STATE OF MICHIGAN

COURT OF APPEALS

MARY JO ARTHUR,

Plaintiff-Appellee,

v

ROBERT D. ARTHUR,

Defendant-Appellant.

UNPUBLISHED
July 18, 1997

No. 193495
Wayne Circuit Court
LC No. 92-205861 DO

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce in which the trial court awarded to each party one-half interest in the marital home. We affirm.

This is the second time this case has been before this Court. With respect to the first appeal, brought by plaintiff, this Court vacated the judgment of divorce entered following a three-day trial, and ordered that the trial court reconsider the property division. This Court advised the trial court, when doing so, to articulate specifically the reasons for any property division adjudged in light of the relevant factors governing such awards. *Sparks v Sparks*, 440 Mich 141, 159-163; 485 NW2d 893 (1992). Upon remand, Judge Marvin R. Stempien, the presiding judge, had retired. Judge Carole F. Youngblood was assigned to succeed Judge Stempien in this matter.

Judge Youngblood indicated that she would review the original trial transcripts and entertain oral argument prior to issuing her findings of fact with respect to the division of the marital estate. Judge Youngblood invited both parties to submit additional briefs for the court to consider if they desired. After the foregoing events transpired, Judge Youngblood issued an opinion regarding the disposition of the marital assets followed by a judgment of divorce incorporating her findings.

Defendant first argues that Judge Youngblood, when reaching her decision, improperly considered evidence that was either not presented to Judge Stempien during the original trial and/or specifically excluded by Judge Stempien. Although defendant has cited to several instances in which this allegedly occurred, our review of the record shows that the only such evidence which Judge

Youngblood apparently did actually rely upon is the testimony of a witness which was given on a separate record as an offer of proof after Judge Stempien denied plaintiff's motion to reopen proofs.[1] We conclude, however, that Judge Youngblood did not abuse her discretion in considering this evidence. In regard to the other evidence allegedly improperly considered, we find no indication that such evidence, although presented, was actually considered and relied upon. We will presume that Judge Youngblood only considered admissible evidence, and not inadmissible evidence or statements of counsel. See *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992).

A successor judge has all the power and authority held originally by the predecessor judge. *People v Herbert*, 444 Mich 466, 471-472; 511 NW2d 654 (1993); *Harry v Fairlane Club Properties, Ltd*, 126 Mich App 122, 124; 337 NW2d 2 (1983); *Christopher v Nelson*, 50 Mich App 710, 712; 213 NW2d 867 (1974). Further, MCR 2.613 (B) provides:

> A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only by the judge who entered the judgment or order unless the judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.

A successor judge has authority to reconsider the rulings of his predecessor. *Herbert, supra* at 472. Consequently, if Judge Stempien could have reconsidered his original ruling, granted plaintiff's motion to reopen proofs and thereafter considered the witness's testimony, Judge Youngblood could do the same. *Id.*

Clearly, Judge Stempien could have reconsidered his original ruling regarding reopening proofs to admit the witness' testimony. This was a bench trial and, because of this Court's order vacating the judgment of divorce, no judgment had been entered. Moreover, while making the offer of proof, defendant had an opportunity to cross-examine the witness. Thus, a full record of the testimony was created. There is no reason why Judge Stempien could not have reconsidered his original ruling. "If a trial court wants to give a 'second chance' to a motion it has previously denied, it has every right to do so, and this court rule [MCR 2.119(F)(3)] does nothing to prevent the exercise of discretion." *Smith v Sinai Hosp*, 152 Mich App 716, 723; 394 NW2d 82 (1986). Consequently, since Judge Stempien could have considered the witnesses testimony, Judge Youngblood was empowered to do the same. Thus, to the extent that Judge Youngblood did, in fact, consider the testimony, this was not an abuse of discretion. Defendant's first claim of error is without merit.

Next, defendant contends that awarding each party one-half interest in the marital home was not fair and equitable. We disagree. In a divorce case, this Court must review the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of the facts. The trial court's ruling should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

In *Sparks*, the Michigan Supreme Court identified several factors to be considered when determining the distribution of marital assets. The Court held that the following factors are to be considered wherever they are relevant to the circumstances of the particular case:

(1) duration of the marriage,

(2) contributions of the parties to the marital estate,

(3) age of the parties,

(4) health of the parties,

(5) life status of the parties,

(6) necessities and circumstances of the parties,

(7) earning abilities of the parties

(8) past relations and conduct of the parties, and

(9) general principles of equity.

Id. at 159-160. The Court also recognized that it would not be feasible nor desirable to "establish a rigid framework for applying the relevant factors." *Id.* at 158. Instead, the trial court is given broad discretion in fashioning its ruling. *Id.* at 158-159. The Court confirmed that there would be no strict mathematical formulations when dividing the marital estate. *Id.*. Finally, while the division need not be equal, it must be equitable. *Id.* at 159.

Defendant disputes several factual findings made by the trial court all relevant to the purchase and maintenance of the marital home. We hold that the trial court's findings of fact were not clearly erroneous based on the evidence present in this case. With respect to the acquisition, maintenance and improvement of the marital home, the trial court found that there was a relatively equal contribution, both monetarily and otherwise, from both parties. This finding was supported by the testimony of both plaintiff and defendant.

Since we conclude that the trial court's findings of fact were not clearly erroneous, the only question before us is whether the trial court's award of one-half interest in the marital home to each of the parties was fair and equitable. We hold that it was in light of the facts presented.

Both parties contributed equally to the acquisition, maintenance and improvement of the marital home. The life status of the parties was essentially equal at the time of trial. In this regard, defendant has not contested the trial court's findings that the parties worked full-time throughout the course of the marriage making similar salaries, that both parties were in their forties, that both had similar earning capabilities and that both parties were in good health. Nor has defendant contested the trial court's conclusion that neither party was more at fault than the other for the breakdown of the marriage.

Considering that all the factors are essentially equal, awarding a one-half interest in the martial home to each party was fair and equitable. *Sparks, supra*.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Roman S. Gribbs

[1] The motion to reopen proofs was made after the parties rested but before closing arguments.