# STATE OF MICHIGAN

# COURT OF APPEALS

KAREN J. PENKALA-SHORKEY,

Plaintiff-Appellee,

v

MARK A. SHORKEY,

Defendant-Appellant.

UNPUBLISHED
March 22, 2012

No. 302776
Saginaw Circuit Court
Family Division
LC No. 09-005359-DO

Before: M. J. KELLY, P.J., and WILDER and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce entered by the Family Division of the Saginaw Circuit Court. Because we conclude that the trial court included separate property as marital property, we reverse and remand. We affirm the award of attorney fees.

Marital property is that property "accumulated through the joint efforts of the parties during their marriage." *Leverich v Leverich*, 340 Mich 133, 137; 64 NW2d 567 (1954). It generally includes "any increase in net worth that may have occurred between the beginning and end of the marriage." *Bone v Bone*, 148 Mich App 834, 838; 385 NW2d 706 (1986). Where an asset is the separate property of one spouse, an increase in its value that occurred during the marriage is martial property if the increase reflects active involvement by one of the spouses, rather than it being purely passive appreciation. *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997).

Three parcels of real property are at issue in this appeal. The first is a home that had been owned by defendant's mother prior to the marriage. During the marriage, defendant purchased his mother's home for approximately $30,000 which he paid exclusively from his pre-martial assets. That house later burned down and defendant received insurance payments of $54,847. The state equalized value of the lot was set by the local government at $18,200. Plaintiff testified that she paid some of the utility bills for that house during the time defendant owned it prior to the fire and that marital assets were used to maintain the property. A single paid utility bill in the amount of $72.00 was introduced to support this claim. The bill was in defendant's name, but plaintiff testified that the words "Pd 72.00 7/30 ck#1671" written on the bill are in her handwriting. No evidence was introduced to support plaintiff's testimony that joint assets were

used to maintain the Linwood property, that it increased in value as a result or the degree of that increase. We find clear error in the trial court's conclusion that the payment of a single utility bill is sufficient evidence to conclude that plaintiff contributed to an increase in value of the Linwood property during the marriage. Further, the trial court's general reference to "comingling" of some assets is not a sufficient basis to conclude that property purchased by one party in his sole name with separate assets falls within the marital estate.

The second parcel in question is the home in which the parties lived together during the marriage and for some period of time before the marriage. Before meeting defendant, plaintiff had purchased the home, paying $32,000. She testified that at the time of marriage she had $13,340 in equity in the home and that during the marriage she refinanced the home and in that transaction received cash in an amount consistent with her pre-marital equity. The marital home remained deeded to plaintiff alone throughout the marriage. Defendant presented evidence that he contributed significantly to an increase in value of the property by making substantial improvements to the home. Plaintiff disputed this, asserting that his contributions were modest. At the time of the divorce, the property was appraised at $48,000 and was subject to a mortgage of $32,387 leaving equity of just under $15,000. We affirm the trial court's conclusion that the value of the house increased by some amount produced by the joint efforts of the parties during the marriage. However, the court did not determine this amount and we cannot make that determination from this record.

The third parcel is 80 acres of land in Arenac County. This land was purchased in the name of both parties during the marriage. At the time the parties married, the 80 acres were owned by Plaintiff's brother. According to plaintiff's testimony, the house and at least some of the property was her childhood home and had been in her family for several decades. During the parties' marriage, plaintiff's brother was unable to make his mortgage payments and just before foreclosure, he quitclaimed the property to plaintiff and defendant in exchange for payment of $63,317. The testimony indicated that all or nearly all of this sum was paid out of defendant's separate assets, i.e. insurance payments received after the fire to the Linwood property and other funds from defendant's individual bank account. Subsequently, the 80 acre lot was divided into two lots: a 20 acre lot with the house and a 60 acre lot. The 20 acre lot was sold by plaintiff and defendant to plaintiff's brother on a land contract upon which he quickly defaulted. A second land contract was agreed upon for $33,500, but plaintiff's brother quickly defaulted on that one as well after a single payment of $1800 which is being held in trust.

The trial court held that the Arenac property was a marital asset and defendant appeals from that holding. While the property was purchased with separate assets, it was purchased in the name of both plaintiff and defendant demonstrating a comingling of assets and an intention that the property would be part of the marital estate. Therefore, we affirm the trial court's finding that the property was part of the marital estate. However, based on this record, we cannot determine whether in dividing that property, the trial court considered the parties respective contributions to the purchase of that parcel or the marital estate generally.

Accordingly, we reverse the property division ordered by the trial court and remand for further proceedings to determine the value of the marital estate, which as we held above, does not include the Linwood property and for an equitable division of that estate including

consideration of "the contributions of the parties to the marital estate." *Berger v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008).

Defendant also challenges the award of $500 in attorney fees to plaintiff. In her proposed distribution of assets, plaintiff requested $2,000 in attorney fees for multiple motions which she alleged resulted from defendant's refusal to obey the court's temporary orders. The trial court ruled:

> Based upon the evidence presented to the Court, including the earning abilities, income and current circumstances of the parties, as well as the fact that Defendant caused Plaintiff to have to file several motions, the Court will award $500.00 in attorney fees to [plaintiff] in this case—payable by Defendant . . . from his share of the $1800.00 held in trust.

The income disparity between the parties does not appear on its face to justify an award of attorney fees. MCR 3.206(C)(2)(a). However, the court also found that "Defendant caused Plaintiff to have to file several motions." The court's findings on this issue were brief, however, given the amount of fees awarded and given that brief, definite, and pertinent findings and conclusions on contested matters are sufficient, MCR 2.517(A)(2), we affirm.

Reversed in part and affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Kurt T. Wilder
/s/ Douglas B. Shapiro