

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM JOHN WOLLTER,

Plaintiff-Appellant,

v

LINDA CAROL WOLLTER,

Defendant-Appellant.

UNPUBLISHED

March 15, 2002

No. 229499

Lenawee Circuit Court

LC No. 99-021011-DO

Before: Meter, P.J., and Markey and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment of divorce. We affirm.

Plaintiff contends that the trial court's property distribution was erroneous because: (i) the trial court clearly erred in valuing defendant's gun collection at \$90,000; and (ii) even if the trial court did not err in its valuation of the gun collection, the property distribution was inequitable. In *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992), our Supreme Court opined:

The appellate court must first review the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. But because we recognize that the dispositional ruling is an exercise of discretion and that appellate courts are often reluctant to reverse such rulings, we hold that the ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable.

Special deference is given to a trial court's findings when based on the credibility of witnesses. *Stoudemire v Stoudemire*, 248 Mich App 325, 339; ___ NW2d ___ (2001); *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998).

Here, the trial court was faced with competing valuations adduced primarily in the parties' property lists, compiled in accordance with procedures established by the lower court. The trial court found plaintiff's testimony to lack credibility because of several "inconsistencies" and his failure to provide additional credible evidentiary support for his claims. Thus, the trial court relied exclusively on those values provided by defendant and her witnesses. *Fletcher*, *supra* at 24. This was competent testimony. In light of the special deference given to a trial

court's findings when based on credibility, we are not left with a definite and firm conviction that a mistake was made. *Sparks, supra* at 151-152; *Stoudemire, supra* at 339. Accordingly, we conclude that the trial court did not clearly err in valuing defendant's gun collection at \$90,000.

Regarding plaintiff's claim that the property distribution was inequitable, we are reminded that the policy underlying a property distribution is "to reach an equitable distribution in light of all the circumstances." *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The trial court is not required to award each spouse a mathematically equal share to achieve an equitable distribution, but the trial court must explain "significant departures from congruence." *Id.* at 114-115. 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). Among the factors that the trial court should consider, where relevant, are "(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." *Sparks, supra* at 159-160.

Here, having already concluded that the trial court did not clearly err in valuing defendant's gun collection at \$90,000, we believe that the resulting property distribution was roughly congruent. Moreover, application of the *Sparks* factors suggests that the equitable circumstances would support a property distribution skewed in defendant's favor. For example, there was evidence that plaintiff engaged in extra-marital affairs. The evidence also indicated that, despite his health problems, plaintiff has a far greater income earning ability. Accordingly, we are not left with a definite and firm conviction that the trial court's property distribution was inequitable.¹

Plaintiff also challenges the trial court's alimony award. The trial court ordered plaintiff to pay defendant \$200 per week.

Generally, we review a trial court's factual findings relating to an alimony award for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). A finding of fact is clearly erroneous where we are "left with a definite and firm conviction that a mistake has been made." *Id.* The primary objective of an alimony award is "to balance the incomes and needs of the parties in a way that will not impoverish either party." *Id.* Accordingly, an alimony award is to be based on what is just and reasonable under the circumstances of the case. *Id.* Relevant factors for the court to consider when determining whether to award alimony, and how much, include "the length of the marriage, the parties' ability to pay, their past relations and conduct, their ages, needs, ability to work, health and fault, if any, and all other circumstances of the case." *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996).

We disagree with plaintiff's suggestion that the trial court failed to make sufficient findings of fact. To be sure, the trial court placed particular emphasis on the parties' respective

¹ Again, we note that the trial court found plaintiff to be almost completely lacking in credibility. The record supports that finding. Plaintiff's rather obvious unwillingness to provide credible testimony certainly prevents us from concluding that "general principles of equity" are in his favor.

income earning abilities. However, this does not mean that the trial court ignored the findings of fact it made with respect to the property distribution. Indeed, the same factors are relevant to both an alimony award and a property distribution. The only additional factor relevant to the alimony award would be the property distribution, which we concluded was roughly congruent.

Further, we would note that the trial court reluctantly accepted defendant's contentions regarding the parties' income earning abilities, even though it believed that defendant overstated her own income earning potential and understated plaintiff's actual income. In fact, the trial court suspected that plaintiff was actually earning twice what defendant estimated. Regardless, using defendant's numbers, plaintiff's annual income potential was \$34,320, whereas defendant's was only \$10,916. In light of these conservative figures, we are not persuaded that a \$200 per week alimony award was clearly erroneous. Nor do we believe that this figure will impoverish plaintiff. Consequently, we reject plaintiff's challenge to the alimony award.

Affirmed.

/s/ Patrick M. Meter

/s/ Jane E. Markey

/s/ Donald S. Owens