

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA JOHNS,

Plaintiff/Counter-Defendant-
Appellee,

v

FREDERICK L. JOHNS,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

April 27, 2010

No. 288861

Macomb Circuit Court

LC No. 2007-005304-DC

Before: JANSEN, P.J., AND CAVANAGH AND K. F. KELLY, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right the trial court's order distributing the parties' marital property. We affirm.

I. BASIC FACTS

Defendant and plaintiff's courtship began when they met on the Internet. At the time, defendant lived in Michigan and plaintiff lived in Massachusetts. Plaintiff owned her home in Massachusetts, but in 1999, plaintiff moved from Massachusetts to Michigan in order to be with defendant. Plaintiff and defendant moved into a home defendant had purchased for \$50,000 located in Roseville, Michigan. Before moving in, plaintiff gave defendant \$5,000 for a washer and dryer, as well as rugs. Once she moved in, plaintiff gave defendant an additional \$5,000 for the construction of a garage.

Subsequently, defendant and plaintiff were married in June 2002. At the time of the marriage, plaintiff owed approximately \$65,000 on her house in Massachusetts. Defendant's name was not added to the Massachusetts's home's title, but plaintiff's name was added to the title of the Roseville home. Shortly thereafter, a mortgage was obtained on the Roseville home solely in plaintiff's name. In July 2003, plaintiff took out a home equity line of credit on the Roseville home in the amount of \$20,000; this money was used for the couple's electronic trading.

In March 2004, plaintiff refinanced her Massachusetts home and obtained \$131,000 in equity that was used for marital purposes. Specifically, plaintiff satisfied the \$20,000 loan on the Roseville home with the equity she received from the Massachusetts home. In addition, the

\$131,000 was also used to finance improvements to the Roseville home, including: construction of a new master bedroom, a new cement porch, driveway, and deck, to add skylights, to buy new furnishings, and to landscape the house. In 2005, the parties also acquired a property interest in a home located in California. Specifically, defendant's father, Norman Johns, executed a deed to his home to the parties and himself. The deed stated, "Norman Johns hereby GRANTS to Norman Johns, a widower and Fred Johns and Patricia Johns, husband and wife, all as joint tenants [certain real property located in California]."

Sometime in 2007, the parties' relationship began to deteriorate. In September of that year, plaintiff took \$18,000 from a joint account holding the proceeds of a \$70,000 settlement defendant had obtained in a personal injury lawsuit and used it to move back to Massachusetts. At the time, the account had a balance of \$51,500.

Plaintiff then filed a complaint for divorce. A trial was held and after the close of the parties' proofs, the trial court issued its decision orally. It did not order any alimony. The trial court awarded defendant all personal property and furnishings located in the Roseville home. It also ordered that any money in bank accounts that could be traced to defendant's settlement award be given to defendant; this included the remaining money, if any, in the joint account plaintiff had taken the \$18,000 from. The court did not require plaintiff to return the \$18,000. Both parties were permitted to keep their retirement plans and social security benefits. In addition, plaintiff was awarded a 2002 Jeep Liberty, while defendant was awarded an Oldsmobile, a 1991 Ford pickup, and a boat. The parties were ordered to sell their 2001 Dodge ram and travel trailer, the proceeds to be divided equally.

With regard to real property, the trial court found that the Massachusetts home was plaintiff's separate property and awarded any interest and debt related to the Massachusetts home to plaintiff. It found that the Roseville home was marital property and ordered the home sold unless defendant opted to purchase plaintiff's portion. In addition, the trial court awarded plaintiff \$20,000 "off the top" of the Roseville property to compensate her for paying off the home's mortgage with the proceeds from the Massachusetts's home refinancing. The trial court noted that plaintiff could not otherwise recoup any of the \$131,000 but that the \$20,000 used for the Roseville home's mortgage was traceable to plaintiff's independent funds. With regard to the California property, the trial court awarded the parties' interests in the property to defendant and plaintiff equally as tenants-in-common. The court ordered the property sold, if no other interests remained, the first \$5,000 going to defendant for expenses spent preserving the asset, and the remainder being divided equally between the parties. The court noted that either party could petition the California court for partition if another outside party had an interest in the property.

II. STANDARDS OF REVIEW

On appeal from a property division in a divorce action, an appellate court must first review the trial court's findings of fact for clear error. *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake was made." *Id.* If the trial court's findings of fact are upheld, we must then "decide whether the trial court's dispositional ruling was fair and equitable in light of those facts." *Id.* We will affirm the trial

court's discretionary ruling unless "left with the firm conviction that the division was inequitable." *Id.* at 717-718.

III. MARITAL HOME

Defendant argues that the trial court erred by granting plaintiff \$20,000 in the equity of the Roseville home. In defendant's view, the trial court erred by finding that plaintiff's payment of \$20,000 to pay off the marital home's mortgage was separate non-marital property. Defendant also contends that this award constituted an inequitable distribution of property.

It is generally true that marital assets are subject to division between the parties while the parties' separate assets may not be invaded. *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002). Thus, before dividing marital assets, the trial court must first determine which assets are marital assets and which assets are separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Marital assets are those a spouse earns during the course of marriage, *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005), while "separate property" is defined as "property owned by [a] married person in his or her own right during marriage." Black's Law Dictionary (Revised 4th ed). Furthermore, the goal in distributing marital assets, absent a binding agreement, is to reach an equitable distribution of property in light of all the circumstances. *Berger*, 277 Mich App at 716-717. To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 88-89; 545 NW2d 357 (1996).

