

Court of Appeals, State of Michigan

ORDER

Jessie F. Simpson v Janice M. Simpson

Docket No. 256801

LC No. 02-244022-DO

Christopher M. Murray
Presiding Judge

Kathleen Jansen

Kirsten Frank Kelly
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall be completed within 60 days of the Clerk's certification of this order and they shall articulate why survivorship benefits were not awarded to defendant or, in the alternative, award defendant survivorship benefits.

The trial court shall also caused to be filed with this Court a copy of its opinion and/or a transcript of any proceeding on remand within 60 days of the Clerk's certification of this order.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 17 2006

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

JESSIE F. SIMPSON,

Plaintiff/Counter-defendant-
Appellee,

v

JANICE M. SIMPSON,

Defendant/ Counter-plaintiff-
Appellant.

UNPUBLISHED

January 17, 2006

No. 256801

Genesee Circuit Court

LC No. 02-244022-DO

Before: Murray, P.J. and Jansen and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right the parties' judgment of divorce specifically challenging the trial court's order denying her motion to amend the divorce judgment. We affirm the trial court's order denying defendant's motion to amend the judgment as it relates to the distribution of the marital home, but we remand solely for the trial court to articulate why it did not award defendant survivorship benefits or, in the alternative, to award survivorship benefits.

Defendant first contends that the trial court erred by not awarding her survivorship benefits under plaintiff's pension. A trial court's findings of fact in a divorce proceeding are reviewed for clear error. *McNamara v Horner*, 249 Mich App 177, 182; 642 NW2d 385 (2002). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.* at 182-183. If the trial court's findings of fact are upheld, this Court must then determine whether the dispositive ruling was fair and equitable. *Id.* at 183.

The parties lived together as husband and wife for twenty years and were separated for ten years before they sought divorce. Throughout the ten years of separation, the parties led separate lives. Plaintiff remained in the marital home while defendant purchased a new home. During the separation, defendant remained covered under plaintiff's insurance through his work and used his employee discount to purchase vehicles. Also during the separation, plaintiff remodeled the marital home at his expense and through his own efforts.

After a bench trial, the trial court determined that the parties were aware of the consequences of being separate while married and distributed the property accordingly. The trial court ruled that a disproportionate distribution was appropriate and gave the most weight to the

relative contribution of the parties to the marital estate. See *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). It then determined that plaintiff's pension was a passive asset that did not require contribution and awarded defendant one-half of plaintiff's pension as of the date of divorce. When asked about supplemental benefits and survivorship benefits associated with plaintiff's pension, the trial court determined that supplemental benefits accrued before the parties separated and gave defendant half of the value of those benefits. The trial court awarded no survivorship benefits and provided no explanation for this ruling.

The trial court's findings of fact were not clearly erroneous. However, the trial court failed to state its reasons for awarding defendant one-half of plaintiff's pension without survivorship benefits. In the absence of some explanation on the record, our determination of whether the trial court's decision was fair and equitable would be mere speculation. Therefore, we remand solely for the trial court to either articulate the reasons for denying defendant survivorship benefits or to award survivorship benefits.

Defendant next contends that the trial court erred in determining her value of the equity in the house resulting in an inequitable distribution of property. We disagree.

The trial court determined that each party was entitled to one-half the value of the equity in the home as of the date of divorce. It then determined that plaintiff was to be given a \$30,000 credit on the amount owed to defendant for that equity, reducing her half by \$30,000. The court initially determined that plaintiff had spent at least \$30,000 remodeling the home, accepting defendant's testimony on that point. Defendant then questioned the court's decision and argued that taking \$30,000 off defendant's half gave plaintiff a \$60,000 credit and asserted that the \$30,000 should be taken off the total value of the home. The trial court made supplemental findings and stated that its decision was equitable because the \$30,000 figure did not take into account plaintiff's time, labor, and inconvenience.

The trial court's factual findings are not in clear error. Both parties agreed that plaintiff did a substantial amount of remodeling to the marital home. A property division does not need to be mathematically equal, so long as it is fair and equitable. *Sparks, supra* at 159. The trial court explained that it weighed heavily the contribution factor because the parties had lived separate lives for the past ten years. The court then determined that plaintiff had made substantial improvements to the house, with a monetary value of at least \$30,000. The court determined that above and beyond the money spent on the renovations, plaintiff had expended a significant amount of time, labor, and inconvenience. Therefore, plaintiff contributed more to the marital home and should, in an equitable division, receive more of the value.

Additionally, the trial court was free to value the marital home at the time of the separation and not at the time of the divorce. *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991). Again, contribution was the primary consideration of the trial court in making its decision because of the lengthy separation. Defendant only actively contributed to the marital home until the date of separation. However, because both parties knew the consequences of remaining married, the equity was valued at the time of divorce. By giving plaintiff a credit, defendant received her passive contribution to the marital home over the ten year separation. Her passive contribution would be allowing plaintiff to remain in the marital home that was almost paid off, while she purchased a different home and had to make payments. However, by giving plaintiff a credit, defendant was prevented from gaining the benefit of

plaintiff's individual contribution and plaintiff was allowed to keep the substantial equity he added. If the trial court had taken \$30,000 off the total value of the home as defendant suggested, she would have substantially benefited from the improvements, to which she did not contribute.

We affirm the trial court's order denying defendant's motion to amend the judgment of divorce as it relates to the distribution of the marital home. We remand solely for the trial court to either articulate the reasons for denying defendant survivorship benefits or, in the alternative, to award survivorship benefits. The trial court must comply with this directive within 60 days. We retain jurisdiction.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly