

STATE OF MICHIGAN  
COURT OF APPEALS

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BONNIE JEAN TEIFKE,

Plaintiff-Appellant,

v

ALBERT CLARENCE TEIFKE,

Defendant-Appellee.

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UNPUBLISHED  
October 11, 1996

No. 186620  
LC No. 94-2673-DO

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

This is a divorce action involving issues relating to the division of the parties' marital property. Plaintiff appeals as of right from the trial court's judgment of divorce. We affirm.

We review the trial court's findings of fact under the clearly erroneous standard, and if the findings of fact are upheld, we consider whether the dispositive ruling was fair and equitable in light of those facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). The trial court's ruling should be affirmed unless we are left with a firm conviction that the ruling was inequitable. *Id.* at 152.

Plaintiff first argues that the trial court erred in the value it assigned to the thirty-nine-acre parcel of marital real property. The trial court has great latitude in valuing an asset, and "where a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Parties are permitted to provide lay testimony regarding the value of property and provide their basis for such a value. *Beckett v Beckett*, 186 Mich App 151, 153; 463 NW2d 211 (1990). The trial court is in a much better position to determine witness credibility than an appellate court, and thus we defer to the trial court to the extent that credibility affects this finding of fact. MCR 2.613; *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991).

In this case, the parcel of land in question had been in defendant's family for many years, and defendant had purchased the property from his parents. The parties agreed that there was a restraint on alienation, but they disagreed as to the exact conditions. The trial court adopted the value to which

defendant testified, rather than plaintiff's jointly-commissioned appraisal value. There was no clear error in the court's finding regarding the value of the thirty-nine-acre parcel. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1989); *Jansen, supra*. We are not left with a firm conviction that the ruling regarding this parcel was inequitable, *Sparks, supra*, and thus, we affirm the trial court's holding on this issue.

Next, plaintiff contends that she should have received more than fifty percent of the marital assets because of the length of the marriage, lack of fault, her poor health, her current unemployment status, and defendant's inability to pay alimony. "[I]n each individual divorce case the circuit court must equitably divide assets on the basis of the facts." *Sands v Sands*, 442 Mich 30, 31; 497 NW2d 493 (1993). The division of marital property is not governed by any set rules, and, although the division need not be equal, it must be equitable. *Sparks, supra* at 158-159. Relevant factors for these dispositions are the duration of the marriage, the parties' contributions to the marital estate, their age, their health, their life status, their necessities and circumstances, and their earning abilities. *Id.* at 159-160. The same principles are applicable when determining whether a party should receive alimony. *Hanaway v Hanaway*, 208 Mich App 278, 295; 527 NW2d 792 (1995). "The main objective of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party." *Id.*

In this case, the evidence established that defendant was a newspaper deliverer and part-time farmer. In 1993, his combined income from these occupations was approximately \$11,500.00. Previously, defendant had also worked as a garage mechanic. At the time of trial, plaintiff was unemployed, but she had previously been employed as a clerk at a drugstore, a grocery store clerk, and a part-time factory worker. From various employment, but mainly from her employment as a clerk in a drug store, plaintiff earned \$7,439.01 in 1994. Due to plaintiff's asthma, she was unable to work in environments involving the use of cleaning solutions, smoke or aromas, and thus could not continue her stints of employment at the Cracker Barrel restaurant or the Molly Maid Cleaning Service. However, there was no indication that her asthma prevented her from again becoming employed as a clerk in a store or gaining similar employment.

Based on the limited earning power of the parties, the trial court found that defendant was not financially capable of paying alimony to plaintiff, and thus was not ordered to do so. In equally dividing the value of the property, the trial court awarded defendant the majority of the real property because the property had been in defendant's family for several generations and retained sentimental value to him. So that plaintiff would have assets on which to live, the court awarded plaintiff liquid assets equal to the value of the assets given to defendant. Because the real property granted to defendant was more valuable than the assets awarded to plaintiff, defendant was ordered to make cash payments to plaintiff totaling \$94,425.00. This had the effect of balancing the awards given to each party.

Based on the facts of this case, we find the trial court's division of property to be fair and equitable. See *Sparks, supra* at 151-152. The trial court's solution satisfied defendant's desire to retain the real property, and granted liquid assets to plaintiff with which she could live. Thus, we are not left with a firm conviction that the ruling was inequitable, and we affirm the trial court's disposition of the

property. For the same reasons, we affirm the trial court's decision to grant plaintiff no alimony from defendant.

Plaintiff next argues that joint marital assets used by her during the pendency of the divorce proceedings should not have been allocated to her as part of her final award. The funds used by plaintiff were taken without defendant's knowledge or consent. In determining whether money from marital assets used by a party during the pendency of the divorce should be treated as an advancement against the final award, the test remains a matter of equity. *Hanaway, supra* at 300. Relevant factors could include whether plaintiff received interim alimony from defendant or the marital estate, whether her earnings were inadequate for her support, and whether defendant's earnings were substantial. *Id.* Although plaintiff received no alimony during pendency of the divorce, the trial court properly determined that alimony was not appropriate in this case. In addition, the evidence established that, at the time plaintiff filed for a divorce, she was earning only slightly less per year than defendant, and that defendant's earnings were not substantial. Based on the facts of this case, we are not left with a firm conviction that the trial court's decision was inequitable.<sup>1</sup> Accordingly, we affirm.

Finally, plaintiff asserts that the trial court should have awarded her attorney fees because defendant made more money than she did and because of her poor health. Attorney fees in a divorce action are awarded to help a party prosecute or defend a case, especially when the requesting party has been forced to incur expenses due to the other party's unreasonable conduct during the litigation. *Hanaway, supra* at 298. However, when a disposition provides the parties with comparable assets and income, fees are inappropriate. *Id.* at 299. In this case, there was no evidence that either party engaged in unreasonable conduct causing increased expenses. In addition, the trial court awarded the parties equal assets, and, although plaintiff was unemployed, the evidence indicated that plaintiff's asthma would not prevent her from working, as long as she worked in an environment free of smoke and fumes. Accordingly, we find that the trial court's denial of attorney fees did not constitute an abuse of discretion.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Richard A. Bandstra

<sup>1</sup> Although we would have preferred more detailed findings by the trial court on this issue, we do not believe remand is appropriate. The expenses the parties would incur on remand would exceed the amount in controversy, and would be a waste of judicial resources. We believe the lower court record was sufficient for our disposition of this issue.