

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT BRUCE HARMSSEN,

Plaintiff/Counter-Defendant-
Appellee,

v

JESSICA MARIE HARMSSEN,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
December 11, 2003

No. 241316
Ottawa Circuit Court
LC No. 00-038882-DO

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of divorce, claiming that the trial court erroneously classified marital property as separate property and wrongly denied her a share of it. Defendant also claims that the trial court assigned too much weight to her role in the marital breakdown and thus erroneously denied her spousal support. Because we find that the separate property was properly categorized and that the trial court's ultimate division was not clearly erroneous, we affirm.

The parties were married for approximately ten years. There were no children born of the marriage, and both parties were relatively young at the time of trial. As a result of injuries she received in a car accident before the marriage, defendant testified that she suffered from daily headaches and problems with her upper back, neck, memory, and concentration. At the time of the divorce proceedings, defendant was receiving \$700 a month in social security benefits because of her injuries. Both plaintiff and defendant worked for plaintiff's family's business; plaintiff was engaged in the business full time, and defendant worked part time fulfilling secretarial duties. The couple experienced severe financial difficulties, at least in part due to defendant's insurance company denying benefits, so the parties eventually filed for bankruptcy.

Also during the marriage, plaintiff's father died, leaving a life insurance policy to which his company was the beneficiary. Apparently, plaintiff's father and his business partner, co-owners of a construction business, arranged life insurance plans so that their heirs would have the money to buy the surviving partner's share of the business. When plaintiff's father died, the policy proceeds were divided four ways and paid by the business to plaintiff, his two brothers, and a fourth employee. With that money, the four recipients bought stock in the company. As a result, plaintiff acquired a 12.25 percent interest in the family business. According to plaintiff's

mother, who became a majority owner of the family business on her husband's death, the insurance proceeds were paid to plaintiff for the sole purpose of buying stock in the company.

Plaintiff testified that he worked both out of the home and in it, fulfilling most of the household duties, and that defendant was rarely home, choosing instead to spend time with her boyfriend. Defendant admitted she was rarely home, but claimed that plaintiff was unemotional, which drove her to have affairs as a "sad way" of gaining plaintiff's attention.

On appeal, defendant first argues that the trial court's determination that plaintiff's share in the business was plaintiff's separate property to which defendant had no claim was erroneous. We review the trial court's findings of fact under a clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). A finding is clearly erroneous if, after review of the entire record, the reviewing court is left with the "definite and firm conviction that a mistake has been committed." *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). If the findings of fact are upheld, we must decide whether the trial court's dispositive ruling on the division of property was fair and equitable in light of those facts. Pursuant to the dictates of *Sparks, supra*, the trial court's ruling should be affirmed unless we are left with a firm conviction that the property division was inequitable.

The distribution of marital property in these cases is governed by MCL 552.1 *et seq.*, and clearly established case law. The trial court's first consideration in distributing the marital estate is to determine which assets are marital assets and which are separate property. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Here, the trial court determined that the insurance policy proceeds used to purchase the corporate stock were an inheritance and therefore separate property. There is sufficient evidence from the record to justify this conclusion. Before plaintiff's father died, there was an attempt to reallocate the stock in the business. Plaintiff's father purchased a life insurance policy to ensure that his children had sufficient capital to purchase the family business. Plaintiff's mother testified that the insurance proceeds were for the exclusive purpose of purchasing stock in the corporation and that if plaintiff did not purchase the stock, he would not have received the insurance proceeds. Predicated on these factors, the trial court did not clearly err in finding that plaintiff's interest in the family business was akin to inheritance – and thus separate property – rather than an asset he earned during the marriage.

Nonetheless, there are exceptions to the rule that "each party takes away from the marriage that party's own separate estate with no invasion by the other party" that defendant argues apply here. See *Reeves, supra* at 494. MCL 552.401 and MCL 552.23(1) provide two statutory exceptions to this rule. The first exception is where the party seeking a share of the property has "contributed to the acquisition, improvement or accumulation of the property." MCL 552.401. The second exception is where the award of marital assets awarded "to either party [is] insufficient for the suitable support and maintenance of either party" MCL 552.23(1). Regarding the first exception, there is no evidence that defendant contributed in any meaningful manner to the acquisition, improvement, or accumulation of plaintiff's share of the family business. The second exception poses a more difficult question in that defendant was collecting social security disability, which evidenced her diminished earning capabilities.

The factors a court must consider in determining an equitable division of property are the duration of the marriage, the contributions of the parties to the marital estate, the ages of the parties, the necessities and circumstances of the parties, the life status of the parties, the health of

the parties, the earning abilities of the parties, the past relations and conduct of the parties, and general principles of equity. *Sparks, supra* at 158-169. Each of the factors need not be given equal weight where the circumstances dictate otherwise. *Id.* at 159. Additionally, fault is not the sole factor to be considered in a distribution and is not to be used as a punitive basis for an inequitable division. *McDougal v McDougal*, 451 Mich 80, 90; 545 NW2d 357 (1996).

Nonetheless, defendant's argument that the trial court relied too heavily on the issue of fault is misplaced. Defendant would have us hold that the trial court's strongly worded opinion regarding defendant's behavior during the marriage is tantamount to the trial court placing too great an emphasis on fault. We disagree. The trial court, through its opinion, simply stated the obvious. Defendant's objections – based solely on the wording of the trial court's opinion – are not evidence of error. Accordingly, we find no evidence that the trial court's property award was punitive in nature or resulted from the trial court according disproportionate weight to fault.

The trial court awarded defendant a total of \$108,194 in marital assets. Defendant continues to earn \$700 a month, and the evidence indicated that defendant has the skills to support herself by working part time. Further, there was no evidence that would have justified the trial court invading defendant's separate estate or awarding spousal support on the basis of need. Defendant was only thirty-one years old at the time of trial and had some earning capacity, although admittedly limited. However, considering all the factors enumerated above – including defendant's role in the marital breakdown – we conclude that the trial court did not clearly err in denying defendant a share of the value of plaintiff's corporate shares or in denying her request for spousal support.

In calculating the distribution of the parties' assets (after omitting the value of the plaintiff's business and the \$51,719.18 of alleged debt owed to the family business), plaintiff received approximately \$80,193 in marital assets as compared to defendant's \$108,194. Even if we were to add plaintiff's interest in the family business (\$115,400), the ultimate award comes to approximately \$195,000 to plaintiff and \$108,000 to defendant. Given the circumstances surrounding the breakdown of this marriage, we cannot find that the trial court clearly erred in the distribution of marital assets and denial of spousal support.

Affirmed.

/s/ David H. Sawyer
/s/ Stephen L. Borrello