STATE OF MICHIGAN

COURT OF APPEALS

BILLIE J. MEADOWS,

Plaintiff/Counter Defendant-Appellee,

v

JOAN J. MEADOWS,

Defendant/Counter Plaintiff-Appellant.

UNPUBLISHED
April 27, 2010

No. 288893
Wayne Circuit Court
Family Division
LC No. 07-705162-DO

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

PER CURIAM.

Defendant appeals as of right the trial court's judgment of divorce, challenging the property distribution and debt allocation provisions. We affirm.

Defendant first argues that the trial court erred in granting plaintiff a one-half interest in property she owned in Higgins Lake because she acquired it before the marriage. We disagree.

On appeal, this Court first reviews the trial court's findings of fact, which will not be reversed unless clearly erroneous. *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 court is left with the definite and firm conviction that a mistake was made. *Id*. Special deference is given to the trial court's findings that are based on the credibility of the witnesses. *Johnson v Johnson*, 276 Mich App 1, 11; 739 NW2d 877 (2007). If the trial court's findings of fact are upheld, we then must decide whether the dispositional ruling was fair and equitable in light of those facts. Because this ruling is discretionary, it should be affirmed unless we are left with the firm conviction that the division was inequitable. *Berger*, 277 Mich App at 717-718.

"[T]he trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Marital assets are those assets which came to either party by reason of the marriage and are subject to division. However, one party's separate assets generally are not invaded for the benefit of the other party. *Id*. at 493, quoting MCL 552.19. There are two statutory exceptions to this general rule of noninvasion of separate estates. *Reeves*, 226 Mich App at 494. The first exception allows invasion if after division of the marital estate the award to one party is insufficient for that party's support and maintenance. MCL 552.23. The second

exception, which is at issue here, allows invasion of a party's separate estate for the benefit of the other party when that other party "contributed to the acquisition, improvement, or accumulation of the property." MCL 552.401; see, also, *Reeves,* 226 Mich App at 495.

In this case, the record evidence includes that defendant and plaintiff were married on August 21, 1993, but they never lived together. Plaintiff lived in Livonia and defendant lived in Ludington. At the time of the divorce, plaintiff was 82 years old and defendant was 60 years old. After defendant married plaintiff, defendant did not work and she received no income except from social security disability which totaled about $800 per month. She had no investments. Before plaintiff married defendant he had at least $500,000 in investments but, at the time of the divorce, no such funds existed. Before the marriage, plaintiff owned two parcels of property; one in Calumet and one in Livonia. Plaintiff was awarded these properties in the divorce. After the marriage, defendant inherited her mother's home in Flint and the parties purchased the home in Ludington that defendant resided in during the course of the marriage. Defendant was awarded these two properties in the divorce.

The property at issue on appeal, however, is a vacant property in Higgins Lake that was owned by defendant before she married plaintiff. The court ordered that this property "be sold and the proceeds divided equally between the parties; plaintiff contributed significantly to this property by paying the property taxes throughout the last 14 years." It appears, then, that the court relied on MCL 552.401 to invade defendant's separate estate. Defendant contends that "the payment of taxes a few times" does not reasonably lead to a finding that plaintiff "contributed to the acquisition, improvement, or accumulation of the property." MCL 552.401. We disagree.

MCL 552.401 provides:

> The circuit court of this state may include in any decree of divorce or of separate maintenance entered in the circuit court appropriate provisions awarding to a party all or a portion of the property, either real or personal, owned by his or her spouse, as appears to the court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property.

Here, defendant admitted that plaintiff gave her money with which she paid real estate taxes on the Higgins Lake property. The taxes on the property appear to have been $4,500 a year. Defendant did not present any evidence that she paid, or could have paid, the property taxes on the Higgins Lake property from her own funds. She testified that during the marriage, she did not work and had an income of about $800 a month. Deborah Meadows, plaintiff's power of attorney and daughter, testified that defendant owned the Higgins Lake property before she married plaintiff, "but she couldn't pay the property taxes on it, so [plaintiff] would pay them." Meadows testified that, not only throughout the marriage did her father pay the property taxes on the property, but he paid the taxes on the Higgins Lake property even before they were married. In fact, in 1994 the property was in foreclosure because the taxes had not been paid and plaintiff paid the taxes again. Meadows' testimony was not contested.

