

STATE OF MICHIGAN  
COURT OF APPEALS

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DONALD PICHE,

Plaintiff-Appellant,

v

CARRIE PICHE,

Defendant-Appellee.

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UNPUBLISHED

October 22, 2009

No. 287835

Keweenaw Circuit Court

LC No. 07-000592-DO

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment of divorce, asserting that the trial court erred in its division of the marital estate and by including in the marital estate assets owned by the Piche Family Trust (the family trust). We affirm in part, reverse in part, and remand for further proceedings.

I. Standard of Review

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). Due “regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *Sparks, supra* at 148 n 5, quoting MCR 2.613(C). 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.” *Beason, supra* at 805. However, questions of law are reviewed de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass’n*, 437 Mich 75, 80; 467 NW2d 21 (1991). “Where a finding is derived from an erroneous application of law to facts,” or “where the trial judge’s factual findings may have been influenced by an incorrect view of the law,” “the appellate court is not limited to review for clear error.” *Beason, supra* at 804-805. “If the findings of fact are upheld, the appellate court must [then] 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.

## II. The Disputed Properties

Plaintiff argues that the trial court lacked subject-matter jurisdiction to dispose of property owned by a third party, the family trust. He also contends that certificates of deposit (CDs) purchased by plaintiff's father, but titled in the parties' names, were intended to pay for plaintiff's father's care and, therefore, were not subject to distribution as marital property.

### A. The Family Trust

Plaintiff correctly observes that in a divorce action, a trial court may not divide property owned by a third party, absent allegations that the third party conspired with one of the spouses to deprive the other spouse of marital property or spousal support. *Przeklas v Przeklas*, 240 Mich 209, 212; 215 NW 306 (1927); see also *Brown v Brown*, 335 Mich 511, 517-518; 56 NW2d 367 (1953); *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991).

Plaintiff was the settlor of the family trust. Defendant, however, did not allege that plaintiff transferred any marital properties to the family trust with the intent to defraud her. Thus, the property rights of the family trust could not be adjudicated and were not subject to distribution. Thus, the trial court erred to the extent that it awarded defendant a property interest in property owned by the family trust.

As further discussed below, however, although the Montgomery Point property is owned by the family trust, the CDs were not, and there is an unresolved question of fact whether the Mendota property is partially owned by the family trust.

### B. Separate Property

"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." *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997); see also MCL 552.19. However, MCL 552.401 provides:

The circuit court of this state *may include in any decree of divorce or of separate maintenance entered in the circuit court appropriate provisions awarding to a party all or a portion of the property*, either real or personal, *owned by his or her spouse*, as appears to the court to be equitable under all the circumstances of the case, *if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property*. The decree, upon becoming final, shall have the same force and effect as a quitclaim deed of the real estate, if any, or a bill of sale of the personal property, if any, given by the party's spouse to the party. [Emphasis added.]

See also *Reeves, supra* at 494-495. Under MCL 552.23(1), a trial court may also invade a spouse's separate property if, after division of the marital assets, "the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party."

In the present case, it is possible that upon appropriate proof, the trial court may have been justified in invading any separate interest by plaintiff in property that is part of the family

trust. Plaintiff argues, however, that his interest in the family trust is inchoate, not vested, and may never come to fruition (if he predeceases his father). At trial, defendant did not ask for a share of plaintiff's separate trust property. Rather, she argued that the CDs and the Mendota property were part of the marital estate. Alternatively, defendant asked to be awarded credit for the appreciation of the Mendota property, and to be awarded credit for the marital funds expended in improving the Montgomery Point and Mendota properties. Under the circumstances, we find it unnecessary to address plaintiff's argument that his interest in the family trust is contingent and inchoate and, therefore, cannot be divided as part of the marital estate. Instead, we shall determine whether the CDs and the Mendota property were part of the marital estate, and whether, in light of the facts and circumstances of the case, it was fair and equitable to award defendant credit for various amounts invested by the parties in these properties.

### 1. The Mendota Property

Plaintiff and his mother inherited the cottage on the Mendota Property during the parties' marriage. They later transferred the property to the family trust by bill of sale. The land was separately purchased by the family trust. In October 2000, the family trust transferred all or part of the property back to plaintiff.

Normally, inherited property that is kept separate from marital property is deemed to be the spouse's separate property, not subject to distribution. *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999). In this case, however, there was substantial evidence that defendant contributed toward the purchase, improvement, upkeep, maintenance, and management of the property as a whole, including its use as a rental property for the parties' benefit, which caused it to appreciate significantly in value. In particular, defendant cashed in two of her pensions, and the parties mortgaged the marital home, to pay for the Mendota land. Therefore, the trial court correctly decided that it was fair and equitable to compensate defendant for her share of the money and effort spent on the Mendota property (as a whole).

