STATE OF MICHIGAN

COURT OF APPEALS

KENNETH R. DEYO,

Plaintiff-Counterdefendant/Appellant,

v

VICKI E. DEYO,

Defendant-Counterplaintiff/Appellee.

UNPUBLISHED
May 25, 2004

No. 245210
Livingston Circuit Court
LC No. 01-030982-DM

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

SAWYER, J. (*dissenting*).

I respectfully dissent.

The "equitable disposition of property is confined to the limits of the applicable statutes." *Charlton v Charlton*, 397 Mich 84, 92; 243 NW2d 261 (1976). Defendant argues, relying on both *Charlton, supra,* and *Demman v Demman*, 195 Mich App 109; 489 NW2d 161 (1992), that whether an inheritance is included in the valuation of a marital estate is within the trial court's discretion and should be based on the circumstances of each case. However, this argument fails to recognize that each of these cases specifically cite MCL 552.23 and/or MCL 552.401 as examples of when an inheritance can be included in the marital estate. *Charlton, supra,* 92-94; *Demman, supra,* 112-113. Furthermore, the Supreme Court has recognized that "property received by a married party as an inheritance, but kept separate from marital property, is deemed to be separate property not subject to distribution." *Dart v Dart,* 460 Mich 573, 584-585; 597 NW2d 82 (1999). Therefore, the trial court did not have the equitable power to include the inherited assets in the marital estate absent a determination, supported by evidence, that either MCL 552.23 or MCL 552.401 applied.

A testator is free to dispose of his property as he wishes. MCL 700.1101 *et seq*. Plaintiff's father was, therefore, free to leave his property to unrelated persons or charities. However, while this statute can be used to support the trial court's inference that plaintiff's father left plaintiff his property in part *because* of defendant's care, it also supports the argument that plaintiff's father could have specifically included defendant in the inheritance had this been his reasoning. In the present case, the inherited property that was jointly owned and/or co-managed by the parties had already been included in the $714,634 marital estate as identified by plaintiff. There is no evidence in the record that plaintiff would not have inherited his father's estate without defendant's assistance; therefore, I am left with a definite and firm conviction that a mistake has been made so that the trial court's determination that defendant contributed to the

acquisition of the inherited estate is clearly erroneous and would remand for a redetermination of the marital estate without consideration of the inheritance.

/s/ David H. Sawyer