

STATE OF MICHIGAN
COURT OF APPEALS

JANE M. CLARK,

Plaintiff-Appellee,

v

MARK J. KRAWCZYK,

Defendant-Appellant.

UNPUBLISHED
September 11, 2014

No. 316633
Livingston Circuit Court
LC No. 12-005401-DO

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by right from the judgment of divorce issued by the circuit court. For the reasons outlined below, we affirm in part, reverse in part, and remand for further proceedings.

I. FACTS

The parties were married on July 26, 2003, and plaintiff filed for divorce on February 21, 2012, after discovering a suspicious text message on defendant's phone to another woman and discovering that defendant had operated a Match.com account during the parties' marriage. A trial was held over a five-day period, with testimony divided by issue.

A. HOUSE ON WHITMORE LAKE

Plaintiff testified that she was living at a house on Whitmore Lake that she had purchased with her former husband in 1989. She became sole owner of the property upon his death. After being widowed for seven years, plaintiff and defendant married. Plaintiff testified that during "the first several years" of her marriage to defendant, she wrote checks for the mortgage on the home out of funds she had received from the sale of inherited property. She explained that in 2004, after she had married defendant, she moved the title out of her trust and placed it in both parties' names in order to obtain a home equity line of credit. However, the title to the house was transferred back into plaintiff's trust later that same day.

Defendant testified that he did not move into the house on Whitmore Lake on a full-time basis until he sold his home in Ann Arbor in 2007. Defendant also testified that after he moved

into the house on Whitmore Lake, he made the mortgage and home equity loan payments on the house approximately 90 percent of the time.

B. MONARCH QUILTS, LLC

Plaintiff testified that she had inherited a one-half interest in Viking Sewing from her previous husband and that after the business was sold, she waited out a year-long non-compete clause before opening Monarch Quilts, LLC. Monarch Quilts was a single-member LLC, and the sole member was plaintiff. Plaintiff further testified that she had loaned \$285,714 to Monarch Quilts. Plaintiff testified that she was not sure that she could make the business profitable in the future, but that she would like to have the opportunity to do so.

The court-appointed evaluation expert, Patrick Hanniford, testified that he did not believe that Monarch Quilts had any value as a going concern and that it should be evaluated for its liquidation value. Hanniford testified that he did not include the approximate \$35,000 debt that was owed by Viking Sewing and was being paid by Monarch Quilts in his calculation of Monarch Quilts's liabilities, as that debt was incurred by a separate business. Hanniford also testified that in evaluating the "loan" made by plaintiff to Monarch Quilts, it was difficult to determine which of plaintiff's contributions were loans, which were investments, and which were intended to be a permanent part of the business's financing. As a result, he considered plaintiff's contributions as "investments" and not "loans." But Hanniford did acknowledge that the company's books logged the money as loans.

Leighann Miller, a registered tax return preparer, testified that Monarch Quilts was not currently profitable because it was servicing debt from Viking Sewing. Miller also testified that Hanniford had miscalculated the company, in part, because he failed to include the \$35,000 debt owed by plaintiff's previous business, which was being paid off by Monarch Quilts. Miller testified that there were never any written notes for the loans made by plaintiff to Monarch Quilts.

Defendant testified that he did not know that plaintiff's contributions to the business were loans and that the contributions should not be considered loans, as "she made a conscious decision to throw good money after bad." Defendant further testified that he had obtained two credit cards under his name that were used exclusively by Monarch Quilts.

C. JUDGMENT OF DIVORCE

The trial court found that defendant made approximately \$100,000 per year in income, while plaintiff earned approximately \$20,000 per year. The trial court also found that the home on Whitmore Lake was plaintiff's premarital property, as well as any equity and debt associated with the property. With regard to Monarch Quilts, the trial court found that the business was a marital asset with \$352,429.54 in outstanding liabilities, including a \$35,000 debt incurred by Viking Sewing and the \$285,714 loan from plaintiff. The trial court also granted plaintiff a one-year period in which to make the business profitable. In the event that the business was not profitable after one year, the business was to be liquidated, and both parties were to share equally any remaining debt.

The trial court then divided the majority of the assets approximately equally, but awarded a pontoon boat valued at \$12,000 to plaintiff, and assigned plaintiff no less than \$1,381 in credit card debt, while assigning defendant no less than \$37,575 in credit card debt. Lastly, due to the disparity in the parties' income and defendant's role in precipitating the deterioration of the marriage, the trial court ordered defendant to pay spousal support to plaintiff, as well as plaintiff's attorney fees.

II. STANDARD OF REVIEW

A trial court's findings of fact are reviewed for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "A decision is clearly erroneous when 'the reviewing court is left with a definite and firm conviction that a mistake has been made.'" *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008), quoting *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006). The ultimate "dispositional ruling of the trial court is discretionary and will be affirmed unless this Court is left with the firm conviction that it was inequitable." *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005).

A trial court's grant or denial of attorney fees in a divorce action is reviewed for an abuse of discretion. *Id.* at 164. The trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

III. ANALYSIS

A. HOUSE ON WHITMORE LAKE

Defendant argues that the trial court erred by classifying the house on Whitmore Lake as plaintiff's premarital property. In divorce proceedings, a trial court must divide marital property between the parties, and in doing so must first determine which property is marital and which property is separate. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). "Generally, marital property is that which is acquired or earned during the marriage, whereas separate property is that which is obtained or earned before the marriage." *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 836 (2010), citing MCL 552.19. It is only this marital property that is subject to apportionment between the parties in the court's equitable property division. *Cunningham*, 289 Mich App at 201. Separate assets, however, may become marital property when they are commingled with marital assets and are treated as marital property by the parties. *Pickering v Pickering*, 268 Mich App 1, 12-13; 706 NW2d 835 (2005). Further, the court may award a party "all or a portion" of property "owned by his or her spouse, as appears 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." MCL 552.401.

In the instant case, plaintiff inherited the home on Whitmore Lake prior to marrying defendant, and the house was held in plaintiff's trust for the duration of the marriage, save for one day when it was removed for the purposes of acquiring a home equity line of credit in both parties' names. On appeal, defendant argues that the house became marital property when he

moved in four years after their marriage and assumed the responsibility of making the payments on the mortgage and home equity lines of credit.

There is no question that the home at the outset of the marriage was plaintiff's separate property because she acquired it before the marriage through inheritance. See *Cunningham*, 289 Mich App at 201. But this does not mean that the property could not have become marital property as a result of how the parties treated the property. See *id.* Here, the unrefuted testimony established that defendant made approximately 90 percent of the payments on the house for over five years, thereby preserving the home and, presumably, adding to its value. It is not clear if this alone would be enough to transform the character of the home from separate property to marital property. However, this is not the only relevant fact. There is no question that the parties also obtained a home equity loan in both parties' names and that both parties contributed money to the joint account that was used to make payments on the home equity loan. This type of behavior shows that the parties did not treat the home equity, i.e., the house itself, as plaintiff's separate property. As a result, the trial court clearly erred when it found that the home remained plaintiff's separate property in spite of the way the parties treated the asset.

The trial court relied, in part, on *Hostetler v Hostetler*, 46 Mich App 724; 208 NW2d 596 (1973) and *Grotelueschen v Grotelueschen*, 113 Mich App 395; 318 NW2d 227 (1982), for the proposition that "an inheritance is a separate asset and retains that separate character even when comingled with the marital estate." *Hostetler* says nothing of the sort, and in fact has no mention of separate property principles. And, although *Grotelueschen* deals with a separate property issue, it does not stand for the proposition that separate property, even if comingled with marital property, retains its separate property status. As already discussed, Michigan law is to the contrary. See *Hodge v Parks*, 303 Mich App 552, 555; 844 NW2d 189 (2014); *Cunningham*, 289 Mich App at 201.

B. MONARCH QUILTS, LLC

Defendant argues that the trial court erred by failing to value Monarch Quilts as a business. Under MCR 3.211(B)(3), a judgment of divorce "must include a determination of the property rights of the parties." With respect to Monarch Quilts, the trial court found that the company was marital property, calculated the liabilities of the business, and granted plaintiff a one-year period in which to make the business profitable. On appeal, defendant asserts that the trial court's decision "punted" the issue of valuing the business and was erroneous under MCR 3.211(B)(3).

While we have no issue with the trial court's characterization of Monarch Quilts as a marital asset, we conclude that the trial court erred with respect to how it handled the disposition of this marital asset. First, the trial court did not determine the value of this asset, as it was required to do. See *Olson v Olson*, 256 Mich App 619, 627-628; 671 NW2d 64 (2003) (stating that a trial court clearly errs when it fails to determine the value on a disputed piece of marital property). Instead, it merely referenced the value that Hanniford calculated for the company (\$107,001), but it did not adopt this as the business's actual value. We note that it is clear that the trial court could not have adopted that amount as the company's actual value because it determined that certain liabilities existed for Monarch Quilts that Hanniford did not use. Specifically, in arriving at the \$107,001 value, Hanniford determined that Monarch Quilts had

assets worth \$226,750 and liabilities amounting to \$119,749.¹ But the trial court determined that Monarch Quilts had liabilities totaling \$352,429.54. Thus, it is evident that the court could not have adopted Hanniford's evaluation of \$107,001. In fact, if the court had used the same assets calculation that Hanniford used with its own liabilities calculation, then the calculated value would have been -\$125,679.54.² Therefore, the trial court clearly erred when it failed to assign a value to Monarch Quilts.

Furthermore, the trial court erred when it awarded the business to each party equally and allowed plaintiff to run the business for a year "to make the business profitable." While the court's solution was unorthodox and under some circumstances, it arguably could have been reasonable, that is not the case here. There was no evidence that the business ever was profitable, and there was no evidence that anything was going to change for the upcoming year. The real problem with this solution was that in the likely event that the business still was not profitable, the parties were to share the total debt equally. Thus, counter to defendant's wishes, the business would be allowed to accrue more debt, which in turn would be attributable to him, all without him having any say in how the business functioned. We conclude that such an arrangement is inequitable. Instead, the trial court should have valued the business at the time of the divorce and considered that value when distributing *all* of the marital property, including all of the marital assets and all of the marital debt.

Defendant also argues that the trial court erred by finding that the funds invested in Monarch Quilts by plaintiff were a loan that needed to be repaid out of the proceeds of any liquidation of the business. While defendant accurately asserts that there was no written note classifying the contributions made by plaintiff as loans, the business's financial records nonetheless listed the contributions as loans. Further, even though the court-appointed business evaluator characterized plaintiff's loan as a contribution or investment, he admitted at trial that it was categorized as a loan in the company's books and that there was nothing inappropriate with the way it was tracked. Therefore, we are not left with a definite and firm conviction that the trial court made a mistake when it classified plaintiff's contributions to the business as loans.

We also disagree with defendant that the trial court erred by including \$35,000 in debt incurred by Viking Sewing in the liabilities of Monarch Quilts. While Hanniford testified that he thought the debt should not be counted as a liability against Monarch Quilts, another expert testified differently. Miller testified that the \$35,000 was part of "debt servic[ing]" that Monarch Quilts was doing for Viking Sewing. Thus, with the competing testimony, we cannot say that the trial court clearly erred in adopting the position put forth by Miller. All the record indicates is that the debt originally was Viking Sewing's and that Monarch Quilts was now paying it. While it is not clear how Monarch Quilts came to be legally responsible for this debt (assuming

¹ \$226,750 in assets minus \$119,749 in liabilities equals \$107,001 in liquidation value.

² \$226,750 in assets minus \$352,429.54 in liabilities would equal -\$125,679.54 in liquidation value. Note that we offer no opinion on whether the \$226,750 value in assets is correct. We leave the determination of value to the trial court on remand.

it is legally responsible), with the limited testimony on this issue, we are not left with a definite and firm conviction that there was a mistake.

C. THE DIVISION OF PROPERTY

Defendant argues that the property division in the judgment of divorce was unduly inequitable. When dividing marital property, a trial court considers the following factors: (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. *Sparks*, 440 Mich at 159-160.

Defendant claims that the property distribution was inequitable based on his previously stated arguments related to the Whitmore Lake home and Monarch Quilts. While we do not agree that the trial court's distribution was "inequitable," the court did err when it failed to distribute these two marital assets at the time of the divorce.

Defendant also claims that the division of credit card debt was inequitable. Defendant was left with \$37,575 in credit card debt, while plaintiff was left with only \$1,381. The trial court concluded that defendant was at fault in the breakdown of the marriage and that he had substantial annual income while plaintiff had very little annual income. The record supports these findings and refutes defendant's contention that the inequalities in the division of marital property were motivated solely by the trial court's determination that defendant was at fault for the divorce. Consequently, we are not left with a firm conviction that the trial court made an inequitable disposition of the credit card debt.

Therefore, on remand, the trial court is to consider the Whitmore Lake home as marital property and equitably distribute any associated value/debts of the home at the time of the divorce between the parties.³ Further, the trial court clearly erred in how it handled the distribution of the marital asset, Monarch Quilts. Instead of delaying any disposition for a year, the trial court should have assessed the value of the company at the time of the divorce and then factored that net value into the overall property division.

D. ATTORNEY FEES

Defendant also argues that the trial court abused its discretion by ordering defendant to pay plaintiff's attorney fees. Under MCR 3.206(C), a party in a domestic relations case may "request that the court order the other party to pay all or part of the attorney fees and expenses related to the action." The party requesting attorney fees, however, must allege facts sufficient to show that the party "is unable to bear the expense of the action, and that the other party is able to pay." MCR 3.206(C)(2)(a).

³ Contrary to plaintiff's argument that the house has no equity, the trial court found that there was \$105,000 equity in the home at the time of trial.

Here, plaintiff presented evidence establishing that she had little to no income and was relying on financial support from a family member to pay her attorney fees, while defendant had an annual income of approximately \$100,000. On appeal, defendant argues that plaintiff had the ability to pay her legal expenses due to the value of the assets that plaintiff was awarded in the divorce. Requiring a party to liquidate the assets awarded in a divorce in order to pay legal expenses, however, is contrary to the very purpose of MCR 3.206(C). Defendant further argues that an award of attorney fees is inappropriate because plaintiff's actions during mediation led to an unnecessary accumulation of legal fees. This argument cannot be substantiated by the record.

Therefore, because plaintiff presented evidence demonstrating both an inability to pay her legal expenses on her part, and an ability on defendant's part to pay those expenses, the trial court did not abuse its discretion by ordering defendant to pay plaintiff's legal expenses.

III. CONCLUSION

For the reasons stated above, we reverse the trial court's determination that the Whitmore Lake property was plaintiff's separate property and vacate the portion of the trial court's judgment deferring the valuation and disposition of Monarch Quilts for a year's time. On remand, the trial court is to perform an evaluation of Monarch Quilts as of the date of the divorce and, while considering its prior disposition of the other marital property, dispose of the Whitmore Lake home and Monarch Quilts as it equitably sees fit. Although we concluded that the trial court did not clearly err in finding that Monarch Quilts's debts included the \$35,000 from Viking Sewing and \$285,000 as a loan from plaintiff, our ruling does not preclude the trial court from reevaluating these and other aspects that are necessary for it to determine Monarch Quilts's value.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. No costs, as neither party prevailed in full. MCR 7.219.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello