

STATE OF MICHIGAN
COURT OF APPEALS

LORETTA J. SARASIN

Plaintiff-Appellee,

v

CHRISTIAN M. SARASIN,

Defendant-Appellant.

UNPUBLISHED

February 7, 1997

No. 184212

LC No. 93-048016-DO

Before: Wahls, P.J., and Young and J.H. Fisher,* JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce entered by the trial court dividing the property of the marital estate between him and plaintiff Loretta J. Sarasin. We affirm.

The parties married in 1987. At the time of this marriage, plaintiff was thirty-six years old and had been married twice before. She brought an extensive amount of property into the marriage, including real property valued at approximately \$60,000. In contrast, defendant brought a motorcycle, a gun cabinet, some tools, a few guns, a pair of downhill skis with boots, a record collection, and a 1978 Jeep CJ5 into the household.

In October 1993, defendant moved out of the marital home. After leaving plaintiff, defendant began a relationship with a person whom he had met at work. In November 1993, plaintiff filed an action for separate maintenance. Defendant responded to this action with a countercomplaint of divorce.

At trial, the parties submitted divergent values for the worth of the personal property found within the marital estate. Nevertheless, the evidence introduced at trial showed that the parties owned assets worth approximately \$146,000. On the other hand, the parties established that the marital debt, which included the outstanding mortgage on the home, totaled \$83,000. From these proofs, the trial court divided the marital estate by awarding \$44,842.86 to plaintiff with the remaining \$18,659.72 going to defendant. Defendant now challenges this division.

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

Defendant argues that the findings of fact upon which the trial court based its property division were clearly erroneous. We disagree. In a divorce action, this Court will uphold the trial court's findings of fact unless they are clearly erroneous. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). A finding of fact is clearly erroneous when this Court, after reviewing the entire record, is left with a definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

First, defendant challenges the trial court's finding that the real property's value at the time of the divorce was \$110,000. We disagree. When the trial court sets the value of a marital asset within the range of the proofs introduced at trial, no clear error can be found. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). The record shows that the parties' appraisers set the value of the real property at \$105,000 and \$127,000 respectively. Because the trial court set the value of the real property between these values, it did not clearly err. Based upon this conclusion, we decline to review defendant's other challenges to this value because they have been rendered irrelevant.

Second, defendant asserts that the trial court erred when it failed to find that he brought a vehicle other than the Jeep into the marriage. We disagree. There was conflicting evidence on this point with defendant testifying that he also owned a Plymouth Volare at the time of the marriage and plaintiff testifying that defendant sold or gave it back to his father before the marriage. Because evidence exists to support the trial court's implied finding that defendant only brought one vehicle into the marriage, the trial court did not clearly err on this point.

Third, defendant asserts that the trial court clearly erred when it found that he claimed that he should be awarded more of the marital estate. We disagree. The record clearly shows that defendant argued in closing that the trial court should consider his change in circumstances after leaving plaintiff when it divided the property between the parties. We conclude that the challenged finding on this point is no more than a reply to this argument. Consequently, no error can be found.

Fourth, defendant asserts that the trial court clearly erred when it made various biographical findings pertaining to the parties. We agree in part, but find no error requiring reversal. The findings concerning defendant's age and the date of his marriage to plaintiff are supported by evidence in the record, so they are not clearly erroneous. *Hertz, supra* at 246. However, the trial court clearly erred when it found that plaintiff's marriage to defendant constituted her second marriage because the record clearly shows that this marriage was plaintiff's third. Nevertheless, this error is inconsequential to the outcome of the matter before us; thus, it is harmless.

Fifth, defendant asserts the trial court clearly erred when it found that the real property in question had a premarital value of \$60,000. We disagree. Plaintiff submitted evidence that the bank appraised the real property at this amount. In contrast, defendant failed to introduce any evidence, beyond his unsupported personal opinion, that the real property had a lower value. A party cannot complain that a finding is erroneous when this party failed to offer evidence that the value of the asset

was lower. *Sullivan v Sullivan*, 175 Mich App 508, 511; 438 NW2d 309 (1989). Consequently, no error occurred on this ground.

Last, defendant asserts that the trial court clearly erred when it found that he brought various items into the marriage and failed to find that plaintiff converted his saving and retirement fund from his place of employment. We disagree. Contrary to defendant's assertion, the record shows that he brought the items in question into the marriage and that he requested the withdrawal of the funds. Therefore, no error whatsoever can be found on this point.

II

Defendant next argues that the property division made by the trial court was inequitable. We disagree. This Court will uphold the trial court's dispositional rulings unless it is "left with a firm conviction that the division was inequitable." *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

As a general rule, a trial court must make a fair and equitable division of the marital estate. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). Such divisions are not governed by any set of rules. *Id.* Nevertheless, the trial court should consider the following factors when they are relevant to the situation before it: (1) duration of the marriage; (2) contributions of the parties to the estate; (3) age of each of the parties; (4) health of the parties; (5) life status of the parties; (6) necessities and circumstances of the parties; (7) earning capabilities of the parties; (8) past relations and conduct of the parties; and (9) general equitable principles. *McDougal, supra* at 89.

First, defendant asserts that the personal property division was inequitable because the trial court awarded more property to plaintiff and failed to consider plaintiff's unclean hands. We disagree. Our review of the record shows that defendant received forty-seven percent of the personal property to plaintiff's fifty-three percent. Therefore, this division is nearly equal. None of the actions alleged by defendant to constitute unclean hands were inequitable when viewed under the circumstances that existed at the time.

Alternatively, defendant asserts that the personal property division was inequitable because the trial court credited him with a \$2,000 advance against the equity in the marital estate. We disagree. If a party receives a portion of the equity in the marital estate in advance of the property division, the trial court may deduct the amount of the advance from this party's ultimate share of the estate. See, e.g., *Hanaway, supra* at 300. Because the trial court has the equitable power to make such a deduction from the ultimate award, defendant's alternative argument must fail.

Second, defendant asserts that the trial court's debt division was inequitable. We disagree. The record clearly shows that defendant received the debt allocation that he requested. One cannot claim error from one's own actions. *Bercel Garages, Inc v Macomb Co Rd Comm*, 190 Mich App 73, 84; 475 NW2d 840 (1991).

Last, defendant asserts that the trial court's division of the real property was inequitable. We disagree. There is no dispute that plaintiff brought the real property into the marriage. The trial court has the discretion to restore property to the party who brought it into the marriage. MCL 552.19; MSA 25.99. Based upon the factors provided this Court by defendant to support his assertion of inequity, we do not believe that the trial court abused its discretion in restoring the real property to plaintiff.

Affirmed.

/s/ Myron H. Wahls

/s/ Robert P. Young, Jr.

/s/ James H. Fisher