STATE OF MICHIGAN

COURT OF APPEALS

PAMELA S. NICKERSON,

Plaintiff-Appellee,

v

MICHAEL B. NICKERSON,

Defendant-Appellant.

UNPUBLISHED
September 24, 1996

No. 179602
LC No. 93-172 DO

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right the division of property. We affirm in part, and remand for proceedings consistent with this opinion.

Defendant first contends that the circuit court erred in finding that certain property not held in the name of the parties was, nevertheless, marital property and, therefore, subject to division. "As a general rule, a court may make property dispositions which affect only the rights of the parties before it." *Wiand v Wiand*, 178 Mich App 137, 146; 443 NW2d 464 (1989). However, property held in the name of a third party may be considered part of the marital estate where the third party has conspired with one spouse to deprive the other spouse of an interest in the marital estate. *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991).

At issue are a trailer and duplex held in the name of defendant's mother. With respect to the trailer, we find no error. The evidence presented at trial established that the trailer was purchased five days after the sale of the parties' marital home. While defendant testified that all of the money received from the sale went to repay promissory notes, defendant could account for only approximately half of the proceeds from the sale. Therefore, one could reasonably infer that at least a portion of the proceeds were put toward the trailer. In light of this evidence and the reasonable inferences that may be drawn

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

therefrom, we find no clear error, MCR 2.613(C), in the court's implicit conclusion that defendant and his mother conspired to deprive plaintiff of her interest.

With respect to the duplex, the court's only statement was "The defendant will have the property known as the duplex. That has a value of $51,000 or more in Richland Township . . . ." Based upon the court's statement and the record below, we are unable to determine the court's reasons for concluding that the duplex was part of the marital estate, nor are we able to conclude that it was not part of the marital estate. The record establishes that defendant helped construct it with his brothers and plaintiff helped decorate it. We conclude that the trial court's findings of fact and the record is insufficient for this Court to make a determination on the ownership of the duplex and, therefore, we remand this case to the trial court for further proceedings.

Defendant also argues that the court failed to consider the relative fault of the parties when dividing the assets. Defendant is correct that fault is a relevant factor when dividing a marital estate. *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992). However, defendant is incorrect in his assertion that the court failed to consider it. The court concluded that because of the amount of time that had passed, the evidence was insufficient for it to assess fault in any meaningful fashion. Therefore, fault was considered.

Affirmed in part, and remanded for proceedings consistent with this opinion.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Kenneth W. Schmidt