

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN DE SPELDER,

Plaintiff-Appellee,

and

DENNIS OLSON,

Intervenor-Appellee,

v

RICHARD DE SPELDER,

Defendant-Appellant.

UNPUBLISHED

March 7, 1997

No. 194193

Kent Circuit Court

LC No. 94-001072-DO

Before: Murphy, P.J., and Markey, and A.A. Monton*. JJ.

PER CURIAM.

Defendant appeals as of right the real property division as found in the April 1, 1996 judgment of divorce. We affirm.

Plaintiff Susan de Spelder and defendant Richard de Spelder were married on May 15, 1993. Plaintiff filed a complaint for divorce from defendant on May 3, 1994. A trial was held on March 5, 1996 to determine the parties' equitable interest in the marital residence, which was sold to limited intervenor Dennis Olson in December 1995. Following the trial, the trial court found, as part of his dispositional ruling, that neither plaintiff nor defendant had any interest in the property and that Olson owned the home.

I

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

Defendant argues first that the trial court made insufficient factual findings necessary to support its distribution of equity in the marital residence and, therefore, the property distribution should be reviewed de novo by this Court.

First, the trial court made sufficient findings of fact to support its ruling. In actions tried without a jury, the trial court must find the facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1); *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994). The contested issue in this divorce case was the amount of equity available in the marital residence and each party's right to such equity. The record reveals that the trial court considered the purchase price of the house, the monthly payments required by the terms of the land contract, the amount of the down payment, the lack of payments made by the parties and the redemption of the home by Olson. The court then concluded that there was no equity in the home to be distributed to the parties. The trial court sufficiently stated the facts as to the contested matter and separately stated his conclusions of law. *Id.* at 883-884.

Second, our Supreme Court has held that factual findings of a trial court in a divorce case are to be reviewed for clear error, not de novo. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990), after remand 204 Mich App 178; 514 NW2d 231, rev'd & reinstated 447 Mich 1023; 527 NW2d 425 (1994). Even if the trial court's factual findings were insufficient, the case would be remanded to allow the trial court to make additional findings of fact. *Id.*

II

Defendant contends that the trial court's conclusion that there was no equity available in the marital residence for distribution was unfair and inequitable. Defendant argues that the trial court's finding that plaintiff and defendant forfeited any rights they had in the land contract by defaulting on the contract is erroneous, that defendant was unfairly denied the opportunity to redeem the property himself, and that plaintiff and Olson were responsible for any forfeiture proceedings occurring after defendant had physically left the property.

First, defendant is correct in that the trial court's dispositive ruling was based on an erroneous application of the law. Summary proceedings to recover possession of premises after forfeiture of an executory contract for the purchase of premises are governed by MCL 600.5701 *et seq.*; MSA 27A.5701 *et seq.*, and MCR 4.202. The statute makes clear that although a land contract vendor has the right to possession upon forfeiture, this right can only be enforced after the writ of restitution is issued and not at all if the vendee prevents the writ from issuing by timely paying the redemption price. *Durda v Chembar Development Corp*, 95 Mich App 706, 711; 291 NW2d 179 (1980). Additionally, this Court has held that a defaulting purchaser under a land contract may redeem his interest in the property through the sale of the property to a third party. *Tenney v Springer*, 121 Mich App 47, 54-55; 328 NW2d 566 (1982).

The trial court erroneously concluded that “once you default on a contract and there is a forfeiture, you have given up your right to any equity that you had.” Therefore, the trial court’s finding

that neither plaintiff nor defendant was entitled to any equity in the property is derived from an erroneous application of law to facts. However, this erroneous application of law does not lead to a firm conviction that the court's division of property was inequitable. If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Because the court's finding that there was no equity to be distributed to the parties was not clearly erroneous, even if the judge had found that the parties preserved their rights to any available equity, there was in fact no equity available to distribute.

Second, defendant's arguments do not lead to a firm conviction that the division of property was inequitable. The court's dispositional ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable. *Id.* at 152. While defendant's equitable interest was limited by the trial court to \$50,000 and he was no longer listed on the title to the property, defendant was in no way released from his obligations under the land contract. Defendant argues that he was neither requested nor required to make payments on the property during the forfeiture proceedings. The land contract sellers had clearly made such a request in the form of a land contract. While under no obligation to do so, Olson made substantial land contract and redemption payments, preventing the property from being forfeited to the sellers.

Defendant claims a right to the return of \$37,000 representing the initial down payment on the property. The trial court found that defendant made none of the required monthly land contract payments of \$1,480 per month and none of the numerous redemption payments on the Hall Street home from December 1993 through December 1995. Olson incurred expenses in excess of \$50,000 to satisfy the land contract payments and redeem the property from numerous forfeiture proceedings. In light of the facts adduced at trial, the trial court's determination that there was no equity to be distributed to either plaintiff or defendant was fair and equitable.

Affirmed. Plaintiff and intervenor prevailing on the merits, they may tax costs pursuant to MCR 7.2119.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Anthony A. Monton