STATE OF MICHIGAN

COURT OF APPEALS

HELYN G. COWEN, Plaintiff-Appellee,	UNPUBLISHED May 11, 2001
v	No. 221101 Kent Circuit Court
MICHAEL T. COWEN, Defendant-Appellant.	LC No. 98-003677-DO

Before: Wilder, P.J., and Cavanagh and Hood, JJ.

PER CURIAM.

Following a bench trial, plaintiff was granted a divorce from defendant. The trial court determined that the marital estate was comprised of a home in Belmont, Michigan worth $246,000, a condominium in Florida worth $345,000, and $422,000 in retirement assets, resulting in a marital estate valued at $1,013,000. The court awarded plaintiff marital assets worth $506,500, including the Florida condominium and $160,500 in retirement assets. Plaintiff also was awarded spousal support of $500 a week for the remainder of her life. Defendant was awarded the Belmont home and the remainder of the retirement assets for a total of $506,500. Defendant appeals as of right. We affirm.

I. Facts and Proceedings

Following their marriage, plaintiff moved into defendant's Belmont home. Defendant had previously lived in the home with his first wife, Mary Ann, and following their divorce, in 1978, she was awarded sole title to the home. However, in 1983, defendant rented the home from Mary Ann and, in return, purchased a house in Florida that Mary Ann rented from him. In 1992, two years after the instant parties were married, Mary Ann deeded the home to defendant and plaintiff jointly, and defendant deeded the Florida house to Mary Ann.

In 1993, defendant purchased the Florida condominium, deeded in both parties names, for their use as a winter residence. The trial court found that both the Belmont home and the Florida condominium were acquired by defendant during the marriage, were marital assets, and were therefore subject to division upon divorce. The court did not include defendant's oil and gas businesses in the marital estate, but did include the oil and gas proceeds that defendant received from these businesses over the course of the marriage. In finding that these two residence properties were part of the marital estate, the court held that the Belmont home became

"commingled and part of the marital estate" after defendant requested that his ex-wife convey the deed of title to himself and plaintiff jointly during the course of defendant and plaintiff's marriage and that the Florida condominium was properly included in the marital estate because it was purchased with funds that were earned during the marriage.

II. Analysis

A. Belmont Home and Florida Condominium

Defendant argues that the trial court erred when it included both the home and condominium in the marital estate because they were purchased with defendant's separate premarital property. Defendant contends that the trial court mistakenly relied on the deed of title in the Belmont home that passed from defendant's first wife to defendant and plaintiff in order to include the home in the marital estate, and that the trial court incorrectly found an inferred intent on the part of defendant to donate the Belmont home to the marital estate. Defendant also argues that plaintiff should not receive any share in the Belmont home because she did not "contribute to the acquisition, improvement or accumulation of the property" as required by MCL 552.401; MSA 25.136. Further, defendant asserts that plaintiff should not receive any benefit from the Belmont home because the final value of the home is less than the value of the improvements made on it, resulting in no appreciation to include in the marital estate. Finally, defendant argues that including the Belmont home in the marital estate is inconsistent with the "pre-marital agreement" between plaintiff and defendant regarding defendant's wish that his assets should ultimately belong to his own children.

Similarly, defendant challenges the trial court's decision to include the condominium in the marital estate. Defendant contends that the trial court erred when it did not specify whether the condominium was bought with defendant's salary earned during the marriage, or whether it believed that defendant's oil and gas proceeds were used for the purchase. Because defendant's salary during the course of the marriage was only $ 75,000, he maintains that the court must have assumed defendant used his separate oil and gas proceeds to purchase the $345,000 condominium and therefore erroneously included the proceeds in its calculation of the marital estate. Defendant also argues that plaintiff failed to contribute to the acquisition or maintenance of the condominium and that plaintiff promised in their "pre-marital agreement" that she would allow the property to go to defendant's children. We disagree with defendant's challenges and affirm the findings of the trial court.

In a divorce action, this Court reviews the trial court's factual findings for clear error. *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*; *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). 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. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999); *Draggoo, supra*. A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Welling, supra* at 709-710; *Draggoo, supra* at 430; *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). Further, assets earned by a spouse during the marriage, whether they are received during the

existence of the marriage or after the judgment of divorce, are properly considered part of the marital estate. *Vander Veen v Vander Veen*, 229 Mich App 108, 110; 580 NW2d 924 (1998); *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997). Generally, marital assets are subject to division between the parties but the parties' separate assets may not be invaded. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997).

Here, it is undisputed that both the home and condominium were purchased after the parties married. In addition, defendant testified that plaintiff was "a joint owner of the marital home in Belmont," and that he intended the condominium to be owned jointly between them. This testimony conclusively shows that defendant intended plaintiff to be the joint owner of both properties. Further, by having plaintiff's name added to each deed of title, defendant willingly included both properties in the marital estate and thus whether plaintiff helped "acquire, improve, or accumulate" the property is irrelevant. Based on the whole record, this Court is not convinced that the trial court made a mistake when it determined that the Belmont home and the Florida condominium were part of the marital estate, *Beason*, *supra*; *Draggoo*, *supra*, and that it's disposition ruling regarding the property was not inequitable. *Welling*, *supra*; *Sands*, *supra*.

In addition, based on this record, we are not persuaded that plaintiff intended to enter into a "premarital agreement" with defendant. A "premarital agreement", also referred to as an antenuptial agreement, must be fair, equitable, and reasonable considering the circumstances. *Rinvelt v Rinvelt*, 190 Mich App 372, 378-379; 475 NW2d 478 (1991). It also must be entered into voluntarily, with full disclosure, and with the rights of each party understood. *Id*. In *Rinvelt*, the discussion of premarital agreements assumes a written document. *Id*. at 375-382. Here, there was no writing memorializing the terms of the "pre-marital agreement." Further, plaintiff's testimony indicates that she never intended to give up her rights to defendant's property in favor of defendant's children.

B. Spousal Support

Defendant next argues that the trial court erred by awarding plaintiff spousal support without having made sufficient factual findings to support the ruling. We disagree. The trial court has discretion to make an award of spousal support, *Denman v Denman*, 195 Mich App 109, 110; 489 NW2d 161 (1992); *Pelton v Pelton*, 167 Mich App 22, 27; 421 NW2d 560 (1988), and any such award is to be based on what is just and reasonable under the circumstances. *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993).

A trial court should consider the following factors to determine whether an award of spousal support is warranted, the amount of that award, and the duration of the award: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay spousal support; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991).

In the instant case, the trial court awarded plaintiff $500 a week in spousal support. The court arrived at this decision by drawing the following conclusions from an analysis of the *Ianitelli* and *Thames* factors: First, that the marriage lasted nine years and was during the second half of each party's life, resulting in a greater change in status following the divorce than a younger married couple might experience; second, that defendant made significant financial contributions to the marriage; third, that defendant was 70, still working, and earning "a healthy disposable income" and that plaintiff was 62; fourth, that the health of the parties is such that defendant can continue to work but plaintiff cannot; fifth, that the life status of the parties before marriage was that plaintiff worked hard every day and lived a middle class lifestyle until defendant urged her to stop working and marry him; sixth, that plaintiff will need support beyond that offered by the marital estate; seventh, that plaintiff quit her job and gave up "good earnings and benefits" at defendant's urging and in reliance on defendant's income; and eighth, general principles of equity mean that the court must decide how to honor defendant's intent to provide for plaintiff during her life.

On appeal, defendant has not contested these findings of fact, but rather, defendant requests consideration of a number of additional factors which he believes are essential to determining whether the spousal support award is reasonable. However, we find that the trial court made factual findings sufficient to support its decision. MCR 2.517(A)(2); *Ianitelli*, *supra*; *Thames*, *supra*. Specifically, the court heard testimony and viewed exhibits regarding defendant's health, income, age, and other relevant characteristics. Additionally, the plaintiff testified regarding her lifestyle before and after her marriage to defendant, her financial needs and health prospects. Therefore, we find defendant's contention that remand for further factual findings is without merit.

Defendant also argues that the trial court erred when it determined that plaintiff was entitled to spousal support even if she remarried. Again, we disagree. Our review of the record reveals that the trial court did not specifically order defendant to pay spousal support to plaintiff if she remarried; in fact, the divorce judgment is silent in this regard. Nevertheless, Michigan law allows the trial court to modify spousal support obligations if the circumstances change and it is warranted. See *Moore v Moore*, 242 Mich App 652, 654; ___ NW2d ___ (2000); See also *McCallister v McCallister*, 205 Mich App 84, 86; 517 NW2d 268 (1994); *Ackerman v Ackerman*, 197 Mich App. 300, 302; 495 NW2d 173 (1992). Thus, should plaintiff remarry, defendant's remedy is to petition the trial court for a modification of his support obligation. *Moore*, *supra*; *McCallister*, *supra*; *Ackerman*, *supra*.

Defendant further argues that the trial court erred in not determining whether plaintiff's first husband should share in defendant's burden of supporting plaintiff. We disagree. Defendant cites *Torakis v Torakis*, 194 Mich App 201; 486 NW2d 107 (1992), and *Rickner v Frederick*, 459 Mich 371, 379; 590 NW2d 288 (1999), as authoritative on the question. However, we find *Torakis* to be distinguishable from the instant case. Further, although *Rickner*, *supra*, stands for the general proposition that spousal support awards are modifiable "on petition of either party[,]" *id*. at 378, it does not aid defendant in this particular argument.

In *Torakis*, *supra*, the plaintiff obtained a divorce judgment against the defendant and reserved any spousal support award for future consideration. *Id*. at 202. Thirteen years later,

following a petition by the plaintiff, the court awarded spousal support and this Court affirmed the award holding that it was a valid modification of the original judgment. *Id*. at 202-203. Here, plaintiff's spousal support award from her first husband was reserved due to plaintiff's first husband's bankruptcy. However, unlike *Torakis*, plaintiff did not file a petition seeking spousal support from her first husband; instead, she sought spousal support from her second husband. In addition, while it is true that plaintiff could file a petition for spousal support against her first husband, nothing compels her to do so. *Rickner*, *supra* at 378. Further, the plain language of MCL 552,28; MSA 25.106 provides that "either party . . . may petition the court . . ." to alter a spousal support judgment. This language indicates that the Legislature intended to allow only parties to the particular divorce to petition the court for an adjustment. Accordingly, we find that neither *Torakis*, *supra* nor *Rickner*, *supra* allow defendant to compel plaintiff to seek spousal support from her previous husband.

III. Conclusion

The trial court properly included the Belmont home and the Florida condominium in the marital estate, did not invade defendant's separate property in determining the marital estate, and did not err in awarding spousal support to plaintiff and refusing to determine whether plaintiff's first husband should share in that award.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Mark J. Cavanagh