

STATE OF MICHIGAN
COURT OF APPEALS

KAREN GOODWINE,

Plaintiff-Appellee,

v

WAYNE C. GOODWINE,

Defendant-Appellant.

UNPUBLISHED

March 6, 2001

No. 226682

St. Clair Circuit Court

LC No. 98-000648-DM

Before: Bandstra, C.J., and Griffin and Collins

PER CURIAM.

Defendant appeals by right an order granting divorce, awarding physical custody of the parties' two children to plaintiff, and dividing the marital property. We affirm.

Defendant first argues the trial court based its decision to award custody to plaintiff on numerous erroneous factual findings. We disagree.

A trial court in a child custody determination must make specific findings of fact regarding each of twelve factors set forth in MCL 722.23; MSA 25.312(3) that are to be taken into account in determining the best interests of the child. *McCain v McCain*, 229 Mich App 123, 124; 580 NW2d 485 (1998). A court need not give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances. *Id.* at 130-131. This Court reviews the trial court's findings of fact using the great weight of the evidence standard, its discretionary rulings for an abuse of discretion, and questions of law for clear legal error. *Id.* at 125; *Mixon v Mixon*, 237 Mich App 159, 162; 602 NW2d 406 (1999).

The parties to this action were married in January 1988. At the time the parties first met, both were employed and defendant was a widower with three minor children. The parties' marriage produced two children, born in 1988 and 1993. At defendant's request, plaintiff was a stay-at-home mother who was responsible for the education and care not only of the parties' two children but her three step-children as well. In 1998, plaintiff filed for divorce, claiming that defendant had a history of being abusive. By virtue of a temporary custody order, plaintiff retained custody of the children throughout the divorce proceedings, and the trial court ultimately awarded sole physical custody of the parties' two minor children to plaintiff.

In so doing, the trial court held that certain factors outlined in MCL 722.23; MSA 25.312(3) weighed evenly for each party; however, in its analysis, the trial court concluded that more factors favored plaintiff than defendant. For example, defendant's family provided sufficient testimony about defendant's verbal and physical abuse to support the court's conclusion that custody factors (b), (g), and (k), MCL 722.23(b), (g), (k); MSA 25.312(3)(b), (g), (k), favored plaintiff. Further, the court found that plaintiff was the primary caregiver throughout the children's lives and that defendant was "essentially an absentee parent" who, upon returning home from work, would immediately leave to go to work on his farm or be at his mother's home and typically would not return to his home and family until after nine at night. Moreover, the court found credible and expressed concern about testimony that defendant allegedly stated he would discontinue the practice of picking up his children after school if he did not gain custody. This Court defers to the trial court's determination of credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000). Episodes of violent behavior were recounted at trial by plaintiff and the children. Citing testimony that the children were not allowed to have friends and "walked on pins and needles" whenever defendant was around, the trial court characterized defendant as a controlling person who did in fact have a history of being verbally and physically abusive.

Taking into account the fact that the children had lived in the marital home their entire lives and plaintiff planned to remain there, and if the children were to reside with their father it would mean they would move some distance from their current environment to a new school, the court concluded that factor (d), MCL 722.23(d); MSA 25.312(3)(d), favored plaintiff. The trial court also found that factor (g), the mental and physical health of the parties involved, favored plaintiff in light of defendant's history of abusive behavior and the fact that he was undergoing psychological counseling. Finally, although noting that there was no indication of impropriety, the court expressed its legitimate concern with defendant's sleeping arrangement with his daughter under factor (l), the catchall provision of the custody statute. MCL 722.23(l); MSA 25.312(3)(l).

Our review of the record indicates that the trial court carefully detailed its findings of fact and determinations with regard to each of the best interest factors and cited credible facts and evidence in support of those factors ultimately favoring plaintiff. Having reviewed the proofs, we find defendant's contention that the trial court's findings of fact with regard to the best interest factors set forth in MCL 722.23; MSA 25.312(3) were against the great weight of the evidence to be meritless. The trial court therefore did not abuse its discretion when it determined that awarding sole physical custody to plaintiff was in the children's best interests. *McCain, supra*.

