

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ELWIN GAY,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 177063

Wayne Circuit Court

CECELIA GAY,

LC No. 93-323130-DM

Defendant-Appellee.

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

MacKENZIE, J. (dissenting in part).

I respectfully dissent from that portion of the majority opinion holding that the trial court abused its discretion in awarding defendant the marital home and its contents. I would affirm the award.

The record in this case is poorly developed. Both parties are originally from Trinidad. Plaintiff-husband has lived in the United States for twenty-two years and has been employed by General Motors for eighteen years. Although he had been laid off from work in 1993, at the time of trial in May, 1994, he was back at work full-time and was apparently making \$18.44 an hour plus \$.10 an hour in COLA benefits. Plaintiff has at least one adult daughter from a prior marriage.

The parties met in Trinidad in 1987. At the time, defendant was residing there and was in the process of building a “squatter’s house,” a house built on government land. She has adult children who continue to reside there. In the spring of 1988, defendant became pregnant with the parties’ child and moved to the United States to live with plaintiff. The parties lived together in an apartment, and then in the marital home. Plaintiff purchased the home with his funds just before the parties married in November 1988. The parties’ child, Damien, was born on January 28, 1989. Plaintiff obtained her green card shortly before the parties separated in 1993 and has worked sporadically as a housekeeper earning \$7.00 an hour. At the time of trial, she was unemployed due to the death of her employer.

Throughout their relationship, the parties have maintained completely separate property, and have never commingled any assets. Each kept their own accounts and each owned their separate property. The record is silent as to defendant’s accounts and is conflicting concerning her Trinidad house. She characterizes it as a shack without running water or indoor plumbing, while he characterizes

it as similar to a Michigan wood frame home, albeit with no indoor plumbing. Although it appears that defendant bought furniture and a television for the house with her income during the marriage, plaintiff has indicated that he makes no claim on the property and defendant has stated that she is disinterested in it. Defendant also used her income to buy clothing for herself and the child, and to buy things for the marital home.

The location or value of plaintiff's assets cannot be ascertained from the record. Plaintiff had to be ordered to answer interrogatories concerning his assets, and the record suggests that his answers failed to disclose the existence of several assets. It appears that he owns a number of parcels of real estate, and owned and sold other parcels during the marriage. The whereabouts of the proceeds of these sales is unknown, although the record indicates that plaintiff gave his mother \$12,000 from one of his bank accounts just before he filed for divorce. Plaintiff also quitclaimed the marital home to his daughter before filing for divorce; the record suggests that whatever price she paid for the home was returned to her after the transfer of title.

The trial court found that plaintiff had concealed assets and had fraudulently transferred the marital home to his daughter in contemplation of filing for divorce; the transaction was ordered rescinded and the marital home and contents were awarded to defendant. Plaintiff was awarded his other real estate. The parties were each awarded their separate accounts, personal property, and automobiles. The parties were awarded joint legal custody of the child, and physical custody was awarded to defendant. Defendant intended to reside in the marital home with the parties' child; the record indicates, however, that plaintiff refused to leave the home after the judgment of divorce was entered.

In reviewing a dispositional ruling in a divorce case, this Court first reviews the 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. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Property disposition rulings should be affirmed unless this Court is left with the firm conviction that the distribution was inequitable. *Id.*

Plaintiff places great emphasis on the fact that he purchased the marital home before the parties were married, inferring that the marital home should therefore not be considered a marital asset for purposes of the property division. However, the timing of the acquisition of an asset is secondary to the overall goal of reaching an equitable division of property. See *Rogner v Rogner*, 179 Mich App 326, 329-330; 445 NW2d 232 (1989); *Feldman v Feldman*, 55 Mich App 147, 153-154; 222 NW2d 2 (1974). Thus, the court may utilize any property in the real and personal estate of either party to achieve a result that is just and reasonable after considering all the circumstances of the case. *Rogner, supra*.

In this case, I am not convinced that the decision to award the marital home to defendant was inequitable. The trial court believed that plaintiff's conduct throughout these proceedings was deceitful, as demonstrated by his fraudulent conveyance of the marital home and his concealment or disposal of other assets. Attempts to conceal assets may be considered in fashioning a division of property and, in some instances, forfeiture of assets may be appropriate to achieve equity. See *Sands, supra*, pp 36-

37. In my opinion, this is such a case. The record suggests that, although the parties kept separate accounts and property, both contributed to the running of the household. It appears that both provided items for the house and for their child. Both assumed child care responsibilities. This equality of contribution would militate toward an equal property distribution to achieve equity. Given the vast difference in the parties' earning power – approximately \$18.50 an hour for plaintiff versus \$7.00 an hour for defendant – and their history of maintaining separate finances, however, defendant's estate must be significantly smaller than plaintiff's. Simply awarding each party his or her own property, then, could not result in an equitable distribution. Additionally, it should be noted that defendant, who was unemployed at the time of trial, was not awarded alimony; she was, however, awarded physical custody of the parties' minor child. In my view, these circumstances, combined with plaintiff's questionable behavior throughout these proceedings, make it inappropriate to say that awarding defendant the marital home in which to live and raise the parties' child was an inequitable disposition. See *Thames v Thames*, 191 Mich App 299, 309; 477 NW2d 496 (1991) ("The division of property can be justified by the disparate earning abilities of the parties, [the husband's] responsibility in causing the marital breakdown, [the husband's] attempt to put marital assets outside [the wife's] reach, and the fact that [the wife] was awarded custody of the parties' minor child.").

Because I am not convinced that the court's disposition was inequitable, I would affirm the decision to award defendant the marital home and its contents. In all other respects, I concur with the majority.

/s/ Barbara B. MacKenzie