

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KATHY LYNN JASTIFER,

Plaintiff-Appellee,

v

CHRISTOPHER PETER JASTIFER,

Defendant-Appellant.

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UNPUBLISHED

July 13, 2010

No. 291988

Montcalm Circuit Court

LC No. 08-010738-DO

Before: HOEKSTRA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right the April 21, 2009 judgment of divorce. He specifically challenges the property distribution. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties began dating in November 1991 and were married in August 1993. There were no children born of the marriage. Plaintiff worked in a factory until 1997 when she became disabled due to fibromyalgia. Defendant worked for a while at a pallet factory and then quit. He took about a year off from work to construct the marital home and now works as a self-employed fabricator.

Before the marriage, the parties looked for property to purchase on which to construct a home. Defendant entered into a land contract to purchase an 80-acre parcel of land. The contract was for \$32,000 with a \$10,000 down payment. Defendant testified that he used proceeds from the sale of a 20-acre parcel to his parents to make the down payment. He received a total of \$24,000 for the sale of the parcel, with the 80-acre down payment coming from the initial \$10,000 partial payment he received from his mother. Plaintiff stated that she gave defendant money from her savings and half of a federal income tax refund to help with the down payment on the land contract, as well as the subsequent payments. Plaintiff's name was not on the land contract but she claimed she was never told that it was not considered marital property. Defendant asserted that he purchased framing and foundation supplies before the marriage in anticipation of constructing a house on the 80-acre parcel that was subsequently purchased. Finally, defendant asserted that he made around \$24,500 from an auction he held immediately before the wedding in which he sold supplies he did not need for the construction of the marital home. Plaintiff claims the house was mainly built by defendant and her son Steven Davis. Defendant contends that Davis had very little to do with the construction of the house.

The 80-acre parcel, house, and out buildings were appraised at \$190,000. The equipment and personal property spread out over two areas of the property were appraised at around \$65,500. Plaintiff was awarded the northern half of the 80-acre parcel along with the house and its contents, her vehicle, the trailer her son was using, and \$10,000. Defendant was awarded the southern half of the acreage, along with all of the existing buildings and personal property items located thereon, and his vehicle. Although defendant believed he had contributed about \$58,500 of premarital assets to the property and home, the court awarded only \$10,000 because there were no firm numbers or specific records to support defendant's position, and his business records were very poor. The trial court awarded defendant all of the personal property and equipment on the southern half of the property because his business was involved and because it was difficult to determine which items belonged to whom.

On appeal, defendant challenges the trial court's determination that he was only entitled to a \$10,000 allocation for separate, premarital property. We disagree.

On appeal from a divorce judgment, this Court must first review the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). We will not reverse findings of fact unless the findings are 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 reviewing court is left with the definite and firm conviction that a mistake was made. *Johnson v Johnson*, 276 Mich App 1, 10-11; 739 NW2d 877 (2007). This Court gives special deference to a trial court's findings when based on the credibility of the witnesses. *Id.* at 11. If the trial court's findings of fact are upheld, this Court must then decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks*, 440 Mich at 151-152. The dispositional ruling should be affirmed unless this Court is left with a firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3); *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003). 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. A trial court's first consideration is the determination of marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Generally, marital assets are subject to division between the parties, but the parties' separate assets may not be invaded. *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002). The appreciation of a premarital asset during the marriage is subject to division as part of the marital estate unless the appreciation was wholly passive. *Id.* 184-185. However, in certain circumstances, a party's premarriage monetary contribution to fund the purchase of property and build a marital home may lose its characteristic of being separate property. See *Pickering v Pickering*, 268 Mich App 1, 12-13; 706 NW2d 835 (2005).

To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of the parties to the marital estate, each party's life status, earning ability, age, health and needs, fault or past misconduct, and any other equitable circumstances. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). The trial court must make specific findings regarding the factors it determines to be relevant. *McNamara*, 249 Mich App at 186.

Contrary to defendant's assertion, the trial court's findings of fact were not clearly erroneous. *Berger*, 277 Mich App at 717. The court properly determined that the sole issue was whether defendant should receive credit for his premarital contributions. Plaintiff and defendant were living together when the land contract to purchase the 80-acre parcel was executed. Defendant presented testimony that he made the initial \$10,000 payment with money from the sale of a 20-acre parcel to his parents. He also testified that he made approximately \$24,500 from an auction of items he owned prior to the marriage, \$8,000 from the sale of a toolbox, and \$24,000 from the sale of the 20 acres to his parents. In addition, he claims to have purchased many of the building materials prior to the marriage as he was already planning on building a house. In arriving at its decision to only credit defendant with \$10,000 for having more lump sum assets at his disposal before the marriage, the court found it was significant that, during this same period, plaintiff had a full time job with a regular paycheck and that plaintiff's son helped in the construction of the house. Moreover, unlike in *Pickering*, 268 Mich App at 12-13, the trial court did not find defendant's premarriage contributions had lost the characteristic of being separate property. Rather, it simply chose to not believe defendant's testimony regarding the amount allegedly contributed. To the extent that the court believed plaintiff's son was also more involved in the construction of the house than defendant and his witnesses averred, it is within the court's discretion to make such credibility determinations. *Johnson*, 276 Mich App at 11. The court's arrival at a \$10,000 credit for separate assets before the marriage was not pulled out of the air; rather, it was arrived at based on the facts presented. As specifically stated by the court, there were no firm numbers or documentation to support defendant's claims. While there is no case law requiring a paper trail in support of payments, etc., the court is entitled to use its discretion in deciding whether to believe witnesses' memories of financial events occurring sixteen years ago, especially when there was clearly so much animosity between the parties before and during the trial. The court clearly had an issue with defendant's lack of record keeping, as evidenced by its decision to give defendant all of the property and equipment on the southern half of the 80 acres to do with as he chose because his business was involved and because there was difficulty in determining which items belonged to whom. Accordingly, the trial court's decision to credit defendant with \$10,000 in separate assets prior to the marriage was not clearly erroneous.

Finally, in light of the facts presented, the distribution of assets was fair and equitable. *Sands*, 442 Mich at 34. The 80-acre property was split in half, with plaintiff receiving the portion of the acreage with the house (which was in extreme disrepair) as well as its contents and with defendant receiving the other half along with all of the out buildings and personal property/equipment. While plaintiff was awarded \$10,000 from defendant to even out the distribution, the personal property and equipment awarded to defendant were valued at around \$65,500. Clearly, the disposition was more than fair and equitable to defendant and was not an abuse of discretion. Even if many of the items on the property in fact belong to clients or family members, there would be sufficient remaining items and out buildings awarded to defendant on the property to make the distribution fair and equitable.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kathleen Jansen  
/s/ Jane M. Beckering