

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN H. FOOS, a/k/a SUSAN H. FARR,

Plaintiff/Counter-Defendant-
Appellee,

V

WILLIAM P. FOOS,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
December 13, 2005

No. 257645
Shiawassee Circuit Court
LC No. 03-009466-DO

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, asserting that the trial court's division of marital property is inequitable. We disagree and affirm.

Defendant first argues that the trial court erred by denying his request to reopen the proofs to introduce a new appraisal of the marital home. We disagree. A trial court's decision whether to reopen the proofs is reviewed for an abuse of discretion. *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 406 (1999).

In this case, the trial court issued a scheduling order setting an appraisal cutoff date of November 26, 2003. Defendant failed to obtain an appraisal before the cutoff date and failed to offer an explanation for his delay in seeking an appraisal. More significantly, at the time of trial more than six months later, defendant *stipulated* that, "presently" (i.e., at the time of trial), the value of the home was \$200,000, in accordance with a July 2002 appraisal. Defendant testified at trial on June 9, 2004, and failed to question that appraisal or mention that he had recently commissioned an appraisal of his own. Instead, relying on a 1997 appraisal, defendant testified that he believed he was entitled to half of the appreciated value of the home during the marriage, which was \$45,000. It was not until June 23, 2004, the date scheduled for closing arguments, that defendant first revealed that he had obtained a new appraisal.

Furthermore, the trial court determined that the appropriate date for determining the value of the home should be the date plaintiff filed her complaint for divorce, see *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991) (a trial court has discretion to choose the date of valuation of a marital asset), given that had defendant stopped contributing any funds

toward paying the mortgage and the parties' bills after that date. Thus, defendant would not have been entitled to any increase in the value of the home after that date.

Under these circumstances, defendant failed to show good reason to reopen the proofs, and the trial court did not abuse its discretion in denying defendant's request. *Rogers v Rogers*, 335 Mich 207, 209-210; 55 NW2d 799 (1952); *Case v City Nat'l Bank of Battle Creek*, 240 Mich 419, 424; 215 NW 362 (1927).

Next, defendant argues that the trial court made insufficient findings of fact, and that its distribution of the marital estate was inequitable. We disagree.

In divorce cases, an "appellate court must first review the trial court's findings of fact under the clearly erroneous standard." *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been committed." *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). The reviewing court may not "substitute its judgment for that of the trial court; if the trial court's view of the evidence is plausible, the reviewing court may not reverse." *Id.* "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." *Sparks, supra* at 151-152. Such rulings are "an exercise of discretion" which "should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable." *Id.* at 152.

Contrary to what defendant argues, the trial court stated that it attempted to divide the marital estate equitably. The court noted that the marital house was plaintiff's separate property, but that defendant was entitled to a fair share of the equity accumulated during the marriage. The court determined that, although the net equity had actually diminished during the marriage, the home had appreciated in value by approximately \$43,000.¹ The trial court stated that it would allocate that increase through its division of the parties' debts and assets.

The trial court awarded plaintiff the home free of any claim by defendant. But it held plaintiff liable for all of the parties' debts (in excess of \$24,000), except a \$62 cellular telephone bill. Conversely, defendant was relieved of his half of the marital debts, and was awarded \$5,000 in cash, approximately \$10,000 in business assets (according to defendant's own estimate), which he would have to share with his partner, and nearly all of the parties' personal property, including a motorcycle, a boat, and a trolling motor. Additionally, defendant was awarded personal property that had an original cost of approximately \$20,000, while plaintiff was awarded personal property with an original cost of approximately \$3,000. Further, despite evidence that defendant had a large preexisting child support arrearage and tax debts that were

¹ The parties stipulated that the value of the home was \$200,000 at the time of trial, and there was evidence of two appraisals of the home. According to those appraisals, the home was valued at \$155,000 in August 1997, two years before the marriage, and \$157,500 in September 2000, one year after the marriage. In light of this evidence, the trial court did not clearly err in determining that the home had appreciated in value by approximately \$43,000 during the marriage.

paid off during the marriage, there is no indication that the trial court considered these items as a basis for reducing defendant's share of the marital estate. In light of all the facts, the trial court's division of the marital estate was fair and equitable.

Although defendant argues that the trial court did not make specific findings concerning the approximate value of the business inventory or the parties' personal property, the parties themselves failed to introduce any evidence concerning those values. It was the responsibility of the parties, not the trial court, to have those items appraised if their value was disputed. The trial court's findings of fact were sufficiently specific to evaluate the fairness of its division of the marital estate, MCR 2.517(A)(2); *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994), and could not have been more specific than the evidence introduced at trial.²

Affirmed.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Alton T. Davis

² Defendant also asserts that many items on the business inventory list are duplicated in the list of items of personal property. However, he did not make that argument at trial and, instead, claimed that many items on the business inventory list were his separate property, purchased before the marriage. Nonetheless, defendant was awarded the personal property and business inventory items *in addition to* approximately half of the equity in the home. Therefore, even if there is some overlap between the lists, defendant has failed to show any plain, prejudicial error. See *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).