

STATE OF MICHIGAN
COURT OF APPEALS

GLADYS M. KROKSTAD,

Plaintiff-Appellee,

v

MARTIN H. KROKSTAD, JR.,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 179209

Delta County

LC No. 93-011896-DO

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

PER CURIAM.

Defendant appeals as of right from the parties' judgment of divorce. He challenges several aspects of the proceedings below, including the trial court's distribution of marital property and the award of spousal support to plaintiff. Because the judgment is unclear regarding the spousal support obligation should defendant predecease plaintiff, we remand for the limited purpose of clarifying that provision. In all other respects, we affirm.

Defendant first contends that the trial judge should have disqualified himself from this case because the judge was also assigned to a divorce case involving defendant's alleged mistress. Defendant has not preserved this issue for appeal because he failed to move for disqualification of the trial judge as required by MCR 2.003. *In re Jackson*, 199 Mich App 22, 29; 501 NW2d 182 (1993). In any event, all the evidentiary proceedings in the other divorce case in fact had been presided over and completed by the trial judge's predecessor before the judge was assigned to that case, eliminating any ground for him to recuse himself in this case.

Defendant next contends that the trial court erred when it refused to allow his accounting expert to remain in the courtroom during the testimony of plaintiff's accounting expert. Defendant has abandoned this issue by failing to provide any authority in support of this proposition. *Terzano v Wayne County*, 216 Mich App 522, 533; 549 NW2d 606 (1996). Even if the issue had been properly presented, the sequestration of all witnesses was ordered by the trial court pursuant to defendant's own motion. Moreover, since the trial court offered defendant the opportunity to discuss

plaintiff's expert's testimony with his expert before cross-examination of plaintiff's expert, defendant was not prejudiced by the sequestration. We find no error.

With regard to the property division, defendant argues that the court erred in valuing several marital assets. We have reviewed defendant's assertions of error, and we find that there was evidence in the record to support all but the court's valuation of one of the parties' savings accounts. *Beason v Beason*, 435 Mich 791, 803; 460 NW2d 207 (1990). At trial, defendant testified that the parties' Detroit & Northern savings account contained \$51,482, and plaintiff accepted that figure during her closing argument. As such, the court's \$51,900 valuation of the account was clearly erroneous. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). However, because the amount of the mistake, \$418, is less than one-tenth of one percent of the aggregate value of the parties' assets, we are not firmly convinced that the error resulted in an inequitable overall property disposition. *Id.* Further, the Detroit & Northern savings account was awarded to plaintiff, so that the court's error actually benefited defendant. Finally, the trial court need not have speculated regarding the tax consequences of the distribution. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993).

Defendant also argues that the trial court's property division was inequitable. We disagree. The parties' aggregate property was valued at over \$1 million. The trial court awarded plaintiff approximately \$569,000 and defendant approximately \$460,000. There was evidence that defendant's close relationship with another woman had precipitated this action, and that defendant attempted to conceal assets from plaintiff after this action was commenced, both of which were properly considered by the trial court. *Sands v Sands*, 442 Mich 30, 36; 497 NW2d 493 (1993); *Sparks, supra*. Under the circumstances of the case, we conclude that the property division was equitable.

Defendant further contends that the trial court erred when it awarded plaintiff spousal support in the amount of \$1,500 a month, arguing that the court overestimated defendant's ability to pay by failing to take into account income-generating assets that were awarded to plaintiff, while not considering plaintiff's corresponding reduced need. We reject this argument. The trial court explicitly considered all the relevant factors when determining defendant's spousal support obligation, *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991), and we are not firmly convinced that the resulting award was inequitable. *Sparks, supra*, pp 151-152.

Defendant suggests that there is an ambiguity in the portion of the trial court's judgment requiring defendant to name plaintiff as the beneficiary of his life insurance policies as security for his spousal support obligation. We agree. The judgment of divorce states as follows:

[Spousal support] shall not cease upon the death of the Defendant but shall be a charge against his estate; and to provide for this event, in the event Defendant shall predecease Plaintiff, Defendant shall forthwith name the Plaintiff as his sole beneficiary of the three Prudential Life Insurance policies....

This language is unclear, and could be interpreted to indicate that plaintiff should receive defendant's life insurance proceeds *in addition to* a continuing monthly charge against his estate. We therefore remand for the limited purpose of clarifying whether, in the event defendant predeceases plaintiff, the spousal support obligation of defendant's estate shall be fully discharged upon the payment of the insurance proceeds to plaintiff, or whether the estate shall make a continuing monthly payment to plaintiff in addition to her receipt of the insurance proceeds.

Finally, defendant contends that requiring him to secure his spousal support obligation by naming plaintiff as his life insurance beneficiary rendered the policies valueless to him. This proposition is not necessarily true; if plaintiff predeceases defendant the encumbrance would be lifted. In any case, given plaintiff's need for spousal support and the aggregate value of the property divided between the parties, encumbering policies with a total cash value of approximately \$24,000 was not inequitable. *Sparks, supra*, pp 151-152.

Affirmed and remanded for clarification of the trial court's intent regarding the spousal support obligation of defendant's estate upon the payment of defendant's life insurance proceeds to plaintiff. We retain no further jurisdiction.

/s/ Roman S. Gibbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin