

STATE OF MICHIGAN
COURT OF APPEALS

JAMES R. BRITT,

Plaintiff-Appellant,

v

RUTH ANN BRITT,

Defendant-Appellee.

UNPUBLISHED

December 16, 1997

No. 199316

Lenawee Circuit Court

LC No. 95-017203-DO

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right certain portions of the parties' judgment of divorce concerning the division of property and alimony. We affirm.

In dividing the parties' property, the trial court awarded defendant certain real property interests defendant had acquired by inheritance. The trial court ordered that the equity in the marital home and defendant's pension be split evenly between the parties. The trial court also ordered an approximately even division of the personal property held by the parties. Finding plaintiff at fault, the trial court ordered plaintiff to pay for defendant's health insurance until defendant either found employment with insurance coverage or was eligible for Medicaid. The court's finding of fault with respect to plaintiff was apparently based on defendant's testimony that plaintiff had been sexually abusive during the marriage.

Plaintiff states that the parties stipulated at trial that the evidence of plaintiff's sexual abuse be disregarded by the trial court. Plaintiff argues that in light of this stipulation the trial court's finding of fault with respect to plaintiff was clearly erroneous. We disagree.

A trial court's finding of fact with respect to the property distribution provision of a divorce judgment is reviewed for clear error. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). The ultimate dispositional ruling must be fair and equitable in light of the facts. *Id.* We will reverse only if we are left with the firm conviction that the distribution was inequitable. *Id.* As further explained in *Byington*:

When dividing the estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstances. . . . The significance of each of these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. [*Id.* at 115.]

In this case, defendant testified that plaintiff forced her at gunpoint to have sex with other men while plaintiff videotaped these encounters. Defendant testified that plaintiff had used the tape to blackmail and threaten her. Defendant also testified that plaintiff had forced objects inside her, causing her injury. Plaintiff's counsel subsequently offered to introduce a tape into evidence to rebut defendant's claim "that there was some sort of coercion and a gun involved in the incident she reports." Defense counsel stated that the issue of plaintiff's sexual abuse had been raised only for the purpose of requesting injunctive relief ordering that plaintiff destroy any existing tapes. Plaintiff's counsel replied that plaintiff would consent to an order that any tapes be destroyed, but would also ask that the court not consider defendant's testimony "to paint [plaintiff] in a bad light and throw fault at him." When the court asked defense counsel if counsel wanted the court to disregard defendant's testimony concerning plaintiff's alleged threats, counsel replied "That's fine, Your Honor." Thus, it appears that the parties agreed that the trial court did not need to consider the evidence of plaintiff's sexual abuse or threats for the purpose of establishing fault.

However, the trial court did not accept the parties' purported "stipulation," but instead merely stated that it would "take that matter under advisement." Cf. *Dana Corp v Employment Security Comm'n*, 371 Mich 107, 110-111; 123 NW2d 277 (1963). The trial court was obligated to consider all of the equitable circumstances of the case, including the parties fault or past misconduct. *Byington*, *supra*. Plaintiff has cited no authority indicating that a trial court must accept a stipulation that would preclude it from considering all the circumstances that encompass the determination of an equitable property distribution. Accordingly, we find no error in the court's consideration of plaintiff's testimony with respect to the issues of fault or misconduct. We likewise conclude that the trial court's findings of plaintiff's fault or misconduct not clearly erroneous where the court stated that it believed defendant's testimony with respect to plaintiff's prior misconduct. MCR 2.613(C).

Next, plaintiff argues that the trial court erred in awarding to defendant all of defendant's inherited real property interests.

The decision to include an inheritance in the valuation of the marital assets is discretionary and is dependent upon the particular circumstances of a given case. *Demman v Demman*, 195 Mich App 109, 112; 489 NW2d 191 (1992). An inheritance may be treated as part of the marital estate if an award would otherwise be insufficient to maintain either party. *Id.* Likewise, an inheritance may be treated as part of the marital estate if a party contributed to the property's acquisition, improvement or accumulation. *Lee v Lee*, 191 Mich App 73, 78-79; 477 NW2d 429 (1991).

In this case, the trial court found that plaintiff did not contribute to the acquisition, improvement or accumulation of defendant's inherited property. The trial court also found that the remaining property

was sufficient for the suitable support and maintenance of both plaintiff and defendant. After reviewing the record, we conclude that these findings are not clearly erroneous. *Byington, supra*. Accordingly, we conclude that the trial court did not abuse its discretion in awarding defendant's inherited property solely to defendant. *Demman, supra; Lee, supra*.

Finally, plaintiff argues that the trial court erred in awarding alimony to defendant. However, as revealed by the trial transcript and the judgment of divorce, the trial court did not award any alimony to defendant. Rather, the trial court expressly declined to award alimony to either party and ordered only that any arrearages in previously ordered temporary alimony be paid.

In summary, we conclude that the trial court's division of property was fair and equitable.

Affirmed.

/s/ Michael R. Smolenski
/s/ Barbara B. MacKenzie
/s/ Janet T. Neff