STATE OF MICHIGAN

COURT OF APPEALS

PHILLIP S. BELLROSE,

Plaintiff-Appellee,

V

LEANNA E. BELLROSE,

Defendant-Appellant.

UNPUBLISHED
November 18, 2010

No. 292498
Cheboygan Circuit Court
LC No. 08-007256-DO

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

Defendant appeals the trial court's judgment of divorce entered on May 29, 2009. For the reasons set forth below, we affirm.

I. FACTS

The parties married on September 2, 1972, and plaintiff filed for divorce on August 12, 2008. In January 2008, plaintiff inherited a lakefront home from his mother worth approximately $495,000. The trial court ruled that this property is not part of the marital estate, but is inherited property not subject to division upon divorce. At trial, plaintiff testified that he also inherited a savings account from his mother with a balance of between $50,000 and $55,000. The trial court did not include this inheritance in either party's property award. Defendant testified that the proceeds of plaintiff's cash inheritance were deposited in a joint savings account, and that plaintiff added her name to the account "just after [his mother] passed away." Plaintiff testified that he withdrew $45,000 from the account when he decided to leave the marriage, and left defendant approximately $11,000; defendant testified that plaintiff left her about $13,000.

Defendant testified that she had various health problems, including diabetes, high blood pressure, and peripheral artery disease, which require her to take several prescription medications and to be under the regular care of a doctor. Defendant testified that she was a member of the Sault Ste. Marie Chippewa Indian tribe, and will receive medical benefits when she becomes an elder of the tribe upon her sixtieth birthday, in December 2009. However, defendant claimed the benefits offered by the tribe will not cover all of her medical expenses or medications. Defendant asked the court to include, as part of the divorce judgment, health insurance comparable to that provided by plaintiff's employer. However, the divorce judgment did not

include such a provision, and stated that "[a]ll insurances, now and in the future, are the sole responsibility of each party."

II. ANALYSIS

A. Lakefront Property

Defendant contends that, although the trial court recognized her significant medical problems and expenses, "instead of providing a means to address this need by invading the lake front property, [the court] simply ignore[d] the need." However, defendant has not documented or described her medical expenses or explained why her property award is insufficient to meet these expenses. Defendant was awarded the marital home, valued at $123,000, less a $65,000 mortgage, and the court ordered plaintiff to continue making the mortgage payments on the home as part of the divorce judgment. Defendant also received two of the parties' real property lots, valued together at $25,000, and her Individual Retirement Account, worth $5,821. The court valued defendant's total property award at $88,821, while plaintiff's divorce award was valued at $30,027. However, the court did not include the lakefront property or savings accounts plaintiff inherited from his mother, nor did it include defendant's award of alimony, which was set at $1,000 per month, in its total valuation of the parties' awards.

Based on the information in the record and provided by the parties, plaintiff has more assets than defendant following the divorce. However, the law does not mandate that both parties have equal assets following a divorce, but rather that the division of marital property be equitable. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992). This Court has also held that "the marital estate is [to be] divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party." *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). The *Reeves* Court cited two statutory exceptions to this general rule, which are set forth in MCL 552.23 and 552.401. *Id.* MCL 552.23(1) provides:

> Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage who are committed to the care and custody of either party, the court may also award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.

MCL 552.401 provides in pertinent part:

> 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.

Defendant claims that both of these exceptions apply here.

According to defendant, the parties used the lakefront property during the marriage and did not keep it separate from the marital property. However, the record reflects that, during most of the marriage, plaintiff's parents owned the property and plaintiff inherited the property only when his mother died in 2008. Defendant also notes that "both spouses transferred their mutual homestead tax exemption to the lakefront property and changed their addresses accordingly." The court did not make findings of fact on defendant's arguments. Nevertheless, that defendant changed her address and state tax homestead exemption to reflect the lakefront property as opposed to the marital residence is not compelling evidence that the property was a commingled asset. Defendant asserted at trial and on appeal that she "lived" at the lakefront property only during the summers and on holidays, and plaintiff testified that until his mother died in 2008, his mother paid the taxes on the property and maintained it. Based on these facts, the court did not clearly err when it held that the lakefront property was plaintiff's sole, inherited property. Defendant's years of use of the property occurred before plaintiff was its sole owner and, therefore, this asset could not have been commingled when it was owned by a third party. Additionally, defendant acknowledged at trial that she did not make any major improvements to the property. Because defendant failed to show that she contributed to the acquisition, improvement, or accumulation of the property, she is not entitled to invasion of the lakefront property based on the statutory exception set forth in MCL 552.401.

Defendant is also not entitled to the exception in MCL 552.23 that permits the trial court to invade a party's separate assets if the property award is "insufficient for the suitable support and maintenance of either party." As noted, defendant does not provide documentation or a description of her monetary needs on appeal, nor does she explain why the trial court's award of property and alimony are insufficient for her support. Defendant may not "leave it to this Court to discover and rationalize the basis for his claim, or unravel and elaborate for him his arguments." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Defendant has failed to establish a claim under MCL 552.23, and relief is not warranted.

B. Spousal Support

Defendant argues that the trial court erred when it ordered that the payment of spousal support ends upon the death of either party. According to defendant, this was unjust in light of the fact that she will have a limited income from other sources, and because plaintiff did not request such a provision.

In the event that plaintiff dies before defendant, she will own the marital home and two other lots. The combined value of these properties was approximately $148,000 at the time of trial. Defendant will also presumably continue to receive her disability benefits payment, which was $719 per month at the time of trial, and a monthly distribution from plaintiff's pension of $225. While plaintiff's pension distribution alone would likely not be sufficient to support defendant following plaintiff's death, she would not be without means of supporting herself based on the value of the assets she was awarded in the divorce judgment. Based on the evidence, the court's decision to terminate alimony payments upon the death of either party was not clear error or inequitable.

C. Attorney Fees

Defendant contends the trial court erred when it declined to award her attorney fees. Defendant argues that, without such an award, she will be required to sell the marital home or use her spousal support to pay her attorney fees, contrary to settled law. Again, however, defendant does not provide an explanation as to why the assets awarded by the court are not sufficient to pay her fees without selling the home or using the funds she will receive through alimony payments. Therefore, this issue lacks merit. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999); MCR 3.206(C)(2).

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad