

STATE OF MICHIGAN  
COURT OF APPEALS

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MARY CIPRIANO,

Plaintiff-Appellant,

v

SALVATORE CIPRIANO,

Defendant-Appellee.

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UNPUBLISHED

December 27, 2002

No. 233215

Macomb Circuit Court

LC No. 91-004641-DO

Before: O'Connell, P.J., and White and B. B. MacKenzie\*, JJ.

PER CURIAM.

This divorce matter is before us a second time. On initial submission, we affirmed the judgment of divorce in part, vacated in part, and remanded for reconsideration in light of *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995). *Cipriano v Cipriano*, unpublished opinion per curiam of the Court of Appeals, issued July 5, 1996 (Docket Nos. 171878, 174026).<sup>1</sup> On remand, the trial court held that *Hanaway* did not apply to the facts of this case and that defendant's inherited stock interest in Peter Cipriano Enterprises (PCE) and 424 shares of Cross & Peters Company (C&P Co) preferred stock were not includable in the marital estate. Plaintiff now appeals as of right. We reverse and remand for further proceedings.

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<sup>1</sup> Our remand order provided as follows:

[W]e vacate the court's determination that defendant's interest in Peter Cipriano Enterprises and 424 shares of Cross and Peters Company stock would not be included in the marital estate because plaintiff had not contributed to its acquisition, improvement or accumulation and remand for reconsideration of this issue in light of *Hanaway*, *supra* at 292-295. See also, generally, *McDougal v McDougal*, 451 Mich 80, 82; 545 NW2d 357 (1996). [*Cipriano*, *supra* at slip op p 2.]

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Plaintiff contends that the trial court clearly erred in finding on remand that plaintiff did not contribute to the acquisition, improvement, or accumulation of defendant's interest in PCE and C&P Co, and that the principles of *Hanaway* were inapplicable.<sup>2</sup> We agree.

Pursuant to MCL 552.401, a party's separate estate may be invaded "if it appears from the evidence in the case that the [other] party contributed to the acquisition, improvement, or accumulation of the property." Appreciation in value of a separate asset is includable if one party actively managed the asset during the marriage, facilitated by activities of the other party. *Dart v Dart*, 460 Mich 573, 585, n 6; 597 NW2d 82 (1999), citing *Hanaway*, *supra*, and *Reeves v Reeves*, 226 Mich App 490, 490; 575 NW2d 1 (1997). A trial court's determination whether a spouse contributed to the acquisition, improvement, or accumulation of the other spouse's separate property is a finding of fact, which we review for clear error. *Reeves*, *supra* at 493-494. A finding is clearly erroneous if, after a review of the entire record, this Court is left with the definite and firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002).

In *Hanaway*, *supra* at 292, the husband's father annually gifted stock to the husband, which the wife claimed should have been included in the marital estate. The stock's value had appreciated significantly during the marriage, not simply by earning interest, but rather because the husband had devoted himself to the business, working long hours over a significant period of time, facilitated by the wife's activities at home. *Id.* at 293-294. We held that appreciation of an asset that occurs because of one spouse's investment of time and effort, facilitated by the other spouse's commitment to run the household and care for the children, is includable in the marital estate. To hold otherwise would be inequitable and deprive the spouse at home of any share in appreciation because that spouse had benefited from the fruits of the money received over the years. *Id.*

Since *Hanaway*, this Court has further refined the analysis of a claim for invasion of a party's separate asset under MCL 552.401 by determining whether the appreciation in value of the asset resulted from management activities of the parties that are deemed active or wholly passive. For example, in *Reeves*, *supra*, the husband had purchased two rental properties before the parties married, making the down payments on his own. The parties were married only four years, during which the wife worked sporadically outside the home and also performed the duties of a homemaker. *Id.* at 492-493. This Court found that the wife was entitled to a share in the appreciation in value of the rental properties that accrued during the marriage. *Id.* at 496. We held that the "increase in value . . . that occurred between the beginning and end of the marriage . . . was part of the marital estate." *Id.* While awarding the wife a share in the appreciation of the rental properties, which were actively managed by the husband during the marriage, we declined to award the wife a share in the appreciation of an asset that passively appreciated during the marriage. *Id.* at 497.

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<sup>2</sup> We reject plaintiff's initial contention that this Court's earlier remand order dictated any particular conclusion with respect to whether defendant's inherited stock interest would be invaded under MCL 552.401. In our earlier ruling, we "vacated" the trial court's holding and remanded for reconsideration in light of this Court's recent decision in *Hanaway*.

Here, the trial court found on remand that plaintiff's efforts to enable defendant to work at C&P Co did not contribute to his acquisition of that interest, and that the appreciation in value of defendant's interest in PCE was independent of his workplace activity at C&P Co and independent of his marriage partnership. The trial court further found the present facts to be sufficiently distinguishable from those in *Hanaway*, rendering its holding inapplicable. Having reviewed the entire record, we are of the firm conviction that the trial court clearly erred. Defendant's interest in the family business, and its significant appreciation in value during the course of the parties' lengthy marriage, was not wholly passive. The evidence demonstrated that defendant ceased working for his own company, Motor City Antique Auto Supply, in 1978, and joined C&P Co as a maintenance employee, eventually becoming a general partner in PCE and a vice president and member of the executive committee of the board of directors of C&P Co after his father's death in 1981. Although defendant's duties at C&P Co did not include day-to-day management operations, he was a full-time, active employee of the company, which grew and prospered during his tenure. Defendant's salary and PCE distributions also substantially increased during the time period. We further cannot dismiss plaintiff's role in defendant's success at C&P Co. She encouraged defendant's parents to offer defendant a position at C&P Co, and then took his place at Motor City, managing it until she voluntarily quit in 1990 after divorce proceedings were begun. During her twenty or so years working at Motor City, plaintiff received no compensation other than three \$2,000 contributions to an individual retirement account. Moreover, plaintiff's responsibilities at home freed defendant to become actively involved in his family's business.

In light of the above, we find the following passage from *Hanaway* to be particularly instructive:

Although initially given to defendant by his father, the interest in the business was a major asset of the marriage that defendant was permitted to cultivate and nurture over the years. It is inequitable to deprive plaintiff of any share of the business or its value on the basis that she enjoyed the benefits of defendant's salary over the years. The fruits of defendant's efforts in the business were both the increase in the value of the business since 1968 and the salary he drew over the years. The parties were building an asset as well as enjoying its fruits on an ongoing basis. That plaintiff's contribution to the asset came in the form of household and family services is irrelevant. The marriage was a partnership. The couple nurtured a business and three children, and watched all four grow. Defendant does not claim that he could have done it all himself. In contrast to *Grotelueschen v Grotelueschen*, 113 Mich App 395; 318 NW2d 227 (1982), cited by the trial court, the asset at issue did not increase in value simply by earning interest. Rather, it appreciated because of defendant's efforts, facilitated by plaintiff's activities at home. See *McNamara v McNamara*, 178 Mich App 382, 391; 443 NW2d 511 (1989).

We thus conclude that, viewed from the standpoint of whether plaintiff contributed to the acquisition, improvement, or accumulation of the property, or from the standpoint of whether the property appreciated in value during the marriage, see *Rickel v Rickel*, 177 Mich App 647, 655; 442 NW2d 735 (1989); *Gregg v Gregg*, 133 Mich App 23, 29-30; 348 NW2d 295 (1984), the trial court

erred in treating Steel Tex as defendant's sole and separate property. Accordingly, we reverse the trial court's judgment with regard to this issue, and remand with instructions to award plaintiff an equitable share of the business. We note that the court need not award plaintiff stock in the business, and may award a sum of money or other assets out of the marital estate representing her equitable share of the business. [*Hanaway, supra* at 293-295. Footnote omitted.]

Here, defendant's interest in PCE appreciated in value, in part, because of his active efforts at C&P Co, facilitated by plaintiff's activities at home as well as her activities at Motor City. Contrary to the trial court's analysis, we find it irrelevant that defendant and other relatives inherited interests in PCE in their individual names, and that these gifts were not conditioned upon employment at C&P Co. To reiterate, the specific interest at issue here is not defendant's inherited interest in a family business founded by his father, but rather the significant appreciation in value of that interest during the marriage due in part to the parties' direct and indirect activities with respect to that asset. *Hanaway, supra* at 294-295. As we have emphasized on numerous occasions, the overarching concern when apportioning property in a divorce action is to achieve an equitable distribution of the property. See *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). To deprive plaintiff of any share of the business interest that dominated the married life of both parties would be inequitable. Accordingly, we conclude that the trial court clearly erred in finding that plaintiff did not contribute to the acquisition, improvement, or accumulation of defendant's inherited stock interest. *Hanaway, supra* at 293-294; *Reeves, supra* at 495-497. We remand this matter to the trial court to determine plaintiff's equitable share of the increase in value of the asset.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White  
/s/ Barbara B. MacKenzie