

STATE OF MICHIGAN
COURT OF APPEALS

HELEN LECKEMBY, Personal Representative of the
Estate of TIMOTHY M. STOREY, deceased,

UNPUBLISHED
April 21, 2000

Plaintiff-Appellant,

v

No. 210547
Wayne Circuit Court
LC No. 97-727448 DO

DOLORES STOREY,

Defendant-Appellee.

Before: Cavanagh, P.J., White and Talbot, JJ.

PER CURIAM.

Plaintiff¹ appeals as of right the trial court's judgment of divorce. We affirm in part and remand for modification of the judgment of divorce.

The parties were married on August 19, 1994, and lived together as husband and wife for three years until August 1997, when plaintiff left the marital home and filed a complaint for divorce. Defendant owned the marital home prior to the marriage and plaintiff began living there about thirteen months before the parties were married. No children were born during the marriage. After a January 12, 1998, trial, the court entered its judgment of divorce on March 5, 1998, dissolving the marriage and dividing the marital estate.

Plaintiff first argues that the trial court failed to make adequate findings regarding what comprised the marital estate. We disagree. In actions tried without a jury, or with an advisory jury, the trial court must find the facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1); MCR 6.403; *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994). The findings and conclusions as to contested matters are sufficient if brief, definite and pertinent, without over-elaboration of detail or particularization of facts. MCR 2.517(A)(2); *Fletcher, supra*, 447 Mich 883. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). The goal of the trial court when apportioning a marital estate is to reach an equitable division in the light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997); *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919

(1987). The court may divide all property that came “to either party by reason of the marriage,” MCL 552.19; MSA 25.99, and it must strive for “an equitable division of any increase in net worth that may have occurred between the beginning and the end of the marriage,” *Byington, supra*, 224 Mich App 113, quoting *Bone v Bone*, 148 Mich App 834, 838; 385 NW2d 706 (1986). Therefore, “the trial court’s first consideration when dividing property in divorce proceedings is the determination of marital and separate assets.” *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997).

In this case, plaintiff is correct that the trial court did not clearly make findings as to which assets were part of the marital estate. However, it is clear to this Court what the trial court considered marital assets by its findings regarding the division of assets and its dispositional rulings. The trial court found that increases in the values of property held during the marriage were part of the marital estate, and that the assets’ values prior to marriage were separate property. Although there was some confusion relating to defendant’s inherited NBD stock and the two homes, an examination of the record indicates that the trial court found the inherited stock to be defendant’s separate property, and both homes to be marital assets. Regarding the homes, the court recognized that both homes were owned before the marriage, that plaintiff contributed to improvements to defendant’s home, and that the proceeds from the sale of plaintiff’s home were used partially to acquire individual property and partially to acquire property that was also acquired with subsequent payments by plaintiff during the marriage.

Thus, although the court failed to specifically state which assets were part of the marital estate, it is clear from the record that the court was aware of the marital estate issues, and from the disposition which assets were regarded as marital. The court only divided the increases in value of the parties’ assets during marriage. After viewing the record, this Court is satisfied that reversal is not required based on the trial court’s failure to make specific findings identifying assets as separate or marital.

Plaintiff’s second argument is that the trial court erred in failing to make findings of fact, and that if it is assumed that the trial court found no separate property, the court’s findings were clearly erroneous. We disagree.

When a party challenges a trial court’s division of property pursuant to a divorce, an appellate court first reviews the trial court’s findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). 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 review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Beason, supra*, 435 Mich 805; *Draggoo, supra*, 223 Mich App 429.

Here, the parties stipulated to the increases in values of the assets, which, in addition to the real estate, consisted primarily of various bank accounts and employee savings accounts. Plaintiff challenges the finding that the increases were marital property. We find no error.

Defendant owned her home before the marriage. Plaintiff moved in before the marriage and lived there throughout the marriage. Plaintiff paid a monthly sum to defendant and also contributed to

improvements to the home. Plaintiff also owned a home before the marriage. He made mortgage payments on the house and otherwise maintained the house for the first two years of the marriage, and then sold it. The record does not reveal the amount by which the value of plaintiff's house increased during the marriage. To the extent plaintiff made payments on the house during the marriage, his ownership was not passive, and an increase in value due to the payments would properly be regarded as a marital asset. Plaintiff's reliance on *Reeves, supra*, where this Court held that a minority interest in property that the defendant acquired prior to marriage could not be considered part of the marital estate, including the appreciation during the marriage, because the defendant's ownership was passive and the plaintiff had not facilitated any appreciation in the property, is misplaced. Here, plaintiff paid the mortgage and maintained the property during the marriage. Similarly, the increase in the value of the northern property was due to payments made during the marriage, not passive appreciation as was involved in *Reeves, supra*. The increases in the values of the bank and employee accounts came largely from deposits to the accounts or employee deductions during the course of the marriage.

Plaintiff's third argument is that the trial court's dispositional ruling dividing the marital estate was unfair and inequitable. When 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. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks, supra* at 151. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands, supra* at 34; *Sparks, supra* at 151-152. Division of property in a divorce is not governed by any set rules, however, certain principles nonetheless apply. *Sparks, supra* at 159-160. Among the equitable factors to be considered are the source of the property; the parties' contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity. *Hanaway v Hanaway*, 208 Mich App 278, 292-293; 527 NW2d 792 (1994). The determination of relevant factors will vary depending on the facts and circumstances of the case. *Sparks, supra* at 159-160.

Plaintiff's main contention is that the trial court's treatment of the two homes and certain motorcycles acquired by plaintiff with the proceeds of the sale of his home was unfair and inequitable. With one exception, we disagree.

Plaintiff receiving a net of \$27,000 upon the sale of his house. Plaintiff deposited the \$27,000 into his Credit Union One checking account, and used \$17,000 to purchase a Harley-Davidson motorcycle, and \$3000 to make a down payment on a Honda motorcycle.² A third motorcycle, a 1996 Kawasaki, appears to have been purchased by plaintiff before he received the money from the house, for a \$3000 down payment and an installment obligation.

Ultimately, the trial court found that both homes were marital property, and then "washed," or canceled, each party's interest in the other's home. Regarding the motorcycles, the trial court awarded plaintiff the Harley-Davidson and ordered the sale of, and equal division of the proceeds from, the Honda and Kawasaki motorcycles. Plaintiff argues that the trial court awarded him his house free and clear of any claims of defendant when it declared the "wash," but then awarded defendant a share of

the assets purchased with the proceeds of the sale of the house (the motorcycles), thereby depriving plaintiff of any interest in defendant's house and of part of the value of his own house.

With the exception of the trial court's treatment of plaintiff's \$3000 down payment on the Honda, we disagree with plaintiff's characterization of the division with respect to the houses and motorcycles as inequitable. To be sure, the court's "washing" of the two homes, awarding of proceeds of plaintiff's home to plaintiff, and the ordered sale and equal division of proceeds from plaintiff's Honda and Kawasaki motorcycles may appear to be inconsistent. However, the trial court did, in fact, award plaintiff the proceeds from the sale of his home. It appears that the trial court then evaluated what was done with the proceeds. The Harley-Davidson, purchased for \$17,000 was awarded to plaintiff as his separate property. There was evidence that the Kawasaki was purchased during the marriage and before plaintiff's house was sold, and that plaintiff made payments on the motorcycle during the course of the marriage. Thus, there was no error in treating this as a marital asset. *Reeves, supra* at 496. Regarding the Honda, there was testimony that plaintiff reduced the indebtedness on the motorcycle by approximately \$5400 during the marriage by making double payments. The \$3,000 down payment on the motorcycle did come from the proceeds of the sale of plaintiff's house, and therefore the trial court erred in treating the entire equity as a marital asset; however, the value above \$3000 was properly ordered divided. We therefore remand for modification of the judgment of divorce to provide that plaintiff is awarded the first \$3000 from the proceeds of the sale of the Honda.

A trial court's division of the marital estate need not be mathematically equal, but rather, must be equitable in the light of all the circumstances. *Byington, supra* at 114-115. Here, we are not left with a firm conviction that the division of the marital estate was inequitable or unfair, except with respect to the \$3000 downpayment.³

Affirmed in part and remanded for modification of the judgment of divorce. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Helene N. White

/s/ Michael J. Talbot

¹ Plaintiff-husband died during the pendency of this appeal. This Court granted a motion for substitution of parties, substituting the personal representative of his estate as plaintiff. However, references in the opinion to "plaintiff" or "the parties" refer to plaintiff-husband rather than the personal representative.

² The money not used on the motorcycles was apparently otherwise used by plaintiff.

³ In his statement of facts, but not in his amended statement of facts or his argument, plaintiff asserts that the trial court also erred by failing to recognize that the funds in his Parkway account were the proceeds of a loan from his Fidelity account, subject to repayment to the Fidelity account. Defendant argued below that the loan and repayments were already reflected in the statements submitted to the court. In any event, the issue is not preserved, and no clear error is apparent on the record.

