

STATE OF MICHIGAN
COURT OF APPEALS

CAROL C. TIERNEY

Plaintiff-Appellee,

v

RUSSEL S. TIERNEY,

Defendant-Appellant.

UNPUBLISHED
November 8, 1996

No. 181497
LC No. 93-464211

Before: Michael J. Kelly, P.J. and Markman and J.L. Martlew, *JJ.

PER CURIAM.

Plaintiff Carol C. Tierney and defendant Russel S. Tierney were divorced after thirty-seven years of marriage. Judgment was entered, November 22, 1994, following two days of trial testimony, in the Oakland County Circuit Court. Defendant appeals, as of right, claiming that the findings of fact were erroneous and the division of the property inequitable.

The parties were married on June 21, 1957 and lived in Detroit until 1974, when they purchased a parcel of land in a suburb on land contract and built a home. Plaintiff's grandfather contributed the construction money of \$50,000.00, because he wanted to live with the family. The completed home was mortgaged, the land contract paid off and the balance of the proceeds were used to establish defendant's business. Four children were born from the marriage and plaintiff completed her college education and obtained two advanced degrees. Plaintiff worked in the defendant's business for a time, but upon completion of her education, obtained employment as an engineering analyst. Plaintiff was so employed at the time of trial, earning between \$56,000.00 and \$58,000.00 per year. Plaintiff testified that she used her income for family expenses and that defendant always earned more than she but she was unsure of defendant's yearly income. Plaintiff accumulated pension and stock benefits which were valued in excess of \$100,000.00 net.

Defendant's activities during the term of the marriage produced businesses that grossed between \$350,000.00 and \$500,000.00 in fiscal years, 1992 and 1993. Defendant admitted at trial

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

that in 1994 the businesses were grossing between \$500,000.00 and \$750,000.00; however, defendant claimed that the businesses were discontinued at that time because of failure.

The debts of the parties were substantial due to liens and a mortgage foreclosure. Plaintiff claimed, and the court found, that the actions of the defendant husband were the cause of the failure of the marriage. The court assigned fault for the failure of the marriage to defendant-husband because of his “chronic gambling,” which was supported by testimony and documentary exhibits admitted in evidence. The court also found, from testimony and documentary exhibits, that the defendant had engaged in adultery.

Based on its findings of fault, the court awarded plaintiff 55% of the marital assets after satisfaction of liens and encumbrances and the defendant, 45%. Each was to have one half of the household effects and no alimony was awarded. Plaintiff was to have her pension and stock savings and defendant was to have the assets of his businesses.

The trial court’s view of the evidence is plausible and does not leave this court with a definite or firm conviction that a mistake was made or that the division of the marital property was inequitable. The evidence developed at trial was substantial that defendant caused the financial problems of the marriage. The trial court’s division of the marital estate was fair and equitable in light of all the facts. *Beason v Beason*, 435 Mich 791; 460 NW2d 207 (1990); *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992); *Sands v Sands*, 442 Mich 30; 497 NW2d 493 (1993).

Affirmed.

/s/ Michael J. Kelly
/s/ Stephen J. Markman
/s/ Jeffrey L. Martlew