The October 2000 bill of sale shows that plaintiff acquired the Mendota *structure*, as his separate property. But because defendant significantly contributed to its improvement and appreciation, the structure can be included in the marital estate under MCL 552.401, and divided accordingly. But it is unclear from the record whether the Mendota land was acquired by plaintiff individually. Although the bill of sale does not reference the land, we note that concurrently with the October 2000 bill of sale, the family trust amended its schedule of properties to omit the Mendota property (both the land and the house). Thus, we believe that there is a question of fact concerning whether the family trust continues to own the Mendota land. Because it is unclear from the record whether the Mendota land was owned by plaintiff, and the trial court did not resolve this issue, we remand for further proceedings to determine plaintiff's interest, if any, in the Mendota land. If the court determines that plaintiff owned both the home and the land, then the Mendota property (as a whole) was properly subject to distribution under MCL 552.401, and, under the circumstances, we affirm the trial court's decision to award defendant a one-half interest in the Mendota property (as a whole). Conversely, if the trial court determines that the Mendota land was not owned by plaintiff individually, but rather belongs to the family trust, then the trial court would have lacked jurisdiction to divide it in the context of this divorce action. Nonetheless, we conclude that

defendant would still be entitled to credit for half of the marital funds used to finance the purchase of the land.

## 2. The Montgomery Point Property

The parties do not dispute that the Montgomery Point property is owned by the family trust. Therefore, the trial court lacked jurisdiction to distribute this third-party property. Thus, the trial court erred in awarding a one-half interest in the Montgomery Point property to defendant. However, the parties spent approximately \$27,000 building an addition to the property, so they could stay on the premises and help care for plaintiff's father. Under the circumstances, the trial court properly decided that it was fair and equitable to award defendant credit for half of the marital funds used to improve the property. On remand, the divorce judgment should be amended to award defendant a credit for half the value of marital funds used to improve the property.

## 3. The CDs

It is undisputed that, although the CDs were placed in the parties' names, the CDs were purchased with money belonging to plaintiff's father. Although there was a factual dispute concerning the CDs' intended use, there was no evidence that the parties had any binding obligation to use the money in any particular manner. Thus, the trial court did not err in finding that because the CDs were titled in the parties' names, they were part of the marital estate and were subject to distribution between the parties. Plaintiff's subsequent disposition of the CDs presents a judgment enforcement issue that is beyond the scope of this appeal.

## III. Personal Property

Plaintiff argues that the trial court erred in failing to specifically divide the parties' personal property and by instructing them to take turns choosing from a list of items. We agree.

Plaintiff testified at trial that he wanted the "old snowmobile in the basement," "three old cars in the garage," and his tools. He stated that these were "all" the items he wanted and that defendant could keep the rest. Defendant agreed that the snowmobile and two of the three antique cars were plaintiff's separate property before the marriage, and he could have them. Defendant agreed that plaintiff could also have a 1966 Cornet and his tools, but she wanted credit for half the value of these items (\$1,300 for the car and \$1,500 for the tools) because they were purchased during the marriage.

Defendant made a list of items she wanted from the Mendota property and the Montgomery Point property. The trial court declined to hear testimony about the individual items. However, plaintiff's counsel stated that plaintiff had "no issue with regards to the personal property items that [defendant] requested."

In light of the parties' testimony, there were no facts in dispute concerning the parties' personal property. The division ordered by the trial court was inequitable in light of the parties' testimony.

## IV. Valuation of Assets

Plaintiff argues that defendant did not present evidence concerning the value of various properties held by the family trust and, therefore, the trial court should not have divided them as part of the marital estate.

In light of our decision in section II, *supra*, it is unnecessary to directly address plaintiff's argument. We note that, at trial, defendant did not ask for half of the Montgomery Point property, so there was no reason for her to introduce evidence of its fair market value. Rather, defendant sought to be reimbursed for half of the marital funds expended in improving the Montgomery Point property, and she introduced receipts in support of the amounts she claimed. Defendant asked for half of the Mendota property, which she argued was a marital asset, and introduced two appraisals. She also introduced receipts for the marital funds used to improve the Mendota property, and evidence of the source and amount of funds used to purchase the land. The CDs had readily ascertainable face values. Moreover, because the trial court divided everything equally, the parties' awards had equal value. We therefore reject plaintiff's claim of error.

## V. The Trial Court's Findings

Plaintiff argues that the trial court failed to make sufficient findings of fact concerning the factors relevant to an equitable division of property during a divorce. We disagree.

"In actions tried on the facts without a jury . . . the court shall find the facts specially, [and] state separately its conclusions of law . . . ." MCR 2.517(A)(1). "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2); see also *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994). Where the trial court's findings "minimally satisfy the requirements of the court rules and case law," remand for specific findings of fact is unwarranted. *Fletcher, supra* at 883.

The division of property in a divorce action is not governed by "strict mathematical formulations"; rather, "while the division need not be equal, it must be equitable" in light of all the facts. *Sparks, supra* at 158-159. "[T]he following factors are to be considered wherever they are relevant to the circumstances of the particular case: (1) 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." *Id.* at 159-160. The trial court shall make specific findings of fact regarding the factors it finds to be relevant, even if not on this list, but it may not assign disproportionate weight to any one circumstance. *Id.* at 158-160, 162-163.

In this case, plaintiff fails to identify any factual disputes that needed to be resolved by the trial court with respect to any of the relevant factors. Further, plaintiff does not argue that the trial court's "even" division of property was inequitable in light of the relevant factors. Under the circumstances, we find no merit to this issue.

## VI. Post-Judgment Proceedings

For his last claim of error, plaintiff argues that the trial court erred in finding that it lacked jurisdiction to decide his motion for relief from judgment or for a new trial and his motion for a stay, although he claims that it correctly found that it lacked jurisdiction to decide defendant's motion to enforce the judgment and her request for a writ of garnishment.

The construction and application of the court rules is a question of law that is reviewed de novo. *Wickings v Arctic Enterprises, Inc.*, 244 Mich App 125, 133; 624 NW2d 197 (2000).

#### A. Motion for Relief from Judgment

Plaintiff filed a claim of appeal in Docket No. 287461 before the trial court decided his motion for relief from judgment or a new trial. As the trial court correctly observed, MCR 7.208(A)(4) provides that "[a]fter a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from except . . . as otherwise provided by law." Therefore, although plaintiff's claim of appeal was premature, and was later dismissed for lack of jurisdiction, the act of filing the claim of appeal deprived the trial court of jurisdiction to decide plaintiff's motion for relief from judgment or for a new trial, in which he sought to have the judgment set aside or amended. Thus, the trial court did not err in finding that it lacked jurisdiction to grant plaintiff's motion.

#### B. Motion for a Stay

MCR 7.208(F) provides that after an appeal is filed, "[t]he trial court retains authority over stay and bond matters, except as the Court of Appeals otherwise orders." In fact, MCR 7.209(A)(2) provides that "[a] motion for bond or for a stay pending appeal may not be filed in the Court of Appeals unless such a motion was decided by the trial court." Moreover, MCR 7.209(E)(1) provides that, "[e]xcept as otherwise provided by law or rule, the trial court may order a stay of proceedings, with or without a bond as justice requires." Lastly, MCR 2.614(B) provides that a trial court may temporarily stay enforcement of a judgment while it decides a motion for relief from judgment.

Contrary to plaintiff's argument on appeal, the trial court recognized that it had "dual authority" with this Court to grant plaintiff's motion for a stay without bond. Thus, there was no error.

#### C. Defendant's Motions to Enforce the Judgment

MCR 2.614(A)(1) provides that enforcement of a judgment is automatically stayed for 21 days after the judgment is entered. Further, if a timely motion for a new trial or for relief from judgment is filed, execution on the judgment may not issue until 21 days after the motion is decided. *Id.* However, "[n]othing in th[e] rule prohibits the court from enjoining the transfer or disposition of property during the 21-day period." *Id.* Several other court rules govern post-judgment enforcement and execution proceedings, including MCR 2.621(A) (separate proceeding to enforce a judgment), and subchapter 3.100, governing debtor-creditor proceedings such as garnishments, attachments, installment payments, and claim and delivery. Moreover, MCR 7.209(A)(1) provides that "[e]xcept for an automatic stay pursuant to MCR 2.614(D) [governmental immunity], an appeal *does not stay* the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders" (emphasis

added). Thus, after the automatic stay periods, a trial court has continuing jurisdiction to enforce a judgment, even after a claim of appeal has been filed, unless proceedings have been stayed.

In the present case, the *second* automatic stay period (due to plaintiff's still-pending motion for relief from judgment) was in effect on September 3, 2008, when the trial court heard and denied defendant's motion to enforce the judgment. Thus, the motion was premature, although the court could have enjoined plaintiff from disposing of any marital property.

The automatic stay thereafter expired on September 24, 2008, 21 days after the court denied plaintiff's motion for relief from judgment and for a new trial. Defendant's remaining motions were filed after that date. Thus, the trial court erred in finding on December 31, 2008, that it did not have jurisdiction to entertain defendant's motion to enforce the judgment's alimony provisions or her request for a writ of garnishment.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra  
/s/ Richard A. Bandstra  
/s/ Deborah A. Servitto