

STATE OF MICHIGAN
COURT OF APPEALS

CHRIS BAILEY McGRAW

Plaintiff-Appellant,

v

LINDA LOU McGRAW,

Defendant-Appellee.

UNPUBLISHED

November 12, 1996

No. 185942

LC No. 92-3325-DM

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

In his appeal by right from a divorce judgment, plaintiff contests the circuit court's choice of asset valuation date, the award of alimony and medical insurance premium payments to defendant, and the property division. We affirm.

Two estimations of the value of assets were prepared for this case, one dated 1992, when plaintiff filed for divorce, and one dated 1994, when the divorce was granted. The circuit court chose to use the latter. The choice of date for valuation of assets is within the trial court's discretion. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). Plaintiff argues that the trial judge should have chosen the earlier date, as the marriage ended at that time, and cites *Thompson v Thompson*, 189 Mich App 197; 472 NW2d 51 (1991), and *Wilson v Wilson*, 179 Mich App 519; 446 NW2d 496 (1989).

In *Thompson, supra*, at 199, this Court noted that the trial court had found that the objects of matrimony had been irretrievably lost at the time the complaint was filed. In *Wilson, supra*, at 523-524, this Court noted that acts such as moving out of the marital home and filing for divorce were external manifestations of intent to end a marriage. Here, however, there was no finding that the objects of matrimony had been irretrievably lost at the time the complaint was filed. Indeed, the trial judge mentioned that, for all he knew, the parties may have been attempting to reconcile during the two-year period between filing and judgment. We find no abuse of discretion in choosing the 1994 valuation date.

Plaintiff also argues that his employment benefits are not sufficiently certain to be counted as marital assets. The trial judge in this case counted plaintiff's sick time, annual leave time and compensatory time as marital assets. A trial judge's findings of fact in a divorce case are reviewed for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). This Court, in *Lesko v Lesko*, 184 Mich App 395, 402; 475 NW2d 695 (1990), specifically held that vacation time and sick time are marital assets. Since plaintiff earned his compensatory time during the marriage in the same way he earned the annual and sick leave, it too was properly regarded as a marital asset.

Plaintiff asserts it was error for the trial judge to fail to consider tax consequences on his work-related benefits. Valuation of a marital asset is a finding of fact and is reviewed for clear error. *Rickel v Rickel*, 177 Mich App 647, 649; 442 NW2d 735 (1989). Plaintiff cites *Lesko, supra*, which held that the trial court should have considered tax consequences in determining the value of vacation and sick time. *Lesko*, p 402. Whether vacation and sick time were marital assets was an issue of first impression in *Lesko*, and the extrajurisdictional cases on which the holding relied made no mention of tax consequences. In addition, this Court held in *Hanaway v Hanaway*, 208 Mich App 278, 301 n 13; 527 NW2d 792 (1995), that *Lesko* concerned "banked sick time [that] had no value unless a taxable event occurred." Here, no taxable event has occurred, and no evidence on any tax consequences was presented for the trial judge to consider. No case law compels a trial court to *sua sponte* determine tax liabilities on awarded assets when the parties have produced no evidence on the issue. There was no error in the trial judge's failure to consider plaintiff's tax liabilities.

Finally, plaintiff challenges the division of marital property and the award of alimony. In reviewing a dispositional ruling in a divorce case, this Court first reviews a 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, supra, at 292* (1995).

In awarding alimony, a trial judge is to consider: (1) the past relationship and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). Here, the trial judge found no fault. The parties' marriage had been lengthy. The defendant had health problems, and her age, lack of job skills, and her needs indicated a need for spousal support. There was no error in these factual findings, and the award of alimony was fair and equitable.

In dividing marital property, the trial judge is to consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, earning ability, age, health and needs, fault or past misconduct, and other equitable circumstances. *Sparks, supra, at 158-160*. The goal of distribution of marital property is fairness and equity, not mathematical equality. *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). The division of marital property in this

case was roughly equal, leaving plaintiff with \$99,494 in assets, and defendant with \$93,870. The division of marital property was fair and equitable.

Affirmed.

/s/ Roman S. Gibbs

/s/ Barbara B. MacKenzie

/s/ Richard Allen Griffin