Next, defendant contests the trial court's division of property, arguing that plaintiff was not entitled to the full value of jointly held real estate. Citing *Reeves v Reeves*, 226 Mich App 490; 575 NW2d 1 (1997), defendant argues it was error for the trial court to consider real estate acquired by defendant prior to the present marriage as marital property. Alternatively, defendant maintains that even if the trial court properly deemed this real estate to be a marital asset, it nonetheless erred in considering the entire equity value as part of the marital estate subject to division; instead, only the active appreciation, if any, of the property that occurred during the

term of the marriage was arguably appropriate for distribution to plaintiff. Under the present circumstances, we disagree.

In a divorce action, we first review the trial court's findings of fact for clear error and then decide whether the dispositional ruling was fair and equitable in light of the facts. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). Property disposition rulings will be affirmed unless we are left with the firm conviction that the distribution was inequitable. *Id.*

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). In reaching this goal, certain principles must be considered by the trial court:

Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court. *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990). 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 circumstance. *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992). The significance of each of these factors need not be given equal weight where the circumstances dictate otherwise. *Id.* at 159. [*Id.* at 114-115.]

The distribution of property in a divorce is controlled by statute. MCL 552.1 et. seq.; MSA 25.81 et seq. Pursuant to MCL 552.19; MSA 25.99, a court may award to either party property that has come to the other by reason of the marriage or make a money award in lieu of that property. MCL 552.401; MSA 25.136 provides that the court may award one spouse property owned by the other if it appears equitable under all the circumstances of the case and the claiming spouse contributed to the acquisition, improvement, or accumulation of the property. Further, MCL 552.23; MSA 25.103 provides that a court may award one spouse a just and reasonable share of the other spouse's separate property if the property to be awarded to the recipient is insufficient for the suitable support of that party and any children in his or her custody.

In *Reeves, supra*, relied on by the present defendant, this Court held that "the equity built up [in a condominium] before the parties' marriage, and any appreciation that occurred before the parties' marriage should have been considered defendant's [the husband] separate estate," and the trial court thus erred in considering the entire equity value of the condominium as part of the marital estate. *Reeves, supra* at 496-497. The *Reeves* Court further held that because the defendant's interest in a shopping plaza was "wholly passive at all times" and did not appreciate because of defendant's efforts, facilitated by the plaintiff's activities at home, "it was also error to include any amount defendant's interest in the Standish Plaza may have appreciated even after the parties married." *Id.* at 497.

However, the facts of *Reeves* which dictated such a result are readily distinguishable from the present case. *Reeves* involved a short-term (four-year) childless marriage during which the

wife's earning capacity was not significantly diminished by the circumstances of the marriage. In the instant case, at the time of the marriage, defendant owned the marital home, a cottage, a fractional interest in certain farmlands, and a homestead. In January 1993, when plaintiff was pregnant with the parties' second child, most of the above real estate was deeded by quit claim to include plaintiff as a title holder to these parcels with her husband, as joint tenants in the entirety. While the title of an asset is certainly not dispositive, in this instance the circumstances support the trial court's finding that the disputed real estate should be considered a marital asset. At defendant's behest, during the course of the twelve-year marriage plaintiff was a stay-at-home mother who provided the necessary domestic services to defendant as homemaker and primary caregiver to the couple's children, as well as defendant's children from his previous marriage. Although plaintiff may not have contributed a paycheck to the acquisition of the property, defendant was able to earn a substantial income allowing him to maintain and improve the real estate, including rental property, since plaintiff was home caring for his and their minor children. We therefore conclude that the trial court did not err in deeming the disputed real estate to be a marital asset rather than a separate asset belonging to defendant. Cf. *Hanaway v Hanaway*, 208 Mich App 278, 292-295; 527 NW2d 792 (1995).

Further, the whole present equity value of the real estate was appropriately considered by the trial court in calculating an equitable property division. Any appreciation in value was not passive; rather, defendant regularly left the home for extended periods to work on the properties, which he would probably not have been able to do without plaintiff staying at home to be the primary caregiver. *Hanaway, supra*. The additional needs and circumstances of the parties were thoroughly considered by the trial court, *Byington, supra*, and we find no clear error in the court's valuation or division of the marital property. We are not left with the firm conviction that the distribution was inequitable. *Sands, supra*.

Affirmed.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Jeffrey G. Collins