utility expenses. In December 2002, defendant quitclaimed the condominium property to himself and Bhama even though plaintiff continued to reside there.

The trial court determined that the condominium was marital property, voided defendant's purported transfer of the property to himself and Bhama, and awarded each party half the value of the condominium. The trial court rejected Bhama's claim that the furniture she furnished early in the marriage was intended as a loan and, instead, determined that it was a gift and awarded it to plaintiff. Defendant was awarded his entire pension, and plaintiff was awarded her \$8,000 IRA.

On appeal, defendant first argues that the trial court erred in awarding plaintiff a portion of the value of the condominium. We disagree. In a divorce action, the parties are entitled to a fair and equitable distribution of marital assets. MCL 552.401. A trial court must make both findings of fact and dispositional rulings. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). We review the trial court's findings of fact for clear error and then determine "whether the dispositive ruling was fair and equitable in light of those facts." *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). The trial court's dispositional ruling is discretionary, but it "should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable." *Id.* at 152. In reaching an equitable division of the property, the trial court must consider the following non-exclusive list of 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. [*Id.* at 159–160.]

We disagree with defendant's argument that the condominium should not have been considered a marital asset. Because the condominium was purchased during the marriage and the parties moved into it together after their marriage, it was a marital asset. See *Reeves v Reeves*, 226 Mich App 490, 495–496; 575 NW2d 1 (1997) (equity accrued in marital home during the parties' marriage is part of the marital estate).

Defendant argues that the initial \$17,000 payment for the condominium came from his premarital assets and, therefore, should have been considered his separate property. However, \$12,000 of the initial payment was made after the parties were married and, therefore, was part of the marital estate. See *id.* Although a \$5,000 down payment was made before the marriage, the sale itself was completed after the marriage. Therefore, the trial court did not err in determining that it merged into the condominium as marital property.

Further, the payments made by defendant during the marriage were part of the marital estate. The parties' separation before divorce was not relevant to this determination. *McNamara v Horner*, 249 Mich App 177, 187; 642 NW2d 385 (2002).

Defendant also claims that the trial court's decision to award plaintiff half the value of the condominium was inequitable. However, the trial court rejected defendant's assertion that he was forced to move from the home because plaintiff assaulted him and that he did not seek a

divorce for cultural reasons. The court also recognized that although defendant made the mortgage payments during this period, he provided no other support, and plaintiff alone maintained the property for approximately 15 years. Under the circumstances, the trial court's decision to equally divide the condominium property was not an abuse of discretion.

Next, defendants argue that the trial court erred by failing to award Bhama the condominium furniture. Defendants maintain that the furniture is Bhama's property, which she furnished only as a loan. The trial court rejected this argument, finding that the property "was put in the home at the time of the marriage [as] a gift, pure and simple, not expecting it back." Considering that Bhama never requested either the return of the furniture or its rental value for more than 15 years, even after her brother moved out in 1991, the trial court did not clearly err in finding that the furniture was either a gift or that both defendants abandoned it when defendant moved out approximately 15 years earlier.

Defendant also argues that the trial court erroneously awarded plaintiff \$3,000 in attorney fees. We review an award of attorney fees in a divorce action for an abuse of discretion. *Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007). Attorney fees may be awarded if the record supports a finding that financial assistance is needed to allow a party to prosecute or defend the action, or if the party requesting the fees had to incur them because of the other party's unreasonable conduct. *Id.*

Here, the trial court found that a disparity of income justified a partial award of attorney fees. Defendant stipulated that he had a combined retirement and social security income of \$2,964 a month, while plaintiff's monthly income was approximately \$1,500. Although defendant contends that his monthly income is approximately the same as plaintiff's because he was liable to pay alimony of \$1,500 a month to a former wife, this argument neglects to consider that plaintiff also had expenses. Further, defendant lived with his sister and did not pay rent, whereas plaintiff was responsible for her own housing costs and expenses. Plaintiff had incurred additional attorney fees of \$6,000 to \$7,000 by the time of trial. Because the record supports the trial court's finding that defendant had a greater income and that plaintiff needed financial assistance, the trial court did not abuse its discretion in awarding plaintiff \$3,000 in attorney fees.

Plaintiff argues on cross-appeal that the trial court erred by failing to award her any portion of defendant's pension. Pension benefits that are earned during a marriage are marital property, without regard for when the parties separated. MCL 552.18(1); *McNamara*, *supra* at 187–188. A trial court must consider a party's vested pension benefits in making a property division, but treatment of the benefits may vary. *Pickering v Pickering*, 268 Mich App 1, 7–8; 706 NW2d 835 (2005). Pension benefits are generally "allocated on the basis of the ratio of the years the parties were married while the employed spouse earned the pension to the total years in which the employed spouse worked to accrue the pension." *Id.* Although a trial court's distribution of assets need not be equal, any significant disparity must be clearly explained. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003).

The parties stipulated that defendant worked for the state of Michigan from 1976 until 2002 and received a monthly pension of \$1,464. The benefits that accrued after the parties' marriage in August 1989 should have been considered a marital asset subject to division. However, it is not clear from the record that the trial court recognized that the portion of defendant's pension that accrued during the marriage was a marital asset. Further, the court did

not indicate what factors it may have considered relative to the distribution of this asset, nor did it explain its decision to award this asset entirely to defendant. Accordingly, we remand this case to the trial court for reconsideration of the distribution of defendant's pension and to explain any significant disparity in the distribution of this asset.

Affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Alton T. Davis