

STATE OF MICHIGAN
COURT OF APPEALS

MARY CIPRIANO,

Plaintiff/Counter-Defendant/
Appellant,

UNPUBLISHED
July 5, 1996

v

No. 171878
LC No. 91-004641-DO

SALVATORE CIPRIANO,

Defendant/Counter-Plaintiff/
Appellee.

MARY CIPRIANO,

Plaintiff/Counter-Defendant/
Appellant/Cross-Appellee,

No. 174026
LC No. 91-004641 DO

v

SALVATORE CIPRIANO,

Defendant/Counter-Plaintiff/
Appellee/Cross-Appellant.

Before: White, P.J., and Smolenski and R.R. Lamb,* JJ.

PER CURIAM.

In docket numbers 171878 and 174026, plaintiff appeals as of right a judgment of divorce and supplemental judgment of divorce regarding the division of property, respectively. In docket number 174026, defendant cross-appeals as of right the supplemental judgment. We affirm in part, vacate in

* Circuit judge, sitting on the Court of Appeals by assignment.

part, and remand.

In reviewing a dispositional ruling in a divorce case, this Court first reviews the trial court's findings of fact for clear error and then decides whether the dispositional ruling was fair and equitable in light of the facts. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 Nw2d 792 (1995). We will affirm a dispositional ruling unless we are left with the firm conviction that the ruling was inequitable. *Id.*

The parties' first arguments on appeal concern the trial court's decisions regarding the extent to which defendant's separate property would be included in the marital estate. Plaintiff contends that the trial court erred when it declined to include defendant's "gifted/inherited" ownership interest in Peter Cipriano Enterprises and 424 shares of Cross and Peters Company stock in the marital estate pursuant to either MCL 552.23(1); MSA 25.103(1) or MCL 552.401; MSA 25.136.

A party's separate property should be distributed as part of a marital estate only if the remaining property is insufficient for the suitable support and maintenance of the other party, MCL 552.23(1); MSA 25.103(1), or if the other contributed to the acquisition, improvement or accumulation of the property, MCL 552.401; MSA 25.136. *Lee v Lee*, 191 Mich App 73, 78-79; 477 NW2d 429 (1991).

Concerning the court's determination that the property in the marital estate excluding defendant's aforementioned interests was "more than sufficient for the suitable support and maintenance of plaintiff," we find neither clear error nor are we left with a firm conviction that a mistake was made. *Hanaway, supra*. However, we vacate the court's determination that defendant's interest in Peter Cipriano Enterprises and 424 shares of Cross and Peters Company stock would not be included in the marital estate because plaintiff had not contributed to its acquisition, improvement or accumulation and remand for reconsideration of this issue in light of *Hanaway, supra* at 292-295. See also, generally, *McDougal v McDougal*, 451 Mich 80, 82; 545 NW2d 357 (1996). On remand, the court's findings shall include findings concerning the valuation of defendant's interests.

Defendant contends that the trial court erred when it determined that plaintiff contributed to the acquisition or improvement of the "Harper" property and included it in the marital estate pursuant to § 401. We disagree. The trial court's findings in this regard were not clearly erroneous. *Hanaway, supra* at 292. We are not left with a firm conviction that a mistake was made. *Id.*

Both plaintiff and defendant argue that the trial court abused its discretion in awarding plaintiff \$66,000 per year in alimony. We disagree. Upon review of the evidence presented at trial, we find that the award was fair and equitable and that the trial court did not abuse its discretion. *Maake v Maake*, 200 Mich App 184, 187; 503 NW2d 664 (1993). The trial court's award was a reasonable approximation of the amount necessary to support plaintiff. It struck a balance between actual and extra-ordinary expenditures, taking into account the unsupported expenditures included in plaintiff's alimony request. Further, because the trial court indicated that "plaintiff's alimony may be adjusted upon her entitlement of pension or profit sharing funds or other changes in circumstances of the parties," we find that it did not abuse its discretion in extending the alimony payments beyond plaintiff's sixty-

second birthday.

Plaintiff argues that the trial court erred when it declined to award her attorney fees. We disagree. Given plaintiff's share of the property distribution, including substantial income producing assets, we find that the trial court did not abuse its discretion in declining to award attorney fees because plaintiff could bear the expense of the action. MCR 3.206(C)(2); *Maake, supra* at 189.

Defendant argues that the distribution of fifty-five percent of the marital estate to plaintiff was inequitable because the trial court improperly determined that fault contributed to the demise of the marriage. We disagree. Considering defendant's extensive extra-marital relationships and treatment of plaintiff, we conclude that the trial court's finding with regard to defendant's fault was not clearly erroneous. *Hanaway, supra*. Even if, as defendant contends, he conducted himself discretely, the trial court could consider the effect of the affairs on the marriage, and properly did so in this instance. Because fault was properly considered by the trial court as one of the relevant factors and not assigned disproportionate weight, we are not left with a firm conviction that the property distribution in this case was inequitable. See, generally, *McDougal, supra*.

Defendant also contends that he is entitled to actual and punitive damages as a result of having to defend against plaintiff's alleged "vexatious" appeal. Because we do not consider defendant's claims on cross-appeal to be any more or less meritorious than those raised by plaintiff, we decline to do so.¹ *Nalevayko v Nalevayko*, 198 Mich App 163, 165; 497 NW2d 533 (1993).

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

/s/ Helene N. White
/s/ Michael R. Smolenski
/s/ Richard R. Lamb

¹ The parties stipulated to dismiss defendant's challenge to the trial court's inclusion of unspecified "heirloom property" in the marital estate. As a consequence, we do not address that issue.