STATE OF MICHIGAN

COURT OF APPEALS

SUSAN E. BRATTON,

Plaintiff-Appellee,

v

ANTONIO BRATTON,

Defendant-Appellant.

UNPUBLISHED
October 28, 1997

No. 192547
Macomb Circuit Court
LC No. 95-001139

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from a default judgment of divorce, challenging the disposition of property located in the State of Washington. We affirm.

A default judgment of divorce was entered in this case after defendant failed to appear at trial. Defendant moved to set aside the aspect of the judgment which awarded the Washington property to plaintiff. The court held an evidentiary hearing and subsequently denied the motion. Defendant argues that the trial court's decision should not stand because in awarding the Washington property to plaintiff, the court failed to make adequate findings of fact on which to base its decision.

This Court has stated that "[t]he decision to set aside a default judgment is a decision within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." *Hood v Hood*, 154 Mich App 430, 438; 397 NW2d 557 (1986). MCR 2.603(D) provides that a default judgment will be set aside only when good cause is shown, and the moving party files an affidavit of facts showing a meritorious defense. Good cause includes a showing of manifest injustice. *Hood, supra* at 438.

In cases where a party has challenged a default judgment based on the division of property, this Court has reviewed the division to determine whether it was equitable. See *James v James*, 57 Mich App 452, 455-456; 225 NW2d 804 (1975); *Wilson v Wilson*, 37 Mich App 255, 256, 194 NW2d 430 (1971). Our Supreme Court has articulated a two-part standard which applies to property divisions in a divorce case:

> The appellate court must first review the trial court's findings of fact under the clearly erroneous standard. 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. But because we recognize that the dispositional ruling is an exercise of discretion and that appellate courts are often reluctant to reverse such rulings, we hold that the ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable. [*Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).]

A finding of fact is clearly erroneous if, after reviewing all the evidence, this Court is firmly convinced that an error has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

There are numerous factors the court may consider in making a division of property, including the source of the property, contributions toward the purchase of the property and to the marital estate, the length of the marriage, the age and health of the parties, the needs of the parties, the earning capacity of the parties, the cause for divorce, and the past conduct of the parties. *Sparks, supra* at 159-160. While all of the factors may not apply to a particular case, the trial court should make specific findings of fact concerning the factors which are relevant. *Id.* at 159.

Defendant contends the trial court failed to consider many of the relevant factors, basing its decision solely on its finding that his child support payments had been minimal. We disagree. The trial court specifically determined that the property was a marital asset purchased during the marriage and paid for with funds during the marriage. The court decided the property must be worth at least $10,000 if it accepted the testimony of defendant that he sold it to his son for that amount. The court stated that each party had a fifty percent interest in the property, but awarded it to plaintiff because defendant had not paid sufficient child support during the pendency of the divorce. Reviewing the entire record, we cannot say these findings were clearly erroneous. Although the trial court stated that defendant had made very minimal child support payments, we find no error in awarding the property to plaintiff on this basis. "Just as the final division may not be equal, the factors to be considered will not always be equal." *Id.* at 159.

We conclude that the trial court made specific findings of fact which it used to make an equitable division of property. Therefore, the court did not err when it refused to set aside the default judgment of divorce on this ground.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ David H. Sawyer
/s/ Janet T. Neff