

STATE OF MICHIGAN
COURT OF APPEALS

EDWIN C. JUTILA,

Plaintiff/Counter Defendant-
Appellant,

v

GINA M. JUTILA,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

November 13, 2008

No. 282961

Houghton Circuit Court

LC No. 06-013383-DO

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's division of the marital estate. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff argues that the trial court failed to account for the pre-marital equity in the marital home and failed to award it to him as a separate asset. Plaintiff also argues that the Hancock house property was actually an inheritance from his deceased mother and, therefore, the original value of the property should have been awarded to him as a separate asset. We disagree.

When evaluating division of property decisions in divorce proceedings, this Court reviews factual findings of the trial court for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). In this case, despite a lack of detailed analysis from the trial court, plaintiff has failed to demonstrate any clear error on the part of the trial court. Findings of fact are "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." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

In upholding the trial court's findings of fact, we review the ruling to see if it was "fair and equitable in light of those facts." *Sparks, supra* at 152. In light of the fact that the trial court's ruling is an "exercise of discretion," reviewing courts should affirm the trial court's decision as to property division unless it is "left with the firm conviction that the division was inequitable." *Id.* In this case, we are not left with a firm conviction there has been an inequitable division.

Considering the factors set forth in *Sparks, supra* at 159-160, the decision to grant the marital home to defendant was equitable, and therefore within the discretion of the trial court. Likewise, the decision to divide the remaining assets 70/30, including all the proceeds from the Hancock property, was also equitable and within the trial court's discretion. *Sparks* instructs courts to consider the "source of property, contribution toward its acquisition, the years of married life, the needs of the parties, their earning ability, and the cause for divorce." *Sparks, supra* at 159 (quoting *Johnson v Johnson*, 346 Mich 418, 431; 78 NW2d 216 [1956]). These factors have been expanded, and additional factors have been acknowledged as part of the calculation for dividing assets, including the age of the parties, the health of the parties, the life status of the parties, necessities and circumstances of the parties, past relations and conduct of the parties, and general principles of equity. *Id.* at 159-160.

While the trial court did not explicitly discuss each factor and its relationship to the facts, it is evident that the trial court considered the *Sparks* factors. The trial court found as fact that plaintiff made more and contributed more economically to the relationship than defendant. The court also noted the differences in age and earning capacity of the parties. Additionally, the court recognized the relative health of both parties and the short period of the marriage. These findings of fact, while not elaborated on, indicate that the trial court's reasoning behind its division of the property was correctly based on the *Sparks* factors. This becomes more evident upon analysis of the trial court's property division. The court awarded defendant the marital home to ensure that she would be able to provide for herself and maintain a reasonable standard of living (she operated a hair salon from the home), but also compensated plaintiff for his greater contribution financially to the marriage by dividing the majority of the rest of the assets 70/30, with the greater percentage going to plaintiff. The trial court additionally took plaintiff's greater financial contributions into account by awarding him the Jacobsville property and his entire Defined Benefits Plan.

While the trial court did not make factual findings whether portions of the marital home should have been treated as a separate asset of plaintiff's or whether the Hancock property was an inheritance of plaintiff's, the determination on that matter is of little consequence. The trial court would have had the discretion to divide such separate assets in this situation because defendant would have met the statutory exception set out in MCL 552.23(1). The trial court reasonably could have determined that even if such assets were separate individual property it was necessary for these assets to be invaded so as to make sure both parties would be able to suitably support themselves and maintain a relative standard of living.

Therefore, the trial court did not clearly err in its division of the marital property. We are satisfied that the division of property was equitable in light of the factors to be considered.

Affirmed.

/s/ Stephen L. Borrello
/s/ Alton T. Davis