Here, the Roseville home was obviously a marital asset subject to division. Although defendant initially bought the home prior to marrying plaintiff, plaintiff's name was added to the property's deed after the marriage, and both defendant and plaintiff resided in the home during the marriage. In addition, the parties spent a significant amount of money on improvements to the house using money plaintiff obtained from a home equity loan of \$131,000 taken out on her separate asset—the Massachusetts home. The trial court correctly found that plaintiff could not recoup this \$131,000 as it had been deposited into a joint account and used for various marital purposes. However, the trial court found that plaintiff could recoup \$20,000 of that money, which she used to pay off the Roseville home's mortgage, because it came from an "equity line out of her premarital funds."

We agree with defendant that the trial court clearly erred to the extent that it found plaintiff was entitled to the \$20,000 because it was separate premarital property. The entire fund of \$131,000 was deposited into the parties' joint account, it was used for various marital purposes, and the \$20,000 was used for the marital purpose of paying off the marital home's mortgage. Thus, to the extent that the trial court found that the \$20,000 was a separate asset, it was clearly mistaken. However, we cannot conclude, under the circumstances, that the award of \$20,000 to plaintiff was inequitable. Much of the funds derived from plaintiff's Massachusetts home were used to increase the value of the Roseville home. The parties used the home equity loan from the Massachusetts home to remodel the Roseville home; with that money, they added a garage, a deck, a porch, a new master bedroom, and skylights to the home. They also used the funds to landscape the home and create a pond, as well as purchase furnishings for the home. Defendant directly benefited from these improvements because they presumably increased the

value of the home. In addition, he was also awarded all the personal furnishings in the home. Furthermore, we note that plaintiff is solely responsible for the debt she accrued on the Massachusetts home as a result of refinancing it. Under these circumstances, the trial court's decision to award plaintiff \$20,000 in the equity of the Roseville home was equitable.

IV. CALIFORNIA HOME

Defendant next argues that he trial court erred by granting plaintiff a one-half interest as a tenant in common of the California property. Specifically, defendant contends that the trial court impermissibly exercised its jurisdiction over the California property and the rights of third parties. While we agree that a court in a divorce action may only make property divisions that affect the rights of the parties, not third parties, *Estes v Titus*, 273 Mich App 356, 365; 731 NW2d 119 (2006), vacated in part on other grounds 481 Mich 573 (2008), we disagree with defendant's allegation that the trial court acted improperly here. Simply put, defendant mischaracterizes the trial court's judgment. The trial court's ruling did not award plaintiff half of the property, nor did it affect the rights of third parties. Rather, half of the interest owned by plaintiff and defendant was given to plaintiff and the other half was given to defendant. Further, with regard to any remaining interests, the trial court noted that both plaintiff and defendant could petition the California court to resolve any remaining disputes.¹ The trial court did not err in dividing plaintiff's and defendant's interests in the California property.

V. EQUITABLE DIVISION

Finally, defendant asserts that the trial court's property award to plaintiff was excessive, inequitable, and unfair. We disagree. As noted, the goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Berger*, 277 Mich App at 716-717. Defendant raises two separate arguments relating to monies he received from the settlement agreement and to other property generally. We consider each in turn.

A. SETTLEMENT AGREEMENT

Defendant contends that plaintiff was not entitled to any portion of the settlement award he received from a personal injury lawsuit. We disagree. Generally, proceeds from a personal injury lawsuit meant to compensate for pain and suffering are not joint marital property. *Pickering v Pickering*, 268 Mich App 1, 10; 706 NW2d 835 (2005). Nonetheless, the proceeds from such a lawsuit may be distributed under certain circumstances. See MCL 552.23 (for spousal or child support) and MCL 552.401 (for spouse's significant contribution to the separate asset). In particular, a personal injury settlement may be treated as marital property if the original action included a loss of consortium claim, the settlement check was made payable to

¹ We also find unavailing defendant's argument that the trial court should have awarded plaintiff only one quarter of the property. Defendant cites no authority for this assertion other than the Michigan Land Title Standards. However, these standards are not binding on this Court and, without any other citation to authority, we consider this argument to be abandoned.

both parties, and the money was treated by the parties as marital property. *Pickering*, 268 Mich App at 10-11. Thus, for example, a settlement check made payable to both husband and wife, deposited in a joint account, and used to fund marital expenses may not be considered separate property. *Id.* at 11-12.

In the present matter, it is not clear from the record whether defendant's lawsuit involved a loss of consortium claim or whether the settlement check was made payable to both parties. However, the settlement check went into plaintiff and defendant's joint account and was used, in part, on marital expenses. Thus, the trial court did not clearly err in considering the money to be a marital asset and by refusing to require plaintiff to reimburse defendant the \$18,000 of the settlement proceeds she took from the joint account before moving out. Moreover, the division was not inequitable. Plaintiff took less than half of the remaining settlement amount and was awarded no more by the trial court. The trial court's finding and judgment with this regard was not erroneous.

B. OTHER PROPERTY

Defendant also complains that the values of property and monies awarded to plaintiff outweigh the properties and monies awarded to defendant and that the division of property was inequitable generally. We disagree because the record does not support defendant's claim. Defendant received half of the parties' interest in both the California and Roseville homes. He received two cars, a boat, and half the proceeds from the sale of a 2001 Dodge Ram and travel trailer. It was not inequitable that defendant received no part of plaintiff's Massachusetts house because the house was her separate property and was not subject to division. Moreover, as a result of not receiving any interest in the house, defendant avoided responsibility for the \$191,000 mortgage on the house. While it is true that defendant makes significantly less monthly income through Social Security than plaintiff does through her pension and Social Security, plaintiff acquired that income through her work prior to her marriage to defendant. Moreover, plaintiff suffers from renal failure and likely requires the income to pay for dialysis. The trial court's division of property was equitable under the circumstances.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly