

STATE OF MICHIGAN
COURT OF APPEALS

MARY JO MEROLLIS,

Plaintiff-Appellee,

v

EUGENE D. MEROLLIS,

Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 212577

Wayne Circuit Court

LC No. 97-720181-DO

Before: O’Connell, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce and the trial court’s denial of his motions for a new trial and modification of judgment. Defendant’s challenges all relate to the trial court’s disposition of the marital estate. We affirm.

Defendant first argues that the trial court erred by failing to make specific findings of fact regarding relevant property division factors (the parties’ relative contributions to the marital estate and their ages), and that the trial court made erroneous findings regarding the relevance of other factors (the duration of the marriage and plaintiff’s fault). Defendant contends that these errors led the trial court to make an inequitable division of the marital estate.

In a divorce case, the trial court must make findings of fact and dispositional rulings. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). Factual findings are to be upheld unless they are clearly erroneous. *Id.* Factual findings are clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake was made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). Further, MCR 2.517(A)(2) requires “[b]rief, definite, and pertinent findings and conclusions on the contested matters . . . without over elaboration of detail or particularization of facts.”

With respect to defendant’s contention that the trial court failed to make findings regarding the parties’ relative contributions to the marital estate, and should have credited him for the estimated \$45,000 that he claims he spent to support plaintiff and her four minor sons over the course of the marriage, we find no error. The trial court declined to credit him for these expenditures, finding that they

were the type of expenditures that would normally be undertaken in a marriage out of marital assets and that these expenditures were irrelevant to its disposition of the marital estate. The trial court's finding in this regard is not clearly erroneous and, as the Supreme Court has stated, the "determination of relevant factors will vary depending on the facts and circumstances of the case." *Sparks v Sparks*, 440 Mich 141, 160; 485 NW2d 893 (1992). We find no error in the trial court's determination in this regard.

With respect to defendant's contention that the trial court failed to make findings on and consider the ages of the parties, we again find no error. While the trial court did not mention their ages in its oral ruling or its judgment of divorce, evidently, the trial court concluded that the ages of the parties was not relevant to its disposition of their marital assets, and under *Sparks, supra* at 159, it was not required to make a specific finding regarding their ages. Thus, the trial court's determination in this regard is not error.

With respect to defendant's contention that the trial court erroneously concluded that three-year duration of the marriage was not relevant to its disposition of the marital estate, the trial court declined to find that the brief duration of the marriage affected the nature of the expenditures made by defendant. This finding was neither clearly erroneous, nor did it result in an inequitable distribution of the marital estate. *Id.* at 151-152.

With respect to defendant's contention that the trial court should have found that plaintiff was at fault for the breakdown of the marriage, the trial court's factual finding is not clearly erroneous. Plaintiff denied defendant's allegation that she left him for another man and testified to various problems within the marriage. In its division of the assets, the trial court declined to apportion fault to either party. We give special deference to a trial court's findings when based on the credibility of a witness, *Dragoo v Dragoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997), and we decline defendant's invitation to second-guess the trial court on this issue.

After segregating the parties' separate assets, as required under *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997), as well as those the parties agreed would be treated as separate assets, the trial court's distribution of the marital assets was roughly congruent. We conclude that the division was fair and equitable in light of the facts. *Sands, supra* at 34; *Sparks, supra* at 151-152.

Next, defendant claims that evidence that only became available after trial proves that plaintiff misled the trial court regarding her credit card usage. Defendant contends that the trial court abused its discretion by failing to grant him a new trial or other relief in light of this evidence. We review a trial court's decision regarding a motion for new trial for an abuse of discretion. *Setterington v Pontiac General Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997).

Pursuant to MCR 2.611(A)(1)(b) and MCR 2.612(C)(1)(c), relief from judgment or a new trial may be appropriate due to fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of the adverse party. Pursuant to MCR 2.611(A)(1)(f) and MCR 2.612(C)(1)(b), relief from judgment or a new trial may be appropriate on the basis of newly discovered and material evidence which by due diligence could not have been discovered and produced at trial.

To win a new trial based on newly discovered evidence, defendant must show that the evidence: (1) is newly discovered, and not merely material, (2) is not merely cumulative, (3) would probably have caused a different result, and (4) could not have been discovered and produced at trial using reasonable diligence. *Hauser v Roma's of Michigan, Inc*, 156 Mich App 102, 106; 401 NW2d 630 (1986). Here, defendant made no showing at trial or in the post-trial proceedings that the credit card receipts he obtained were newly discovered. Indeed, at trial defendant testified that he could obtain credit card receipts signed by plaintiff if given an extra week, indicating that he knew the receipts existed. Furthermore, it is clear that plaintiff did not testify, as defendant claims, that she only used the card once or twice. Rather, she testified to repeated use of the credit card. The evidence obtained by defendant after trial merely overlaps plaintiff's trial testimony as to her credit card use and would have been cumulative if offered at trial. In addition, the credit card receipts and statements would not have produced a different result at trial because they document expenditures similar or identical to those the trial court concluded were marital expenses. Finally, defendant made no showing that he could not have produced the receipts at trial with diligent effort. Thus, the trial court did not abuse its discretion by denying defendant's motion for a new trial and other relief based on this evidence.

A trial court may also relieve a party from a final judgment, order, or proceeding on the grounds of misrepresentation, fraud, or other misconduct of the adverse party. MCR 2.611(A)(1)(b), MCR 2.612(C)(1)(c). As noted above, plaintiff's trial testimony plainly undermines defendant's allegation that she only admitted to using the credit card twice, thus, defendant's contention that plaintiff lied about her credit card expenditures at trial is simply not supported by the record.

Accordingly, the trial court did not abuse its discretion by denying defendant relief on these bases.

Next, defendant argues that the trial court erred by failing to modify the judgment of divorce where the judgment awarded plaintiff a \$10,000 certificate of deposit but the trial court made no disposition of the certificate of deposit in its ruling from the bench. We review a trial court's decision on whether to grant relief from judgment for an abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999).

Defendant's trial position regarding the certificate of deposit was ambiguous. Defense counsel listed various items in her opening statement that defendant wanted returned by plaintiff, but did not mention the certificate of deposit. Later, regarding the certificate of deposit, defendant stated, "She took it; she can keep it." These statements indicate that defendant did not contest plaintiff's retention of the certificate of deposit. In light of defendant's testimony, we conclude that the trial court's factual finding that defendant did not contest plaintiff's continued possession of the certificate of deposit was not clearly erroneous. Although the trial court did not make an express determination regarding the ownership of the certificate of deposit during the proceedings, that determination appeared in its signed order. A determination not expressed during the proceedings is still effective if embodied in the court's signed order. See *Safie Enterprises, Inc v Nationwide Mutual Fire Ins Co*, 146 Mich App 483, 491; 381 NW2d 747 (1985).

Lastly, defendant argues that the trial court lacked jurisdiction to award plaintiff \$3,450 for defendant's vandalism damage to the property of a third party. This Court reviews de novo questions of jurisdiction. *Comm'r of Ins v Albino*, 225 Mich App 547, 557; 572 NW2d 21 (1997). Clearly, "the circuit court has no jurisdiction in a divorce case to compel a party to convey property or a property interest to a third person. . . or to adjudicate claims of third parties." *Krueger v Krueger*, 88 Mich App 722, 724-725; 278 NW2d 514 (1979); see also, *Hoffman v Hoffman*, 125 Mich App 488, 490; 336 NW2d 34 (1983). With one exception, not relevant here, a circuit court has no jurisdiction in a divorce to adjudicate the rights of any party other than the divorcing parties. *Smela v Smela*, 141 Mich App 602, 605; 367 NW2d 426 (1985). However, a circuit court does not err if it orders a party to pay the other party's debt incurred after the commencement of the proceedings, if the evidence shows that the debt was incurred to support a party. *Ackerman v Ackerman*, 163 Mich App 796, 808; 414 NW2d 919 (1987).

Plaintiff alleged that she experienced ongoing acts of vandalism after she moved out of the marital home, and she submitted a videotape of defendant throwing paint on the driveway of the house where she was living. Plaintiff testified that her efforts to remove the paint were futile, and that she paid to have the paint removed from her friend's truck and would have to pay to have it removed from the driveway. She presented receipts from the auto repair shop that removed the paint from the truck and an estimated bill for removing the paint from the driveway and asked the trial court to order defendant to reimburse her for these expenses she incurred. Defendant admitted that he sprayed the paint on at least two occasions. The trial court ordered defendant to pay plaintiff for these costs. It appears that the order was an attempt by the trial court to effectuate an equitable distribution of the property by reassigning the expense of completing the clean-up from plaintiff to defendant. As part of the disposition of the marital estate, the order was not beyond the jurisdiction of the trial court.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kathleen Jansen