

STATE OF MICHIGAN  
COURT OF APPEALS

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EDGAR ALLEN KNIGHT,

Plaintiff-Appellee/Cross Appellant,

v

MARTHA PATRICIA KNIGHT,

Defendant-Appellant/Cross-  
Appellee.

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UNPUBLISHED

July 2, 2002

No. 229041

Washtenaw Circuit Court

LC No. 99-014971-DO

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right the findings and property distribution incorporated into her judgment of divorce. The property settlement distributed the parties' marital assets and ordered spousal support for defendant until she reaches the age of sixty-three. However, the settlement left untouched plaintiff's inheritance from his mother's estate, received while the divorce was pending, and funds from a grantor-retained income trust invested in a brokerage account solely in his name.<sup>1</sup> Plaintiff filed a cross appeal. We affirm.

I. Inheritance

Defendant challenges the trial court's designation of plaintiff's inheritance as separate property. Specifically, defendant argues that because the inheritance vested while plaintiff was legally married to defendant, it constitutes a marital asset under MCL 552.19. We disagree.

When examining a judgment of divorce, we review the findings of fact for clear error. *Draggou v Draggou*, 223 Mich App 415, 429; 566 NW2d 642 (1997). A finding is clearly erroneous if, after review of the entire record, this Court is left with a definite and firm conviction that a mistake was made. *Id.* If the trial court's findings of fact are upheld, then this Court must determine whether the dispositional ruling was fair and equitable under the circumstances. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Absent a firm

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<sup>1</sup> We note that plaintiff was ordered to forgive a \$65,700 mortgage on the marital home inherited as part of his mother's estate.

conviction that the division was inequitable, a trial court's dispositional rulings should be affirmed on appeal. *Id.* at 152.

A trial court is required by law to include a determination of the parties' property rights in a judgment of divorce. MCR 3.211(B)(3); *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). Because the trial court must divide all property that came "to either party by reason of the marriage," it is required to distinguish between marital assets and separate property. *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997), quoting MCL 552.19. While marital assets are subject to division between the parties, a spouse's separate assets are normally protected from invasion. *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002). Assets earned by the effort of a spouse during the marriage, whether received during the marriage or after the divorce judgment, are properly considered part of the marital estate subject to division. *Id.* Likewise, the appreciation of a premarital asset during the marriage is subject to division as part of the marital estate unless the appreciation was wholly passive. *Id.* at 184.

In this case, plaintiff received the disputed assets as an inheritance from his mother. There is no evidence that he exerted any effort to secure their appreciation and the record shows he kept them separate from the marital property. Thus, the disputed assets were properly deemed separate property and were not subject to distribution. *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999); *Lee v Lee*, 191 Mich App 73, 78-79; 477 NW2d 429 (1991).

The question remains whether the circumstances in this case warrant an invasion into plaintiff's separate property. The distribution of a party's separate property is allowed if the assets awarded are "insufficient for the suitable support and maintenance of either party . . . ." MCL 552.23(1). Moreover, if the trial court finds that the other spouse "contributed to the acquisition, improvement, or accumulation of the property", those assets may be subject to division despite their status as non-marital property. MCL 552.401.

Defendant has failed to make any showing of need beyond the property awarded. Indeed, we note that defendant received a slightly larger, albeit equitable under the circumstances, property award than plaintiff. See *Sparks, supra* at 158-159. The property settlement, in conjunction with the spousal support awarded, appears sufficient to provide for defendant's foreseeable needs without necessitating invasion of plaintiff's separate property. Therefore, we agree with the trial court's interpretation of *Dart, supra* at 585, n 6, as precluding invasion of plaintiff's separate property.

## II. Spousal Support

Defendant further alleges that the trial court's award of spousal support was error. Specifically, defendant posits that plaintiff's imputed income was incorrectly determined and that permanent spousal support should have been awarded. We disagree.

After considering a party's ability to pay and the character and situation of the parties, a trial court may award spousal support that it considers to be just and reasonable under the circumstances. MCL 552.23. "The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The ability to pay spousal support includes the

unexercised ability to earn income if income is voluntarily reduced to avoid paying spousal support. *Knowles v Knowles*, 185 Mich App 497, 498; 462 NW2d 777 (1990).

As a preliminary matter, defendant's reliance on *Healy v Healy*, 175 Mich App 187; 437 NW2d 355 (1989), is misplaced because plaintiff did not voluntarily reduce his income in contemplation of divorce. Rather, the record indicates that this decision was made while the parties were married and after discussions with defendant. See *Ruteledge v Ruteledge*, 96 Mich App 621, 625; 293 NW2d 651 (1980) (absent bad faith or willful disregard, a change in employment does not preclude modification of support award). The trial court's award balanced the equities and circumstances of this case and awarded a fair and flexible amount of money that was subject to change as the parties' positions improved. The sixteen-year award of spousal support was sufficient to allow defendant to live in accordance with her previous standard of living and enable her to reenter the workforce without any significant disruption of her lifestyle or dissipation of the property awarded. See *Zecchin v Zecchin*, 149 Mich App 723, 734-735; 386 NW2d 652 (1986). Combined with the transfer to defendant of the marital home debt free and the size of the property award, we find that the spousal support award was fair and equitable under the circumstances.

### III. Cross-Appeal

Plaintiff raises several issues on cross-appeal that we decline to review. We simply remind plaintiff that the property distribution was based on the aborted settlement to which he reaffirmed his willingness to be bound, and that the trial court adopted in its entirety. Once a negotiated property settlement has been placed in a judgment of divorce, a court will uphold it in the absence of fraud, duress, or mutual mistake. *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987). Despite the parties' lack of mutual consent to the property settlement, plaintiff agreed to be bound by its provisions and in equity may not be allowed to collaterally challenge its provisions. Plaintiff will not be allowed to agree to a course of action and then argue that the resulting action was error. Error must be that of the trial court, not one to which an aggrieved party contributed to by plan or negligence. *Anton v State Farm Auto Ins Co*, 238 Mich App 673, 679, n 4; 607 NW2d 123 (1999).

Affirmed.

/s/ Donald S. Owens  
/s/ David H. Sawyer  
/s/ Jessica R. Cooper