STATE OF MICHIGAN

COURT OF APPEALS

RITA BARILE,

Plaintiff-Appellee,

v

SILVIO LUIGI BARILE,

Defendant-Appellant.

UNPUBLISHED
January 14, 1997

No. 183357
LC No. 93-321094

Before: Marilyn Kelly, P.J., and MacKenzie and R.J. Ernst*, JJ.

PER CURIAM.

Defendant appeals as of right from the property distribution portion of the parties' amended judgment of divorce. We affirm.

The parties were married in 1978, and by the time of their divorce in 1994, they had several hundred thousand dollars' worth of assets. Defendant brought a number of parcels of real property into the marriage, including three houses and the bakery he had owned and operated for some 35 years. The parties stipulated that at the time of trial in 1994, the three houses had a combined value of $213,500. There was no meaningful evidence concerning the value of the homes in 1978. Plaintiff testified that she thought the houses had a "possible" combined value of "around" $103,000 to $104,000, while defendant testified that "from [his] intuition," he would "guess" the value of the homes in 1978 was "maybe" $110,000. Trial briefs in the court record indicate that plaintiff would stipulate that the property had a value of $86,882 on the date of the marriage, while defendant would stipulate they were worth $115,500.

In dividing the parties' assets, the trial court recognized that the bakery and the houses were defendant's separate property and excluded them from the marital estate. The court, however, concluded that plaintiff should receive a fifty percent share of the appreciation in the homes' value. On appeal, defendant argues that the court erred in including the appreciation in the value of defendant's separate property as part of the marital estate and in awarding a one-half interest in that appreciation to plaintiff. We disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

When a party challenges a trial court's division of property, we first review the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). If the trial court's factual findings are upheld, then we review the trial court's dispositional ruling for fairness and equity in light of the facts. *Sparks, supra*, 440 Mich 151-152.

Generally, property acquired prior to the marriage is not marital property and is not subject to division upon dissolution of the marriage. *Rogner v Rogner*, 179 Mich App 326, 329; 445 NW2d 232 (1989). However, the award of an interest in one spouse's separate property is justified where "it appears from the evidence that the non-owner spouse has contributed to the acquisition, improvement or accumulation of the property," MCL 552.401; MSA 25.136. Because plaintiff's services in the bakery business, and caring for the house and children, contributed to the increase in value of defendant's separate property during the marriage, we conclude that the trial court did not err in including that increase in value in the marital estate. See *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995); *Gregg v Gregg*, 133 Mich App 23, 24; 348 NW2d 295 (1984). Moreover, the trial court's decision to award plaintiff a one-half interest in the appreciation of defendant's separate property was fair and equitable considering each spouse's contribution toward the enhanced value of the property, as well as their needs and circumstances. *Hanaway, supra*, pp 292-293.

Defendant also argues that the trial court should not have included the appreciation in the value of the homes as part of the property division because plaintiff failed to provide proofs to establish the amount of the appreciation. We disagree for the reason that it would have been an abuse of discretion on the part of the trial court to ignore the value of this asset. See, e.g., *McNamara v McNamara*, 178 Mich App 382, 391-393; 443 NW2d 511 (1989), modified and remanded on other grounds 436 Mich 862; 460 NW2d 222 (1990). Moreover, under the circumstances of this case we find no abuse of discretion in the court's decision, in calculating the amount of appreciation, to consider the value of the houses at the time of their purchase rather than the date of the marriage; neither party presented adequate information to enable valuation of the houses at the latter date. *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 76-77; 471 NW2d 631 (1991); *Curylo v Curylo*, 104 Mich App 340, 351; 304 NW2d 575 (1981). Furthermore, the premarital property value assigned by the court, $92,000, was within the range of values to which the parties were willing to stipulate as the value of the parcels at the time of the marriage. Because we are not convinced we would have reached a different result in the trial court's place, *Burkey, supra*, we decline to reverse on this ground.

Affirmed.

/s/ Marilyn Kelly
/s/ Barbara B. MacKenzie
/s/ J. Richard Ernst