

STATE OF MICHIGAN
COURT OF APPEALS

KAREN J. HILL,

Plaintiff-Appellee,

v

RANDALL B. HILL,

Defendant-Appellant.

UNPUBLISHED
February 24, 2009

No. 276050
Saginaw Circuit Court
LC No. 01-040535-DM

AFTER REMAND

Before: Sawyer, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

This case is before this Court following proceedings on remand pursuant to the Court's previous opinion, *Hill v Hill*, unpublished opinion per curiam, issued July 24, 2008 (Docket No. 276050) (*Hill I*), remanding the case for further findings of fact regarding the disposition and valuation of disputed assets relative to the trial court's property division. We now affirm.

This appeal involves defendant's challenge to the trial court's disposition of the marital estate, which defendant argues is inequitable. As we explained in our prior opinion:

[T]he goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). A court should consider the following factors whenever relevant to the circumstances of the case: (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 v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). [*Hill I*, *supra*, slip op at 1-2.]

The trial court's findings of fact are reviewed for clear error. *Sparks*, *supra* at 151. Conversely, the trial court's dispositional rulings are discretionary, but "should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable." *Id.* at 151-152.

Previously, we concluded that remand for further findings of fact was necessary because "the trial court did not resolve the parties' claims about hidden or missing assets, did not resolve valuation disputes regarding certain properties or state the dates it was using to value certain assets, and failed to mention some disputed assets altogether." *Hill I*, *supra*, slip op at 2.

On remand, the trial court did not modify its property distribution, but issued findings of fact in support of the property division. After reviewing the record in light of the trial court's findings on remand, we conclude that the property division was equitable and, therefore, affirm the trial court's judgment.

Although defendant disagrees with several of the trial court's findings of fact on remand, we conclude that those findings are not clearly erroneous. The trial court found that plaintiff's withdrawal of the proceeds from her 401(k) account was reasonable, "other than any portions relating to attorney fees." The record discloses that plaintiff liquidated her retirement accounts with the trial court's permission. She was required to withdraw her retirement funds at their lowest value, incurring taxes and penalties on the withdrawals, in order to maintain the marital home after she became unemployed and defendant failed to make court-ordered child support payments. Plaintiff's childcare expenses and the cost of preserving the marital home, a joint marital asset, exceeded the amount of money that plaintiff received from liquidating her retirement accounts.¹ Because the accounts were not sufficient to cover these reasonable expenses, we view the trial court's remark about attorney fees as an affirmation of the judgment of divorce, which provided that each party was responsible for his or her own attorney fees. Therefore, the trial court did not clearly err in assigning a zero value to plaintiff's retirement accounts for purposes of the property division. The trial court awarded defendant half of the net equity in the marital home after payment of liens and expenses, thus giving both parties an equal benefit from the funds used to maintain the property. There is no merit to defendant's argument that the trial court should have also considered the reduced value of his retirement account, because defendant was not forced to liquidate it in order to care for the children or preserve a marital asset.

Defendant argues that the trial court used inconsistent dates to value the marital assets. The appropriate date of valuation is within the trial court's discretion. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). In the exercise of that discretion, the trial court was not prohibited from considering special circumstances affecting some assets, including defendant's prolonged failure to pay court-ordered support and the "substantial amount" of hidden cash.²

The trial court found that defendant's down payment on the marital home was not his separate property. Separate property may not, as a general rule, be invaded, but where there are additional contributions and appreciation during the marriage, it may be included in the marital estate. *McNamara v Horner*, 249 Mich App 177, 184-185; 642 NW2d 385 (2002). Given the

¹ For the same reason, we cannot conclude that plaintiff's retirement monies were used to maintain the Apple Mountain property, which the trial court awarded solely to plaintiff.

² Contrary to defendant's suggestion, there was both testimony and documentary evidence to support the trial court's finding that he possessed a "substantial amount" of hidden assets. Further, the trial court's consideration of these assets did not result in defendant receiving an inequitable property distribution, because the trial court concluded that plaintiff benefited by having a reduced tax liability and, therefore, was estopped from asserting any claim to any hidden funds.

length of the parties' second marriage and plaintiff's contributions to the property, the trial court did not clearly err in its finding that defendant's down payment had merged into a marital asset.

Neither the trial court's findings, nor the judgment of divorce, support defendant's claims that plaintiff received an offset for paying off a joint credit card debt, or that defendant's portion of the property distribution included blueprints with an assigned value of \$31,800.

Both parties provided testimony and evidence regarding the jewelry obtained during the marriage. Plaintiff testified that she received no jewelry during the parties' second marriage and she presented an appraisal and an insurance statement valuing her jewelry at \$6,000. Although defendant essentially argues that plaintiff's testimony was not credible, this Court defers to the trial court on issues of witness credibility. *Sparks, supra* at 148. In light of plaintiff's testimony, the trial court did not clearly err in finding that plaintiff did not acquire any jewelry during the second marriage. The evidence also supports the trial court's finding that plaintiff's book of business had no economic value, because she was precluded by court order from having any contact with her former clients.

Lastly, there was evidence at trial to support a finding that defendant's car lot had a value of \$25,000, and that his inventory had a value of \$28,608.

Having found no clear error in the trial court's findings of fact, we must consider the trial court's property division in light of those findings to determine whether the division is equitable. After carefully reviewing the record, we are persuaded that there was no significant disparity in the distribution of the marital estate, and we are not left with a firm conviction that the division was inequitable. Accordingly, we affirm the trial court's property division.

Affirmed.

/s/ David H. Sawyer

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra