

STATE OF MICHIGAN
COURT OF APPEALS

DONNA J. ROOT,

Plaintiff-Appellant,

v

H.C. ALLEN ROOT,

Defendant-Appellee.

UNPUBLISHED

May 2, 1997

No. 189694

Jackson Circuit Court

LC No. 95 71482 DO

Before: Young, P.J., and Markey and D.A. Teeple,* JJ.

PER CURIAM.

In this divorce action, plaintiff appeals by right the judgment of divorce. We affirm.

Plaintiff contends that the trial court erred by excluding defendant's testimony during cross-examination about his 1980 criminal sexual conduct conviction. A trial court has broad discretion in making a relevancy determination. *Zecchin v Zecchin*, 149 Mich App 723, 729; 386 NW2d 652 (1986). The court did not abuse its discretion in excluding the testimony because the conviction was remote in time to the divorce. Further, plaintiff herself testified about defendant's conviction. Thus, the error was not prejudicial because the facts were established by other evidence--plaintiff's testimony. See *Gutowski v M&R Plastics & Coating, Inc*, 60 Mich App 499, 515; 231 NW2d 456 (1975). Accordingly, the court's initial exclusion of the conviction was harmless error because the exclusion did not change the result in the case. See *In re DaBaja*, 191 Mich App 281, 287; 477 NW2d 148 (1991).

Plaintiff also avers that the court erred in finding no proof that defendant had an affair. The court found that plaintiff "greatly suspected activities of the Defendant with other females, but there was absolutely no proof as to the same." We review factual findings in a divorce case for clear error. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). The court did not clearly err because it weighed the contradictory testimony and assigned more weight to the testimony that no affair had

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

occurred. We give special deference to the court's assessment of the credibility of the witnesses before it. MCR 2.613(C); *Williams v Williams*, 214 Mich App 391, 399; 542 NW2d 892 (1995).

Plaintiff further contends that court erred by refusing to consider defendant at fault based on his conviction and alleged affair. Although fault may be considered in the division of marital property, *Zecchin, supra*, 149 Mich App at 727, the trial court's decision not to consider defendant at fault on those grounds was supported by the evidence, or the lack thereof. Plaintiff testified that the conviction had not led to the breakdown of the marriage and plaintiff presented insufficient proof that defendant had an affair.

Plaintiff next contends that the court erred by reducing her alimony to "equalize" the greater award of marital assets to her and that she will be forced to sell her major asset as a result. An award of alimony is within the trial court's discretion, *Nalevayko v Nalevayko*, 198 Mich App 163, 165; 497 NW2d 533 (1993). Courts balance the incomes and needs of the parties so as to not impoverish either party. *Hanaway v Hanaway*, 208 Mich App 278, 295; 527 NW2d 792 (1995); *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). The court in this case considered the parties' respective incomes and needs. The alimony award did not impoverish either party.

Additionally, despite plaintiff's assertion to the contrary, the court did not divide the assets in an inequitable manner. This Court affirms a property distribution unless we are left with the firm conviction that the distribution was inequitable. *McDougal v McDougal*, 451 Mich 80, 87-88; 545 NW2d 357 (1996). As stated above, court properly concluded that fault would not be considered as a factor in the division of the marital property; thus, the court did not err in dividing the marital assets equally. The parties' major assets (the business and the home) both carried substantial debt. By reducing plaintiff's alimony and increasing her award of the marital estate, the court arguably gave plaintiff a tax benefit because she had less taxable income and more nontaxable assets. Considering the increased expenses to the parties as single individuals maintaining separate households, as well as the assets and incomes of the parties, the division was equitable.

Plaintiff next argues that the court erred when it issued a supplemental opinion that changed the tax consequences of its alimony award. Plaintiff's contention is without merit because the supplemental opinion did not change the award, but appropriately clarified it by explaining the tax consequences of the periodic alimony award. *Mitchell v Mitchell*, 198 Mich App 393, 396; 499 NW2d 386 (1993).

Finally, plaintiff asserts that the court erred by ignoring her expert's opinion regarding the value of defendant's business. A trial court has great latitude to determine the value of stock in a closely held corporation, and where the trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). No error occurred as the court based its valuation on the evidence, including the recent sale of stock from the business, within the ranges established by the proofs.

Affirmed. As the prevailing party, defendant may tax costs under MCR 7.219.

/s/ Robert P. Young, Jr.

/s/ Jane E. Markey

/s/ Donald A. Teeple