We conclude that, considering the special deference afforded a trial court's findings that are based on the credibility of the witnesses, the trial court did not clearly err when it concluded

that plaintiff significantly contributed to the accumulation of the Higgins Lake property's worth. See *Johnson*, 276 Mich App at 11; *Reeves*, 226 Mich App at 495. Defendant made no claim that she paid or could have paid the property taxes throughout the several years of the marriage without plaintiff's monetary contributions. The property was, at least at one point, at risk of foreclosure which was thwarted by plaintiff's payment of the taxes. The property's accumulation in value would not have been realized if that property would have been lost and if plaintiff had not paid the taxes on it through the several years. In other words, plaintiff's contributions to the accumulation of the Higgins Lake property's worth was not indirect and minor. See *Grotelueschen v Grotelueschen*, 113 Mich App 395, 400-401; 318 NW2d 227 (1982), superseded on other grounds 10 USC 1408(c)(1).

Further, as defendant testified, the worth of the Higgins Lake property was very speculative. When defendant was asked what the current value of the property was, defendant testified, "[i]t's an incredibly troubled market, and it's very difficult for me to speculate, and I'm not qualified to do that." Defendant further testified that it might be worth about $330,000, but that it was a small lot and without a building permit "it has the value of a garden plot." Thus, as defendant testified, the one-half interest in the Higgins Lake property that plaintiff was awarded may be of very little value compared to the amount of taxes—$4,500 a year—that he paid throughout the 14 years of marriage, amounting to $63,000. In light of the facts, we are not left with the firm conviction that the discretionary decision to award plaintiff a one-half interest in the Higgins Lake property was inequitable. See *Berger*, 277 Mich App at 717-718.

Furthermore, it appears from the record evidence that the Higgins Lake property was commingled with the marital property with the intent that it no longer remain defendant's separate property. See *Pickering v Pickering*, 268 Mich App 1, 12-13; 706 NW2d 835 (2005); *Reeves*, 226 Mich App at 494-497. Defendant testified that she and plaintiff "absolutely" discussed plans for the property; they were going to build a retirement home there "and we'd be able to retire there happily one day." Apparently consistent with those plans, plaintiff paid the property taxes on it for 14 years. In any case, the trial court's decision is affirmed.

Next, defendant argues that the "trial court erred in approving the Judgment of Divorce submitted pursuant to the 'seven-day rule,' MCR 2.602(B), where even though no objections were timely filed, the portion of the Judgment dealing with credit card debt did not comport with the court's decision because it ordered Defendant to pay one-half of at least ten credit card debts upon which no testimony or evidence was presented, and which are nowhere referenced in the record." After review for plain error affecting substantial rights, we disagree. See *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

At trial, defendant was questioned extensively about the amount of marital debt, including credit card debt, that existed but provided very little information. For example, when asked about marital debt and whether there was a substantial amount of credit card debt, defendant answered, "I don't have them." When asked if she used the credit cards over the last two years, defendant admitted that she did but she had no idea how much she charged. She was then asked: "And in your interrogatories, you provided no information pertaining to the marital debt, correct?" Defendant answered: "Yes." Defendant also admitted that the last time she used a credit card, which was within the last few months, it was plaintiff's credit card. She also admitted to having an American Express card. But, when asked again: "And are you aware of any idea of how much debt there is on the credit cards?" Defendant answered: "No."

Although defendant used plaintiff's credit cards and had no idea what the balances were on the credit cards, she had no intention of paying any of the credit card debt. In particular, defendant testified as follows:

> *Q*. As far as marital debt, you believe that the debts you charged should be your debt and the debts that [plaintiff] charged should be your debt, or his debt, I'm sorry?
>
> *A*. No.
>
> *Q*. What's your contention to how the allocation of debt should be?
>
> *A*. My contention is that he chose to want to be married. He wanted me to marry him. We made that decision together, and he was going to care for me and provide for me . . . .
>
> * * *
>
> *Q*. So what's your proposed [sic] on allocation of debt?
>
> *A*. I believe my debts are the responsibility of my husband.
>
> *Q*. So you want him to pay one hundred percent of the marital debt?
>
> *A*. Yes, I do.

Defendant also testified that she did not believe that plaintiff should have returned to him any of his premarital assets but, she contended, all of her premarital assets—which appears to be only the Higgins Lake property—should be returned to her.

Deborah Meadows, plaintiff's power of attorney and daughter, testified extensively about the marital bills, including credit card debt. Meadows testified that it was difficult to determine the debt because defendant "kept coming in the house and stealing all the paperwork." In particular, Meadows testified that one General Motors credit card, for example, had a balance of $20,000, and her father—plaintiff—charged less than $2,000 on it. Another, a Sears credit card that defendant used, had a balance of $6,000, with $5,000 of it for a cash advance. Another Sears credit card had a balance of $3,700, from defendant's charges. Then counsel asked Meadows:

> *Q*. How many credit cards are there, approximately instead of me going through every one so I can save the Court some time?
>
> *A*. Oh gees. Well, my father's wallet was about that thick, and most of those were credit cards. And all of them are gone but one.

Meadows approximated the overall credit card debt at probably between $40,000 and $50,000, with about $25,000 to $30,000 in her father's name, alone, although he did not make the charges. Meadows testified that about 95% to 98% of the credit card debt was from defendant using the charge cards.

The trial court opinion contained the following with regard to the apportionment of debt:

> The Court has insufficient real evidence and conflicting testimony with which to accurately determine the allocation of debt between the parties. Plaintiff argues that the majority of the debt was incurred by defendant's formidable charge-card expenditures. Defendant asserts that plaintiff should be responsible for her outstanding debt as accumulated throughout the marriage as necessary marital expenditures. The Court finds that as there is insufficient evidence to apportion the debt according to each parties' individual expenditures; therefore, the debt is hereby determined by the Court to be marital debt, and shall be equally split between the parties.

Thereafter, the judgment of divorce entered by the court set forth a list of 15 credit cards. The credit cards were as follows: two GM cards, three Sears Mastercards, three American Express cards, and Discover, Home Depot, Value City, Sam's Club, Walmart, Macy's, and Marshall Fields cards. The judgment indicated that the "parties shall split the debt 50/50."

Defendant claims on appeal that the judgment did not comport with the trial court's decision and that the court should not have signed the judgment. Thus, defendant argues, "the court failed to fulfill its requirements pursuant to MCR 2.602(B)(3)(a)" which is to ensure that the judgment comports with its decision. Defendant's argument is premised on the claim that the only evidence as to credit card debt involved three credit cards, one from GM and two from Sears. Thus, that is the only debt that should be "split 50/50." We disagree.

First, defendant admitted during her testimony that she had an American Express credit card during the marriage. Second, defendant failed to provide any evidence at trial whatsoever pertaining to the amount of credit card debt that existed although she admittedly used credit cards that were in plaintiff's name. Third, defendant admitted to failing to provide pretrial discovery on the issue of credit card debt. Fourth, it appears that plaintiff was thwarted in his efforts to compile the credit card debt information because defendant would come to his house and take the mail.

In any case, the judgment of divorce comports with the trial court opinion. The opinion provided that the debt was to be split equally, and the judgment of divorce provides for the same. At trial plaintiff's counsel presented evidence of credit cards from, at least, GM, Sears, and American Express. Meadows' trial testimony clearly indicated that there were several more credit cards with balances. Plaintiff's counsel asked Meadows approximately how many credit cards there were "instead of me going through every one so I can save the Court some time" and Meadows replied that there were many. Defense counsel did not object or attempt to elicit any additional or more specific information about the credit cards. Defendant provided absolutely no information about the credit card debt, either before or during trial, although she used the cards. In summary, defendant has failed to establish plain error affecting her substantial rights.

Affirmed.

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