

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES SHALHOUB,

Plaintiff-Appellee,

v

BARBARA SHALHOUB,

Defendant-Appellant.

UNPUBLISHED

October 9, 2014

No. 316335

Oakland Circuit Court

LC No. 2012-792584-DM

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Defendant-wife appeals the property division, child support, and spousal support provisions in the trial court's judgment of divorce. Defendant also appeals the trial court's denial of her request for attorney fees. Defendant's arguments on appeal are based on defendant's contention that the trial court undervalued plaintiff-husband's annual income, plaintiff's interests in business property, and plaintiff's interest in the parties' residence. Although defendant argues that the trial court erred as a matter of law, the arguments actually challenge the trial court's factual findings. Because the record is sufficient to support the trial court's findings, we affirm.

The parties married on August 27, 1993. They had two daughters, born in 1994 and 1996, respectively. The parties separated in 2011, and plaintiff-husband filed for divorce in 2012. After numerous discovery disputes and a six-day trial, the trial court ordered that the marital estate be divided equally between the parties, with plaintiff paying defendant \$500 monthly as alimony in gross for certain property. The trial court further ordered that plaintiff pay \$416.21 in child support, in keeping with the Michigan Child Support Formula. The court declined to order spousal support.

On appeal, defendant first argues the trial court's valuation of the marital assets was erroneous. The valuation issues involve three assets: a restaurant business known as Packard Grill; a real property parcel held by Shelby Properties, Inc.; and the family residence on Standish Street in Troy, Michigan. We review for clear error the trial court's factual findings regarding the division of marital property. *Cunningham v Cunningham*, 289 Mich App 195, 200; 795 NW2d 826 (2010). We will not reverse the trial court's valuations of marital assets unless the valuations are clearly erroneous. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). We defer to the trial court's credibility determinations. *Johnson v Johnson*, 276 Mich App 1, 10-11; 739 NW2d 877 (2007).

I. THE STANDISH STREET HOUSE

A. TRIAL COURT'S FINDINGS

The parties stipulated that the value of the house at the time of the divorce was \$295,000. The trial court found that plaintiff owned a one-third interest in the house, that his interest was valued at \$60,875, and that this amount was marital property. The court calculated this value from the \$295,000 stipulated property value, less \$112,375 owed to plaintiff's sister. The court awarded defendant one-half of \$60,875.

B. ANALYSIS

The parties presented conflicting testimony concerning the extent of plaintiff-husband's ownership interest in the Standish Street house. Plaintiff had purchased the house prior to the marriage, and approximately one week before the parties married, plaintiff conveyed a one-third interest in the house to each of his two sisters. Defendant-wife argued that plaintiff's conveyance of a one-third interest to each of his sisters was fraudulent, and that plaintiff's intent in the conveyance was to place most of the value of the Standish Street house outside of the marital estate.

However, defendant cites nothing in the record to challenge the validity of the transfer of interests to plaintiff's sisters. To establish fraud, defendant was required to prove that plaintiff intended to deprive defendant of a property interest in the house. See *Stein v Home-Owners Ins Co*, 303 Mich App 382, 386; 843 NW2d 780 (2013). Although there was testimony at trial that each party had been untruthful during the marriage, there was no evidence, other than defendant's assertions, that plaintiff intended to defraud her when he transferred interests to his sisters. The trial court accepted plaintiff's testimony, and that of his sister, explaining that the transfer of interests to the sisters was in keeping with the expressed intent of their deceased mother. This Court gives deference to a trial court's findings when based on the credibility of the witnesses. *Johnson*, 276 Mich App at 11. Accordingly, this Court will not disrupt the trial court's finding that plaintiff owned a one-third interest in the Standish house.

Defendant next contends that the trial court erred by reducing the value of the Standish Street house by \$112,375, which is the amount one of plaintiff's sisters paid to redeem the house from foreclosure. Defendant argues that the sister's payment is not a valid loan because the payment fails to comply with the statute of frauds, MCL 566.132. Defendant also argues that the trial court could have refused to recognize the loan, citing *Donahue v Donahue*, 134 Mich App 696, 705-707; 352 NW2d 705 (1984).

Defendant's arguments are unpersuasive. A court has authority to divide the marital estate in accordance with the reality of ownership. *Gates v Gates*, 256 Mich App 420, 428; 664 NW2d 231 (2003). In this case, the trial court considered and accepted the evidence that plaintiff's sister had paid to redeem the Standish Street house from foreclosure, and that the sister expected be repaid when and if the house was sold. Accordingly, the trial court did not err in reducing the value of plaintiff's interest in the Standish Street house to reflect the sister's redemption payment.

II. PACKARD GRILL

A. TRIAL COURT'S FINDINGS

The trial court found that plaintiff owned a one-third interest in the Packard Grill, that the interest was valued at \$83,333, and that this amount was marital property. The trial court calculated this amount based on the stipulated value of the business as \$250,000, and on the court's finding that plaintiff and his two sisters owned the Packard Grill in one-third shares.

B. ANALYSIS

Defendant contends that the trial court erred by determining that plaintiff's sisters had ownership interests in the Packard Grill. We conclude that the record supports the trial court's determination. At trial, plaintiff's accountant testified that since the time the Packard Grill opened, plaintiff and his two sisters each owned a third of the business. Plaintiff's accountant confirmed that the Packard Grill issued annual K-1 tax statements to both sisters, and that the K-1 statements reported the sisters' portions of the Packard Grill's income or losses. In recent years, the Packard Grill had distributed dividend checks to each sister for \$500 monthly.

Plaintiff's sisters both testified that they had invested money in the Packard Grill. In contrast, defendant testified that plaintiff told her that his sisters had loaned him money for the Packard Grill.

After hearing the testimony and reviewing the exhibits presented at trial, the trial court determined that plaintiff's sisters were investors, and that their contributions to the Packard Grill were properly characterized as investments, rather than loans. The undisputed evidence that the Packard Grill issued K-1 statements to the sisters supports the trial court's determinations. The Internal Revenue Service Schedule K-1 is entitled "Partner's Share of Income, Deductions, Credits, etc." See Schedule K-1 (Form 1065), <http://www.irs.gov/pub/irs-pdf/f1065sk1.pdf>. The form requires information about whether the partner is a limited or general partner, as well as information about the income, dividends, gains, and losses attributable to the partner. *Id.* Given this evidence, the trial court did not err in attributing a one-third ownership in the Packard Grill to each of plaintiff's sisters.

III. SHELBY PROPERTIES

A. TRIAL COURT'S FINDINGS

The trial court found that plaintiff owned a one-fifth interest (20%) in Shelby Properties, that the interest was valued at \$118,870, and that this amount was marital property. The court calculated this amount by valuing the business as \$707,500, which is the average of the \$600,000 appraisal offered by plaintiff's expert, and the \$815,000 offered by defendant's expert.¹ The court then subtracted the \$113,148.86 loan amount due on the business, for a balance of \$594,351.

¹ Plaintiff's expert appraiser valued Shelby Properties at \$600,000; defendant's expert appraiser valued it at \$815,000.

B. ANALYSIS

The dispute concerning Shelby Properties centers on two issues: the lack of documentation on the division of ownership and a quitclaim deed which indicates that defendant-wife relinquished any interest in the property. The evidence supports the trial court's determination that plaintiff had a 20% share of the property.

At trial, plaintiff's accountant testified that the ownership of Shelby Properties was as follows: plaintiff, 20%; the parties' two daughters, 5% each; and plaintiff's sisters, 35% each. Defendant argues that plaintiff's accountant's testimony does not support the trial court's determination of the ownership interests in Shelby Properties. Defendant implies that plaintiff was required to produce stock certificates or other documentation to support his allegation.

We disagree. Plaintiff produced a loan document for Shelby Properties that lists plaintiff's sisters as officers in the Shelby Properties Corporation. Both sisters testified that they had invested money in Shelby Properties. This evidence, combined with the accountant's testimony, is sufficient to support the trial court's determination concerning the ownership of the property.

Defendant next argues that the trial court erred by acknowledging a quitclaim deed that relinquished defendant's interest in Shelby Properties. Defendant maintains that the quitclaim deed was misleading or was a forgery, and that the trial court's property division should have reflected the allegedly questionable nature of the deed. We disagree.

At trial, plaintiff's accountant testified that he had known defendant since approximately 1992, and that he considered her a friend. He further testified that if plaintiff asked defendant to sign something, she would sign it without reading it. The accountant witnessed plaintiff and defendant sign the quitclaim deed, and he testified that a notary properly notarized the deed. The notary in turn testified that she did not specifically recall notarizing the deed, but confirmed that the deed bore her notarization. She testified that she would not have notarized the deed unless she had examined the proof of identification of both of the signatories and both had appeared in person to sign the deed. Defendant retained a handwriting expert to examine the signatures on the deed. The parties stipulated that the handwriting expert's analysis results were inconclusive.

On the basis of this record, there is no indication that the trial court's assessment of the quitclaim deed was against the great weight of the evidence, or that the property division should have been altered.

IV. CHILD SUPPORT AND SPOUSAL SUPPORT

Defendant argues that the trial court significantly underestimated plaintiff's annual income, and that this error caused the court to err in its calculations concerning child support and spousal support. This Court reviews the trial court's factual findings regarding child support and spousal support for clear error. *Carlson v Carlson*, 293 Mich App 203, 205; 809 NW2d 612 (2011); *Loutts v Loutts*, 298 Mich App 21, 25; 826 NW2d 152 (2012).

The trial court found that plaintiff earns \$24,500 annually, and that defendant earns \$10,400 annually. The court ordered that plaintiff pay defendant monthly child support of \$416 , pursuant to the Michigan Child Support Formula. The court declined to order spousal support.

We find no clear error in the trial court's determination of plaintiff's annual income. Although there was considerable testimony from defendant's expert accountant that there were discrepancies concerning the cash expenditures of the Packard Grill, plaintiff's accountant testified that the discrepancies did not reflect additional income. Similarly, although defendant's expert testified that the Packard Grill's cost of goods sold was higher than the industry average, the expert did not conclude that this figure necessarily indicated that plaintiff was receiving unreported income. The trial court heard testimony from plaintiff, defendant, and plaintiff's accountant, and the court concluded that plaintiff and his accountant had accurately described plaintiff's annual income. We decline to reweigh the credibility of this testimony.

Absent any clear error in the trial court's assessment of plaintiff's annual income, there is no ground to reverse the child support award, or the trial court's decision not to award spousal support.

V. ATTORNEY FEES

Defendant's final argument challenges the trial court's denial of her request for attorney fees. A trial court has discretion to award attorney fees in a divorce action, and the party seeking fees must establish both the party's own financial need *and* the opposing party's ability to pay. *Ewald v Ewald*, 292 Mich App 706, 724-725; 810 NW2d 396 (2011); see also MCR 3.206. "This Court reviews a trial court's decision to grant or deny attorney fees for an abuse of discretion; the court's findings of fact on which it bases its decision are reviewed for clear error." *Ewald*, 292 Mich App at 724-725.

Defendant's argument concerning attorney fees is founded on defendant's contention that the trial court erred in determining that plaintiff's annual income is \$24,000. As previously discussed, we find no clear error in the trial court's factual finding concerning plaintiff's income. Accordingly, there is no basis for reversing the attorney fee decision.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O'Connell