

STATE OF MICHIGAN
COURT OF APPEALS

ELLEN C. BARGER,

Plaintiff-Appellee,

v

DAVID A. BARGER,

Defendant-Appellant.

UNPUBLISHED

November 14, 2006

No. 263070

Monroe Circuit Court

LC No. 04-029627-DM

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right a judgment of divorce granting plaintiff half of the proceeds from the sale of the parties' marital home and half of defendant's pension benefits. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues the trial court's dispositional ruling regarding the marital home was inequitable. We disagree. We review the findings of fact in a divorce case for clear error and then decide whether the dispositional ruling was fair and equitable in light of the facts. MCR 2.613(C); *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). "The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable." *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997).

When dividing marital assets "the conduct of the parties during the marriage may be relevant to the distribution of property, but the trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance." *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992). "The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances." *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). To reach an equitable division, the trial court should consider the following factors: (1) the duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. *Sparks*, *supra* at 159-160.

After several years of marriage, plaintiff filed this action for divorce. Before awarding plaintiff half of the proceeds from the sale of the parties' marital home, the court made several

factual findings regarding the home. The court found that defendant acquired the home prior to the marriage. Plaintiff moved into the home with defendant, but before doing so plaintiff sold the home that she owned in another state. The court found the home was improved after the marriage due to plaintiff's contributions. The court also found that the parties intended to own the house together. The court found the house was a joint asset because defendant deeded the house to himself and plaintiff as joint tenants with rights of survivorship before the parties married.

Based on its findings, the court granted plaintiff half of the proceeds from the sale of the marital home. We agree with the lower court. The trial court's factual findings were consistent with the evidence presented and the distribution was fair and equitable in light of the facts. The evidence presented showed that before the parties married, defendant entered into a land contract with his uncle, Thomas Dudley, to purchase the home at 1010 Sycamore, Temperance, Michigan. Before the parties married, plaintiff moved into the home with defendant. Shortly after, plaintiff's name was added to the deed for the property. When plaintiff lived with defendant at 1010 Sycamore, improvements were made to the patio, shed, landscaping, kitchen, and other areas. The evidence also showed that plaintiff contributed to the addition of an extra room in the house and an outside pool.

In light of the evidence presented, the court's dispositive ruling was fair and equitable. The parties were married for several years. The evidence showed that each party contributed to the family expenses during the marriage. The parties lived together, prior to and during the marriage, at 1010 Sycamore and during this time they improved the property together. Plaintiff took out a mortgage on the home in her name and used the proceeds to pay off the land contract and to make home repairs. As mentioned, when plaintiff lived with defendant at 1010 Sycamore, improvements were made to the patio, shed, landscaping, kitchen, and other areas. Plaintiff also contributed to the addition of an extra room in the house and an outside pool. Plaintiff's contributions to the home more than likely increased the value of the home. The parties shared and maintained the marital home, which gave both parties an interest in any increase in value during the course of the marriage. *Korth v Korth*, 256 Mich App 286, 293-294; 662 NW2d 111 (2003). The trial court's division was fair and equitable, and therefore, defendant's claim is without merit.

Although defendant argues that he is entitled to the \$42,000 equity in the marital home because the home was his separate asset, this argument is without merit. When dividing property in a divorce action, the trial court's first consideration is the determination of marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Generally, "the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party. However, a spouse's separate estate can be opened for redistribution when one of two statutorily created exceptions is met." *Reeves, supra*, pp 493-494. The first exception permits invasion when "the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party." MCL 555.23; *Reeves, supra*, pp 493-494. The second exception permits invasion when "one significantly assists in the acquisition or growth of a spouse's separate asset." MCL 552.401; *Reeves, supra*, pp 493-494.

The trial court properly determined that the home at 1010 Sycamore was a marital asset. Defendant deeded the property to himself and plaintiff prior to the marriage. Therefore, plaintiff

and defendant jointly owned the property when they married each other. In any event, even if considered defendant's separate asset, plaintiff substantially contributed to the improvement of the home during the marriage. MCL 552.401. Because this Court permits the invasion of a spouse's separate asset when the other spouse "contributed to the acquisition, improvement, or accumulation of the property," the court properly determined that plaintiff was entitled to half its value. MCL 552.401; *Korth, supra*, pp 292-293.

Defendant next argues the trial court's division of his \$42,000 IRA pension was inequitable. Defendant argues the pension was accumulated before the marriage and the amount awarded to plaintiff should have been offset by \$18,000, including consideration for the \$11,000 IRA that plaintiff liquidated during the marriage and \$7,000 for defendant's contribution to the purchase of plaintiff's vehicle. Defendant argues he is entitled to reimbursement for the vehicle because he solely paid off the \$7,000 credit card balance plaintiff used to purchase the vehicle. We disagree.

Before awarding plaintiff half of defendant's \$42,000 IRA pension, the court made factual findings regarding the parties various IRA pensions. The court found that each party had a \$12,000 IRA in his and her name. The court found that plaintiff had an additional IRA for \$11,000, which she liquidated during the marriage to pay for family expenses. The court found that when plaintiff liquidated the IRA defendant was unemployed and family finances were "tight." The court further found that defendant had an additional IRA worth about \$42,000. The court determined that this IRA was acquired during the marriage.

The trial court made further factual findings regarding plaintiff's vehicle. The court found plaintiff was the only one working when the vehicle was purchased. The court also found that the parties needed a vehicle when the purchase was made. The court further found that, although the vehicle was purchased in part with a joint credit card, marital assets were used to pay the credit card balance.

Based on its findings, the court awarded each party their respective \$12,000 pensions free and clear of the other party's claim. Plaintiff was also granted half of defendant's \$42,000 IRA pension. The court denied defendant's request for reimbursement for the \$7,000 he paid on the joint credit card that plaintiff's used to purchase her vehicle. In doing so, the court granted plaintiff the vehicle free and clear of defendant's claim.

The trial court's factual findings were not erroneous and its division was fair and equitable. The evidence presented showed that each party had IRA pensions worth \$12,000. The evidence also showed that plaintiff cashed in an additional IRA in her name during the marriage to pay for family expenses. When plaintiff cashed in the \$11,000 IRA, defendant was not working and she was working part time. According to plaintiff, she cashed in the IRA because "[defendant] had just lost his job and [she] had no savings and [she] had no knowledge of where any money or survivorship would be for the next few months until [they] got on [their] feet." The evidence also showed that defendant's \$42,000 IRA was acquired during the marriage. Defendant admitted that he started the IRA when the parties first married and that he contributed to it during the marriage. The trial court's factual findings were consistent with the evidence presented, and therefore, were not clearly erroneous.

In light of the facts presented, the court's dispositional ruling regarding defendant's \$42,000 pension was fair and equitable. Pensions are considered part of the marital estate and may be distributed through a property division upon divorce. MCL 552.18(1); *Magee v Magee*, 218 Mich App 158, 164; 553 NW2d 363 (1996). The trial court properly determined that plaintiff was entitled to half of defendant's \$42,000 IRA pension. Both parties worked for the majority of the marriage and each contributed to the family expenses. The parties were married for several years and it was during this time that defendant contributed to the pension. Defendant started the pension when the parties first married and contributed to the pension throughout the marriage. Defendant's pension was clearly part of the marital estate, which entitled plaintiff to half its value.

Defendant's claim that the trial court should have deducted \$18,000 from his IRA pension before awarding plaintiff half of the pension is without merit. Although defendant did not directly receive half of plaintiff's \$11,000 IRA pension, the money was used for family expenses which defendant undoubtedly benefited from. The trial court's division was fair and equitable, and therefore, defendant's claim is without merit.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio