

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH BLASZAK,

Plaintiff–Appellee,

v

THOMAS LEO BLASZAK,

Defendant–Appellant.

November 8, 1996

No. 179962

LC No. 93-323898 DM

Before: Gribbs, P.J., and Young and W. J. Caprathe,* JJ.

PER CURIAM.

Defendant, Thomas Leo Blaszak, appeals as of right from the October 10, 1994, judgment of divorce which granted plaintiff, Deborah Blaszak, sixty percent of the marital estate, as well as one-hundred percent of the appreciation on Thomas' personal bank and stock accounts. We reverse and remand.

Thomas first argues that the trial court clearly erred in finding that he had concealed marital assets, and therefore, the judgment below giving Deborah one-hundred percent of the appreciation in Thomas' personal bank and stock accounts, as well as sixty percent of the marital estate, should be reversed. The factual findings of a trial court in a divorce proceeding are to be reviewed for clear error. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

The trial court found that Thomas was concealing marital funds, based upon Deborah's finding hidden money in her home, and Thomas' lack of forthrightness in disclosing his assets. No automatic forfeiture rule exists regarding a party's attempt to conceal assets. *Sands v Sands*, 442 Mich 30, 36; 497 NW2d 493 (1993). Rather, a party's attempt to conceal assets is only one of many factors the trial court must weigh in fashioning an equitable property division. *Id.*, 36-37. Other factors the trial court should consider to reach an equitable division include the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstances. *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992).

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

In this case, the trial court emphasized in its opinion that Thomas' misconduct in concealing his assets was the prominent factor in its decision to give Deborah a disproportionate share of the marital assets. However, "a judge's role is to achieve equity, not to 'punish' one of the parties." *Sands, supra*, at 36-37.

Further, the trial court improperly awarded Deborah the full appreciation on Thomas' accounts, which amounted to \$68,353.25. The trial court made no specific findings of fact as to whether the \$68,353.25 was Thomas' separate property or whether it was joint marital property.¹ Even assuming arguendo that the \$68,353.25 was marital property, we find that Thomas' concealment of his assets did not justify giving Deborah the entire \$68,353.25. While such a severe sanction may be appropriate under egregious circumstances, cf *Sands, supra*,² Thomas' behavior in this case did not justify such a severe remedy.

Accordingly, we remand this case to the trial court for equitable distribution of the property acquired or enhanced during the course of the marriage. While some sanctions against Thomas may be appropriate, the award of sixty percent of the marital property and the entire \$68,353.25 to Deborah was inequitable.

Thomas next argues that the trial court erred in awarding attorney fees to Deborah. We agree. A trial court's award of attorney fees in a divorce proceeding will not be reversed on appeal absent an abuse of discretion. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995). In this case, it appears from the record that Deborah has sufficient income to pay her own attorney fees, and that Thomas' conduct was not so unreasonable as to justify an award to Deborah of \$8000.

The trial court's property division and award of attorney fees are reversed, and this matter is remanded for further proceedings. We do not retain jurisdiction.

/s/ Roman S. Gribbs

/s/ Robert P. Young, Jr.

¹ Property acquired before the marriage is not usually marital property and is usually not the subject of a division of property upon dissolution of the marriage. *Rogner v Rogner*, 179 Mich App 326, 329; 445 NW2d 232 (1989). However, an award of one spouse's property is justified where (1) it appears from the evidence that the nonowner spouse has contributed to the acquisition, improvement or accumulation of the property, MCL 552.401; MSA 25.136, or (2) the award to the nonowner spouse would be insufficient for the "suitable support and maintenance" of the spouse and any children committed to his or her custody. MCL 552.23; MSA 25.103. Absent these circumstances, the property must be returned to its owner. *Lee v Lee*, 191 Mich App 73, 79; 477 NW2d 429 (1991).

² In *Sands, supra*, 442 Mich at 31, the defendant husband had been held in contempt at least five times and had been jailed several times for refusing to comply with the court's orders. Additionally, in *Sands*, this Court found "devious and deceptive conduct" in the defendant husband's behavior, when he had lied about ownership of assets, taken papers from his attorney's file, and transferred funds from his account into his father's account. *Sands v Sands*, 192 Mich App 698, 699-702; 482 NW2d 203 (1992). In this case, Thomas was never held in contempt of Court, and the only deceptive conduct that Thomas demonstrated was producing an incomplete interrogatory answer.