

STATE OF MICHIGAN
COURT OF APPEALS

DUANE V. KEMERER, JR.,

Plaintiff/Counter-Defendant-
Appellant,

v

KATHY MARIE KEMERER,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

December 21, 2001

No. 222797

Saginaw Circuit Court

LC No. 97-018056-DM

Before: Bandstra, C.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of divorce. We affirm.

The parties were married on May 19, 1979. The marriage produced two children, one of whom was fifteen years of age and one of whom was twelve years of age at the time the complaint for divorce was filed on March 5, 1997. Defendant, who has suffered two bouts of breast cancer, was awarded physical custody of the children. The trial court found that plaintiff conspired with his father to file bogus mechanics' liens against various property and awarded defendant \$500 in attorney fees to remove these liens. The incorporated property settlement disposed of the parties' assets, comprised primarily of the marital home, various rental properties, and personal property. Plaintiff received net equity of \$179,535.19, consisting primarily of the rental properties, a subdivision lot, and his business equipment. Defendant received \$198,192, comprised primarily of the marital home, an adjacent lot, and her pension.

Plaintiff first challenges the trial court's valuation of various marital assets and its inclusion of his coin collection in the property division. When reviewing a judgment of divorce, this Court reviews the trial court's findings of fact regarding an incorporated property division under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Reversal of a trial court's valuations of particular marital assets is only warranted where they are found to be clearly erroneous, and this requires a finding that, after review of the entire record, the 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); *Draggoo, supra* at 429. If the lower court's findings of fact are upheld,

then this Court must determine whether the dispositional ruling was fair and equitable under the circumstances. *Sparks, supra* at 152.

Before making a property division, the trial court must make specific findings with respect to the value of the property being awarded. *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 75; 471 NW2d 631 (1991). Generally, it is permissible for the trial court to base its findings of value on expert testimony, *Young v Young*, 354 Mich 254, 257; 92 NW2d 328 (1958); however, in circumstances where there is competing evidence of value, the trial court has broad discretion to reject the testimony of both parties and make its own determination of value. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994); *Pelton v Pelton*, 167 Mich App 22, 25-26; 421 NW2d 560 (1988).

Here, plaintiff failed to meet his burden of establishing a readily ascertainable value regarding the challenged marital assets and the record supports the trial court's determination of value. *Pelton, supra* at 25-26; *Jansen, supra* at 171. A close review of the record indicates that the trial court was well aware of and thoroughly considered the parties' assets and liabilities in dividing the property and that the court's factual findings are not clearly erroneous.

Regarding the coin collection, the trial court rejected plaintiff's assertion that it was a premarital asset and therefore the court subjected the collection to division. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). The trial court apparently chose to disbelieve plaintiff's testimony that the majority of the collection predated his marriage because his credibility was severely damaged by his fabrication of liens on the parties' rental properties. This Court gives great deference to the trial court's assessment of the credibility of witnesses, *Fletcher v Fletcher*, 229 Mich App 19, 25; 581 NW2d 11 (1998), and accordingly, the trial court's refusal to accept plaintiff's self-serving statements cannot allow a definite and firm conviction that a mistake was made. *Beason, supra* at 805.

Plaintiff next contends that the property division is inequitable under the circumstances of the case. We disagree.

Generally, the policy underlying the distribution of marital assets in divorce proceedings is to reach an equitable distribution in light of the surrounding circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). An equitable distribution of marital assets means that they will be roughly congruent. *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990). The division does not need to be mathematically equal, but any significant departure must be supported by a clear exposition of the court's rationale. *Id.* at 114-115. "While the division need not be equal, it must be equitable." *Sparks, supra* at 159. The court must also consider the several judicially determined factors whenever relevant. *Sparks, supra* at 159-160. Here, application of the *Sparks* factors supports a finding that a fifty-four/forty-six property division¹ in favor of defendant was equitable under the circumstances,

¹ The actual division is closer to fifty-one/forty-nine in plaintiff's favor; however, a significant portion of plaintiff's award went to complying with existing court ordered payments and repaying the business loan secured by the marital home.

especially in light of defendant's continuing health problems and plaintiff's attempts to divert marital assets and disregard several court orders.

Plaintiff also argues that the trial court abused its discretion by reserving spousal support in the event defendant is forced to cease employment because of health problems. We disagree.

The decision to award spousal support, bar support, or reserve support is within the trial court's discretion. *Pelton, supra* at 27. An award of spousal support seeks to balance the income and needs of the parties in a way that will not impoverish either party and is conditioned on what would be just and reasonable under the circumstances. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). It is well established under Michigan case law that the court can, at its discretion, expressly reserve the question of alimony to be revisited in the future. *McCoy v McCoy*, 317 Mich 478, 481; 27 NW2d 62 (1947); *Torakis v Torakis*, 194 Mich App 201, 202; 486 NW2d 107 (1992). Because there is a reasonable probability that defendant's health may deteriorate and prevent her from working, the trial court did not abuse its discretion in reserving spousal support so that defendant may petition the court for support should her condition worsen. *Moore, supra* at 654.

Finally, plaintiff argues that the trial court erred in failing to consider the future tax consequences of divorce because the award of the marital home will allow defendant to receive a tax windfall should she decide to sell that property. We disagree.

Adjustments should be made for taxes in valuing property only where the tax liability is reasonably foreseeable, not highly speculative or conjectural, or when the tax liability is likely to arise in the near future. *Everett v Everett*, 195 Mich App 50, 55; 489 NW2d 111 (1992). Because the occurrence of tax consequences in this case is highly speculative, the trial court did not err by failing to consider those consequences in its distribution of the parties' real property. *Hanaway v Hanaway*, 208 Mich App 278, 300; 527 NW2d 792 (1995).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage