STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM BORAS, Plaintiff-Appellee,	UNPUBLISHED July 21, 2016
v	No. 328616 Kent Circuit Court
ANGELA ANN BORAS, a/k/a ANGELA ANN BURANDT, Defendant-Appellant.	LC No. 14-001890-DO

Before: MURRAY, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's division of property in a judgment of divorce granted to plaintiff. Defendant challenges the classification of premarital equity in the parties' marital home as plaintiff's separate, premarital asset. Defendant also claims that the court failed to (1) consider a debt that reduces the value of defendant's award, (2) divide a joint bank account between the parties, (3) award items of personal property to defendant, and (4) consider the effect of taxes on the value of each party's award. We find no basis for reversal and thus affirm.

I. FACTS AND PROCEEDINGS

Plaintiff and defendant married in April 2007. Plaintiff filed this divorce action in March 2014. The trial court assigned fault to plaintiff for the dissolution of the marriage and accordingly awarded 55% of the marital estate to defendant.

The trial court classified each contested financial asset as marital property or premarital, separate property. The court then compiled all marital assets and divided the total value of those assets between the parties, 55% to defendant and 45% to plaintiff. The parties stipulated to the value of several assets before trial, including premarital equity in the marital home, the home equity that accrued during the marriage, a joint Fidelity bank account, and the insurance proceeds awarded when the parties' Nissan Maxima was totaled. Plaintiff requested that the court award specific items of personal property to him, namely a clock and blanket he received as gifts from his relatives.

Plaintiff purchased the marital home before he married defendant. Plaintiff paid mortgage bills from his checking account, roughly $2,500 a month. In July 2008, more than one year after the marriage, plaintiff executed a quitclaim deed to create a joint tenancy between himself and defendant in the home. Defendant also placed her name on the checking account from which plaintiff withdrew mortgage payments. Although defendant's name appears on this checking account, plaintiff testified that defendant does not deposit funds into the account.

Defendant sold her own premarital home shortly after the marriage. She agreed to contribute $26,398.43 of the proceeds from this sale to plaintiff's outstanding home equity loan, which plaintiff had drawn to purchase furniture for the home. Both parties made payments on this home equity loan during the marriage.

II. STANDARDS OF REVIEW

This Court has authority to correct mistakes, address ambiguities, and resolve inequities in the trial court's division of property. See *Hagen v Hagen*, 202 Mich App 254, 258; 508 NW2d 196 (1993). Findings of fact are reviewed for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Beason v Beason,* 435 Mich 791, 805; 460 NW2d 207 (1990). A finding of fact is clearly erroneous if this Court, after reviewing the entire record, has a definite and firm conviction that a mistake has been made. *Beason*, 435 Mich at 805. Special deference must be given to findings of fact if those findings are based upon the credibility of a witness. *Johnson v Johnson*, 276 Mich App 1, 11; 739 NW2d 877 (2007).

"[I]f the trial court's account of the evidence is plausible in light of the record viewed in its entirety, the Court of Appeals may not reverse. . . . [T]he burden is on the appellant to persuade the reviewing court that a mistake has been committed . . . ." *Beason*, 435 Mich at 803-804.

This Court may also assess whether the trial court's division of property was fair and equitable in light of all facts. *Sparks*, 440 Mich at 151-152. The trial court's division of property is discretionary and should be affirmed unless this Court is left with the firm conviction that the division is inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks*, 440 Mich at 151-152.

III. ANALYSIS

A. PREMARITAL HOME EQUITY

Defendant first argues that the premarital home equity became a marital asset when both parties took title to the marital home. However, defendant offers no evidence that the parties intended the 2008 quitclaim deed to transfer the value of the premarital home equity jointly to defendant. Moreover, the parties stipulated to the value of the premarital home equity at trial as "95,309 to William." This suggests that both parties clearly distinguished the value of the premarital home equity from the value of the marital home equity. It also strongly suggests that the parties did not intend for those values to mingle when defendant took title to the home in 2008.

Defendant further argues that the premarital home equity was a marital asset because defendant made payments on a home equity loan and that this entitled her to a share of the premarital home equity. However, the trial court found that the home equity loan, drawn by plaintiff before the marriage to purchase furniture for the home, was distinct from the premarital home equity value. To reverse that finding, this Court must have the "definite and firm conviction" that the trial court erred. *Beason*, 435 Mich at 805. It was not unreasonable for the trial court to distinguish the home equity loan from the value of the premarital home equity, nor was it unreasonable to characterize defendant's contributions to the home equity loan as payments on a marital debt, rather than a premarital debt. The trial court accounted for defendant's contributions to this loan by listing the value of the *marital* home equity as a marital asset to be divided equitably between the parties.

Defendant next argues that the premarital home equity was a marital asset because plaintiff bestowed the value of this equity to defendant as a gift. However, defendant offers no evidence of the three required elements of gift-giving—intent, delivery, and acceptance—with respect to the value of the premarital home equity. *Molenda v Simonson*, 307 Mich 139, 141-142; 11 NW2d 835 (1943). Most notably, Defendant offers no evidence that the 2008 quitclaim deed transferred title to the premarital home equity to defendant or that the parties intended this to occur. There is no evidence to support a "definite and firm conviction" that the trial court erred in failing to consider the deed a "gift" of premarital home equity. *Beason*, 435 Mich at 805.

Even if the court did not err in classifying the premarital home equity as plaintiff's separate asset for the reasons stated above, defendant alternatively argues that she may "invade" the premarital home equity to recover the value of her contributions to the home equity loan, pursuant to MCL 552.401. This argument also fails. Defendant made no mortgage payments on the home before the marriage; plaintiff alone built equity in the home before the marriage. Even after the parties married, plaintiff alone made mortgage payments from a checking account to which defendant did not deposit funds. The trial court wisely considered defendant's contributions to the home equity loan not as premarital payments on a premarital debt, but rather as marital payments on a marital debt. The trial court did not return the exact value of these contributions to defendant, nor did it award defendant the furniture purchased with the home equity loan. Rather, the court included the value of the marital home equity in the total value of the marital estate and divided this value equitably between the parties, even though plaintiff alone made mortgage payments on the marital home. The trial court included the marital home equity in the list of divisible assets with implicit consideration for defendant's contributions to the home equity loan and various marital bills. We find no error.

B. ADDITIONAL ASSETS

Defendant argues that the trial court failed to consider an outstanding $7,500 debt on the parties' Nissan Maxima, which reduces the total value of defendant's award. Although defendant testified that there was a "loan on the Nissan," she failed to develop this evidence or provide a value for the loan at trial. She also failed to include evidence of the debt in her proposed judgment of divorce. In her trial memorandum, she even stated that "[e]xcept for the mortgage on the martial home, [the parties] have no debt." Defendant thus fails to meet her

burden to compel reversal of the trial court's judgment, because she offers no evidence from the record to support her claim that this debt should have been considered in the list of marital assets. *Beason*, 435 Mich at 804.

Regarding defendant's second claim, the trial court did fail to divide the parties' joint "wedding account," held at Fifth-Third Bank, containing $2,300. Plaintiff testified that this account existed. However, the parties did not stipulate to the value of this account, as they did to the joint Fidelity account, nor did defendant develop plaintiff's testimony that the wedding account existed. Neither defendant's nor plaintiff's documents in the record included the value of this account in the list of divisible marital assets.[1] We cannot find that the trial court clearly erred in failing to divide this asset between the parties because it had not been adequately urged to do so.

Defendant also argues that the trial court failed to assign certain items of personal property to her while at the same time awarding certain personal items to defendant. While it is true that the judgment of divorce specifically awarded a clock and blanket to plaintiff, without awarding any specific items of personal property to defendant, plaintiff testified at trial that the clock and blanket were gifts from his godparents and mother, respectively. Defendant offered insufficient testimony that the items of personal property she requests on appeal were her separate or premarital property, as opposed to property purchased with marital funds. Thus, the trial court's failure to award those items to defendant does not leave this Court with the "definite and firm conviction that a mistake has been committed." *Beason*, 435 Mich at 805.

Defendant lastly argues that the trial court's division of property was inequitable because it failed to consider the effect of taxes on the value of each asset in the marital estate; defendant assumes that a 25% tax rate will apply to each pre-tax asset. However, defendant cites no authority to support her claim. The precise after-tax value of each account was unknown to both the parties and the court. This Court has held that "an abuse of discretion per se does not occur where a trial court declines to consider tax consequences in the distribution of marital assets." *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). "[I]f . . . the parties have presented evidence that causes the court to conclude that it would not be speculating in doing so, it *may* consider the effects of taxation . . ." (emphasis added). Under the circumstances, we find no basis for reversal.

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[1] While defendant's written closing statement referred to a "wedding account," it assigned no value to this account, and her trial memorandum did not refer to it. In addition, at page 10 of her appellate brief, defendant refers to the *Fidelity* account (containing $8,764.82) as the "wedding account," and at page 30 of her appellate brief she refers to the "wedding fund" at Fifth-Third Bank as containing $8,457.75, when plaintiff had testified that the Fifth-Third account contained $2,300. In light of the convoluted arguments and insufficient factual foundation, we find no basis for relief.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Patrick M. Meter