

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA J. KARCHIN,

Plaintiff-Appellant,

v

PAUL E. KARCHIN,

Defendant-Appellee.

UNPUBLISHED

June 19, 2007

No. 268750

Wayne Circuit Court

LC No. 04-437291-DM

Before: Servitto, P.J., and Jansen and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. We affirm.

I. FACTS

Plaintiff filed for divorce on December 7, 2004, asserting that defendant was at fault for the break-up of the marriage and that she did not have the income earning capacity that defendant did. Plaintiff sought 55 percent of the parties' assets, as well as sole legal and physical custody of the parties' then 17-year-old son, Joshua. But plaintiff settled for joint legal custody.

The trial court found that both parties were at fault for the breakdown of the marriage. Therefore, the trial court ordered the parties to sell the marital home and split the proceeds equally. Plaintiff was awarded possession of the marital home until it was sold, and defendant was ordered to pay the mortgage payments and taxes on the home until June 1, 2006, after which the parties were to split those expenses equally. Defendant was ordered to pay monthly child support of \$1,158.06 until Joshua turned 18. Defendant was also ordered to pay plaintiff spousal support of \$800 a month until the marital home was sold, \$1,800 a month after the sale of the marital home and until Joshua was 18 years old, and \$1,500 a month after Joshua turned 18 for a period of seven years. Plaintiff was awarded her premarital accounts, the loss carry forward, half of the parties' joint accounts, and half of the retirement portfolio. Defendant was awarded the home on Lakepointe, half the parties' joint accounts, and half of the retirement portfolio.

II. PROPERTY DIVISION

Plaintiff first challenges the trial court's division of the marital estate. Plaintiff argues that the trial court erred by equally dividing the parties' retirement account instead of awarding 55 percent of this asset to plaintiff. We disagree.

A. Standard of Review

“The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. The division need not be mathematically equal, but any significant departure from congruence must be clearly explained by the trial court.” *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003) (citations omitted). “The [trial court’s] dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division is inequitable.” *Id.*, quoting *Draggoo v Draggoo*, 223 Mich App 415, 420-430; 566 NW2d 642 (1997).

B. Analysis

Relevant factors that a trial court should consider when dividing the marital estate include: the duration of the marriage, contributions of the parties to the marital estate, the ages of the parties, the health of the parties, the life status of the parties, the necessities and circumstances of the parties, the earning abilities of the parties, past relations and conduct of the parties, and general principles of equity. *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992).

Plaintiff asserts that defendant was at fault for the breakup of the marriage because he allegedly became romantically involved with another woman in 2004. Although fault is a proper consideration when dividing the marital estate, *Byington v Byington*, 224 Mich App 103, 115; 568 NW2d 141 (1997), it is not appropriate to consider fault “which occurred subsequent to the breakdown of the marriage relationship[.]” *Knowles v Knowles*, 185 Mich App 497, 499; 462 NW2d 777 (1990). Here, the trial court found that the marriage broke down long before defendant’s involvement with another woman and that both parties were equally at fault for not working together on goals, and addressing their problems. The parties were the same age, both were well educated, both were in good health, and both had the same standard of living, assets, and needs.

Plaintiff’s concerns about maintaining the marital home, not having a full-time job, not having a roommate, and supporting the parties’ adult children also do not demonstrate that the trial court’s decision to equally divide the retirement account was an abuse of discretion. The trial court ordered that the marital home was to be sold and the proceeds divided equally, and defendant was to be solely responsible for the mortgage and tax payments until June 1, 2006. The difference in the parties’ earning abilities was addressed by the trial court’s award of spousal support. The fact that plaintiff did not have a roommate was not particularly relevant. Lastly, defendant was ordered to pay child support until the parties’ youngest child turned 18, and neither party was obligated to provide support for the adult children thereafter. Under the circumstances, we are not left with the definite and firm conviction that the equal division of the parties’ retirement account was inequitable.

Plaintiff next argues that the trial court improperly treated the parties’ inheritances differently, allowing defendant to keep his inheritance as separate property, but not awarding plaintiff her inheritance as separate property. “Normally, 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). “[T]he decision to include inheritance in the valuation of marital assets is discretionary and is dependent

upon the particular circumstances of a given case.” *Demman v Demman*, 195 Mich App 109, 112; 489 NW2d 161 (1992).

