

STATE OF MICHIGAN
COURT OF APPEALS

DEBRA C. ZIMMERMAN,

Plaintiff-Appellee,

v

DAVID M. ZIMMERMAN,

Defendant-Appellant.

UNPUBLISHED

September 26, 1997

No. 189575

Ottawa Circuit Court

LC No. 94-21542-DZ

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendant David Zimmerman appeals as of right from the judgment of divorce. Defendant challenges the award to him of the value of only 750 shares of stock in Gyro Powder Coating (hereinafter "Gyro"), a company started and owned by plaintiff Debra Zimmerman's father. He also challenges the denial of his request for alimony and attorney fees. We affirm in part and remand for further findings.

Plaintiff and defendant were married on September 24, 1983, and have two minor children, Amanda and Kendra. On July 28, 1995, an opinion was issued ordering the rights of the parties in their divorce; the opinion was expanded and incorporated into a judgment of divorce entered on September 21, 1995. The issues of custody and visitation of the children were resolved by the parties before trial, as was much of the valuation and distribution of the parties' marital estate. The primary focus at trial and on appeal is the issue of how to value and distribute the parties' stock in Gyro.

Defendant first argues that the trial court did not consider all of the relevant factors in determining the amount of Gyro stock to which he was entitled and that the court's order that defendant was entitled to only 750 shares of stock was inequitable. We disagree.

When reviewing dispositional rulings, this Court must first review the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). Findings of fact, such as a trial court's valuations of particular marital assets, will not be reversed unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). 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 has been made. *Beason*, *supra* at 805. If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts; the dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks*, *supra* at 151-152.

It was undisputed that plaintiff's parents had gifted 2300 total shares of Gyro stock to the parties during their marriage, 800 to plaintiff alone and 1500 to plaintiff and defendant jointly. A few months before the marriage ended, the parties redistributed title in the stock for tax purposes as part of an estate plan; plaintiff then had 1300 shares in her name and defendant had 1000 in his name. It was also undisputed that defendant began working for Gyro just before marrying plaintiff and had worked his way up until he was managing the company entirely. At the same time that plaintiff decided to end the marriage, she also used her position as majority shareholder to fire defendant from his position with Gyro.

At trial for the divorce, defendant argued that he should be entitled to the value of half the 2300 shares of stock that the couple owned together, because virtually everything else in the marital estate had been split evenly and because he had helped to build the value of the company. Plaintiff, on the other hand, argued that defendant should only be entitled to half of the 1500 shares that were initially transferred to them jointly. The court ruled in favor of plaintiff and awarded the value of 750 shares to defendant, stating:

Plaintiff's parents obviously intended their daughter would receive a greater ownership share than would their son-in-law despite his greater authority within day to day operations of the company. This favored status to the daughter is natural

Considering the source of the stock, the relatively short duration of the marriage, the short length of time prior to the divorce that the stock was transferred to the parties and the reason for transferring stock placing thirteen hundred shares in plaintiff's name and one thousand shares in defendant's name only four months before defendant's sabbatical from the company and the termination of this marriage this Court is going to order that defendant is entitled to the value of seven hundred fifty shares of stock, i.e., one-half that amount originally transferred to the parties jointly.

Defendant argues that the trial court placed its emphasis solely on the source of the stock and failed to consider that the rest of the marital estate was divided evenly, the extent to which defendant increased the company's value, and defendant's attempts to reconcile the marriage. However, we find defendant's argument without merit. The trial court did review the parties' history in the marriage as well as the family business. It also recognized that the parties had agreed to divide other assets evenly. However, the court further recognized that Gyro was originally started and owned by plaintiff's father and, as evidenced by the transfers of stock, plaintiff's parents intended that plaintiff have a greater ownership share than defendant. Defendant does not dispute these findings but argues that the court's distribution of stock was unfair.

Our Supreme Court has held that the trial court "is given broad discretion in fashioning its rulings and there can be no strict mathematical formulations." *Sparks, supra* at 158-159. At the same time, the Court stated, "while the division need not be equal, it must be equitable." *Id.* at 159. Further, the trial court's dispositional ruling will not be reversed on appeal unless this Court is left with the firm conviction that the division was inequitable. *Sands, supra* at 34; *Sparks, supra* at 151-152. In the present case, although the distribution was not absolutely equal, we find nothing on the record to indicate that the trial court's dispositional ruling with regard to the Gyro stock was inequitable.

The record sufficiently supports the court's determination that it was fair to award only half of the original joint transfer of stock because defendant was otherwise compensated for his contributions to the company and because, up until a few months before the divorce, the parties did not intend that defendant own half of the stock. We, therefore, conclude that the trial court's dispositional ruling with regard to the Gyro stock was fair and equitable.

Defendant further argues that the trial court's ruling denying alimony or attorney fees was inequitable. With regard to those rulings, the trial court merely stated: "Both parties shall pay their own attorney fees" and

“No alimony is awarded and none is reserved.” The court did not support these conclusions with any factual findings. Because this Court must first determine whether a trial court’s factual findings are clearly erroneous, *Beason, supra* at 805, before deciding whether the court’s dispositional ruling denying alimony was fair and equitable, *Sparks, supra* at 151-152, we cannot conduct a meaningful appellate review where the trial court has failed to state its findings on the record, *id.* at 159, 162-163. Similarly, a trial court’s award or denial of attorney fees is reviewed on appeal for an abuse of discretion, *Ianitelli v Ianitelli*, 199 Mich App 641, 645; 502 NW2d 691 (1993), and an abuse of discretion exists if an unprejudiced person, considering the facts upon which the trial court acted, would say there is no justification or excuse for the ruling, *Auto Club Ins Ass’n v State Farm Ins Cos*, 221 Mich App 154, 167; 561 NW2d 445 (1997). Because the court failed to state the facts on which its decision was based, this Court cannot review whether the trial court abused its discretion. Therefore, we remand this case for resolution of the issues of alimony and attorney fees, only.

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

/s/ Richard Allen Griffin

/s/ Myron H. Wahls

/s/ Roman S. Gibbs