

STATE OF MICHIGAN
COURT OF APPEALS

LARRY LYNN RAYL,

Plaintiff/Counter-Defendant-
Appellant,

v

TINA JEAN RAYL,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

January 31, 2003

No. 235992

Tuscola Circuit Court

LC No. 00-018975-DM

Before: White, P.J. and Kelly and Gribbs*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's valuation of marital property and determination of child support pursuant to the parties' judgment of divorce. We affirm.

We review a trial court's findings of fact for clear error. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). A trial court's findings are clearly erroneous when, after conducting a thorough review of the record, this Court is left with the "definite and firm conviction that a mistake has been made." *Id.* at 429. This Court reviews dispositional rulings to determine whether the trial court reached a fair and equitable result in light of the trial court's factual findings. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

Plaintiff first argues that the trial court erred in finding a \$40,000 certificate of deposit (CD) was subject to division because it had been disbursed prior to the parties' divorce. We disagree.

The date on which a marital asset's value is determined lies within the trial court's exercise of discretion. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). A party's attempt to conceal assets may be weighed by the trial court in its apportionment of marital assets. *Hanaway v Hanaway*, 208 Mich App 278, 298; 298 NW2d 792 (1995).

Evidence produced at trial established that the day before plaintiff filed his complaint, he removed the CD from the parties' joint account and placed the funds into a newly-opened account in his and his father's names only. Plaintiff's conduct belies his assertion that defendant knew of, and expressly consented to, plaintiff's use of the funds. A trial court's findings of fact

*Former court of appeals judge, sitting on the Court of Appeals by assignment.

are entitled to heightened deference when those findings are based on the court's assessment of witness credibility. *Sparks, supra* at 147; *Draggoo, supra* at 415. Here, the trial court clearly doubted plaintiff's veracity in accounting for the funds withdrawn from the parties' CD. In deciding to treat the money as a marital asset, the trial court expressly noted plaintiff's failure to produce adequate evidence that the money was used in the manner plaintiff claimed it was used. Under these circumstances, and absent credible proof that plaintiff used the funds for valid expenditures in the course of his farming business, we find that the trial court did not clearly err in finding the CD was marital property and determining its value on a date prior to the disbursement.

Plaintiff also argues that the trial court's division of property was inequitable because it failed to properly credit plaintiff for several assets he brought to the marriage. We disagree. The goal of dividing marital assets is to reach an equitable, though not necessarily mathematically equivalent, distribution of the parties' property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997).

Here, the trial court divided the parties' marital property equally based on its finding that the total value of the marital assets was \$98,000. This amount includes the values of the home (\$54,000), two vehicles (\$4,000), and the CD (\$40,000). With the exception of the CD, plaintiff does not argue that these findings were clearly erroneous. Plaintiff specifically stated in his brief on appeal, "Appellant does not dispute the division of the marital home as a marital asset." Rather, defendant argues that because he brought more property to the marriage, he should have received a larger share of the marital property at the time of divorce. However, the trial court awarded solely to plaintiff the balance of the farm assets including the crops in storage. After a careful review of the record, we are not left with the "definite and firm conviction that a mistake has been made." *Draggoo, supra* at 429.

Plaintiff finally contends that the trial court erred when it based the amount of child support on a net weekly income imputed by the trial court and based only on testimony about the parties' estimated monthly bills. We disagree. The award of child support rests in the sound discretion of the trial court. *Morrison v Richerson*, 198 Mich App 202, 211; 497 NW2d 506 (1993). The court's exercise of that discretion is presumed to be correct. *Id.*

Plaintiff and defendant agreed that defendant would have primary physical custody of the children, and the parties would share joint legal custody. The trial court ordered plaintiff to pay child support in the amount of \$143 each week based on its determination that plaintiff contributed at least \$15,000 per year to support himself, defendant, and their three children.

Although the Michigan Child Support Formula Manual does not expressly authorize or approve of the method the trial court used to determine plaintiff's net income, nor does it prohibit or disapprove of the trial court's method. Rather, the manual devotes a specific subsection to addressing the "Special Considerations in Determining Income of Self-Employed Persons." Michigan Child Support Formula Manual, thirteenth rev, p 22. According to the manual, "Because tax rules and forms, and business balance sheets . . . have quite different purposes, it is necessary to examine such documents carefully" when calculating the amount of income available for child support. *Id.*

After careful review of tax returns reflecting plaintiff's itemized farming expenses and business deductions, this Court can find no error in the trial court's decision to impute a net weekly income of \$300 to plaintiff.

Affirmed

/s/ Helene N. White
/s/ Kirsten Frank Kelly
/s/ Roman S. Gribbs.