In this case, plaintiff received a sum of money from her living grandmother in 1995, which was both intended for and used as a down payment for the purchase of the parties’ marital home. Both parties’ names were on the deed and mortgage, the parties and their children lived in the home for several years thereafter, and defendant paid to keep and maintain the home. Thus, plaintiff’s alleged inheritance was neither intended nor kept as separate property. By contrast, defendant’s inheritance was received after his mother died in 2004, near the time the parties’ separated, and was placed in defendant’s separate account. After defendant moved out of the marital home, he used some of the inheritance to purchase another home in which to live. Plaintiff never had an interest in defendant’s new home and never contributed to its purchase or maintenance. Considering the different circumstances involving the two sums of money, the trial court did not abuse its discretion by treating them differently.

III. SPOUSAL SUPPORT

Plaintiff next argues that the trial court’s award of spousal support was inequitable. Again, we disagree.

A. Standard of Review

As this Court explained in *Gates, supra* at 432:

Whether to award spousal support is in the trial court’s discretion, and we review the trial court’s award for an abuse of discretion. On appeal, we review the trial court’s findings of fact concerning spousal support for clear error. The findings are presumptively correct, and the burden is on the appellant to show clear error. [Citations omitted.]

“The trial court’s decision concerning spousal support must be affirmed unless we are firmly convinced that it was inequitable.” *Id.* at 433.

B. Analysis

The trial court awarded plaintiff spousal support of \$800 a month until the marital home was sold¹; \$1,800 a month after the marital home was sold and until Joshua, the youngest child, turned 18; and \$1,500 a month thereafter for a period of seven years.

Plaintiff argues that the spousal support award was inequitable because defendant had agreed to pay spousal support for ten years. Although defendant had expressed a willingness to

¹ As part of the property settlement, the court awarded plaintiff exclusive possession of the marital home until it was sold and ordered defendant to make the monthly mortgage payments and tax payments for the marital home until it was sold or June 1, 2006.

pay support for ten years, this was based on a yearly amount less than that requested by plaintiff and less than what was ultimately awarded by the trial court. Contrary to what plaintiff asserts, the parties did not reach an agreement on the issue. In addition to spousal support, the trial court ordered defendant to pay plaintiff's housing expenses until their youngest child turned 18, and to pay part of her housing costs for an unspecified length of time after that until the marital home was sold. The record reflects that the trial court considered the appropriate factors, *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991), and we are not convinced that the award of spousal support was inequitable.

Plaintiff further argues that the trial court erred by failing to require defendant to obtain a life insurance policy to protect his spousal support obligation. Although we agree with plaintiff that the trial court had the authority to include a life insurance provision in the divorce judgment, that does not mean that it was obligated to do so. Such a requirement, which would have been an added expense for defendant, was never requested by plaintiff at trial and, consequently, was not considered by the trial court in its determination of spousal support and its division of the marital estate. Under the circumstances, plaintiff has not shown that the trial court abused its discretion, either by failing to sua sponte order life insurance, or by denying plaintiff's motion to amend the judgment. See *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003).

IV. ATTORNEY FEES

Finally, we reject plaintiff's argument that the trial court erred in denying her request for attorney fees.

A. Standard of Review

The trial court's decision whether to award attorney fees in a divorce action is reviewed for an abuse of discretion. *Gates, supra* at 437-438.

B. Analysis

Plaintiff requested attorney fees of \$15,000, but the trial court ordered that the parties would be responsible for their own attorney fees. "Attorney fees in a divorce action are awarded only as necessary to enable a party to prosecute or defend a suit." *Gates, supra* at 438; see also MCR 3.206(C)(2)(a). Attorney fees may also be awarded if they were incurred because the other party refused to comply with a court order. MCR 3.206(C)(2)(b).

The marital assets were equally divided. Plaintiff was awarded half the value of several bank and investment accounts, as well as half the proceeds from the sale of the marital home, which the trial court found had an equity value of more than \$250,000. Plaintiff failed to show that she was unable to bear the expense of the action without an award of attorney fees, or that attorney fees were unnecessarily incurred because of defendant's unreasonable conduct. The trial court did not abuse its discretion by requiring each party to pay their own attorney fees.

Affirmed.

/s/ Deborah A. Servitto

/s/ Kathleen Jansen

/s/ Bill Schuette