

STATE OF MICHIGAN
COURT OF APPEALS

VATCHE MINASSIAN,

Plaintiff-Appellee,

v

DALIDA MINASSIAN,

Defendant-Appellant.

UNPUBLISHED

September 25, 2003

No. 240481

Oakland Circuit Court

LC No. 00-645314 DO

Before: Donofrio, P.J. and Fort Hood and Schuette, JJ.

PER CURIAM.

Following a bench trial, defendant appeals as of right the trial court's decision granting divorce and awarding plaintiff/husband Dalida's Jewelry, the couple's business. We affirm in part and reverse in part and remand for a property division consistent with this opinion.

I. FACTS

This case involves a divorce between plaintiff Vatche Minassian and defendant Dalida Minassian. Plaintiff and defendant were married in 1990 in Syria and remained married for ten years. Once in the United States, plaintiff opened a wholesale jewelry business. When defendant moved to the United States two years later, plaintiff expanded the business to include retail and named it "Dalida's Jewelry." The amount of time defendant worked in the retail jewelry store is in dispute. Plaintiff had sole control over the wholesale aspect of the business.

The parties had fertility problems and were unable to have children. Defendant claims that plaintiff engaged in adultery and was abusive during the marriage. The couple did not own a home; they acquired two automobiles, the jewelry store, home furnishings, and \$24,000 in savings. Plaintiff filed a complaint for divorce on December 18, 2000. Defendant took two trips to Lebanon that lasted over a month while the divorce was pending.

At trial, the lower court heard expert testimony from each party regarding the value of the couple's jewelry store. Pursuant to defendant's motion for an independent expert, the court appointed Jeff Risius, senior partner at accounting firm Stout, Risius and Ross. However, the case was eventually assigned to another employee of the accounting firm, Michael Kern. Defendant relied on the findings of Kern, a financial analyst. Kern spoke to both parties and reviewed the company's statements. Kern had no prior jewelry valuation experience. Kern testified that his conversations with defendant led him to believe that plaintiff was not recording

the true financial situation of the company. Kern also believed the entire inventory was owned by plaintiff because Kern found no accounts payable. Kern's adjusted value of the business was \$400,000. That value included cash and accounts receivable that Kern believed were not being recorded, plus the value of the entire inventory. Kern testified that he was not aware of the industry standard in the jewelry business, which is to operate on consignment, not using traditional accounts payable. Moreover, Kern compared Dalida's jewelry to a sample of eighteen retail businesses throughout the nation, which were not compatible with Dalida's mostly wholesale nature.

Plaintiff relied on his expert Al-Hassan who has an Master of Business Administration degree and has a certification in England that is the equivalent of a Certified Public Accountant in the United States. Al-Hassan testified that he handles the accounts of thirty-eight jewelry stores in the Detroit area. Al-Hassan did the bookkeeping for Dalida's Jewelry for the entire period of operation and is close friends with plaintiff. Al-Hassan valued the business at \$80,000. The trial court relied on Al-Hassan's valuation because of Kern's lack of experience with consignments in the jewelry business. The trial court awarded the business to plaintiff, vehicles to defendant, \$90,569.50 of alimony in gross to defendant and \$1500 in attorney fees to defendant.

II. STANDARDS OF REVIEW

This Court reviews the property distribution findings of fact in a divorce judgment, under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Reversal of a trial court's valuations of assets is only warranted where they are found to be clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1989); *Draggoo, supra* at 429. A finding is clearly erroneous where, after review of the entire record, this Court is left with a definite conviction that a mistake was made. *Id.*

Findings of fact are reviewed under a clearly erroneous standard. *Beason, supra* at 805. Dispositive rulings are reviewed de novo, but will not be reversed unless this Court is convinced it would have reached a different result in the trial court's place. *Burkey v Burkey*, 189 Mich App 72, 79, 471 NW2d 631 (1991).

On appeal, we review the trial court's findings of fact concerning spousal support for clear error. *Moore v Moore*, 242 Mich App 652, 654, 619 NW2d 723 (2000). The trial court's decision regarding spousal support must be affirmed unless we are firmly convinced that it was inequitable. *Korth v Korth*, 256 Mich App 286, 662 NW2d 111 (2003).

III. ANALYSIS

A. Value of Jewelry Store

Defendant first argues that the trial court erred when it assigned the lower value of the couple's business and relied on plaintiff's expert. We remand this issue for a reevaluation of the value of the jewelry store based on an accurate and independent appraisal.

Defendant argues that the trial court clearly erred when they disregarded Kern's adjusted value of the business in favor of plaintiff's expert Al-Hassan. Defendant further argues that Al-Hassan's testimony was not reliable because he was not impartial or neutral due to the relationship between Al-Hassan and plaintiff. We agree with defendant that Al-Hassan was not completely reliable. Furthermore, we agree with the lower court findings that Kern was not reliable because he lacked the experience necessary to understand the valuation of jewelry businesses. If the trial court does not have ample information from expert testimony presented to determine a fair value, it should "appoint its own disinterested appraiser to assist the court." *Steckley v Steckley*, 185 Mich App 19, 23-24 460 NW2d 255 (1990) quoting, *Perrin v Perrin*, 169 Mich App 18, 22, 425 NW2d 494 (1988). Here, neither party was completely neutral nor qualified to evaluate a jewelry business. The trial court found that Kern was not a court appointed expert because the court appointed senior partner Jeff Risius, not Kern. Therefore, we remand for the trial court to appoint an independent expert to correctly assess the value of the jewelry business.

B. Fault for Divorce

Defendant next argues that the trial court clearly erred when, for purposes of property division, it found that neither party was at fault for the breakdown of the marriage, and awarded plaintiff the entire business. We disagree.

Defendant contends that while she was undergoing in vitro fertilization surgeries, plaintiff was engaging in extramarital affairs. The trial court ruled that defendant did not present evidence sufficient to prove that plaintiff was having an affair. Further, the court found that neither party was at fault for the breakdown of the marriage; rather it was the disappointment of not being able to start a family. Since the trial court determined that neither party was at fault, the court must do an evaluation before dividing property. The court must examine the following factors: duration of marriage, contributions of the parties to the joint estate; and the parties' age, health, station in life, necessities and circumstances, and earning ability. *Davey v Davey*, 106 Mich App 579, 581, 306 NW2d 468 (1981).

In the instant case, the wholesale aspect of the business accounts for most of the income. Defendant is not familiar with wholesale and it is disputed how much experience she has with jewelry retail. Moreover, plaintiff has operated the entire wholesale business on consignment, which means he is obligated to sell or give back the merchandise; therefore, he should retain the ability to fulfill his promise to sell. Finally, defendant testified that although she knew she had little money, she took two trips to Lebanon where she rented a car and an apartment and bought hundreds of dollars worth of food and clothes on plaintiff's credit cards. The trial court concluded that this behavior demonstrated that defendant was not financially responsible enough to run a business. Therefore, we find the trial court did not clearly err when it found that plaintiff is entitled to the jewelry business.

C. Spousal Support

Finally, defendant argues that the trial court committed clear error by not awarding spousal support to defendant. We disagree.

When determining spousal support the court considers: the past relations of the parties, the length of the marriage, the ability of the parties to work, source and amount of property

awarded, age of the parties, ability to pay, present situation, need, health, prior standard of living, and general principles of equity. *Sparks v Sparks*, 440 Mich 141, 163, 485 NW2d 893 (1992). In the instant case, neither party was at fault for the breakdown of the ten-year marriage. Defendant is thirty-six years old, in good health, and able to work. Defendant is educated in accounting and has experience in business and jewelry design. Defendant did not attempt to mitigate by finding work during the year the divorce was pending. Moreover, plaintiff earns a modest income, from which he is already paying defendant a significant amount of money for her share of the business. Thus, the trial court's decision not to award spousal support to defendant in this case was appropriate.

Affirmed in part, reversed in part, and remanded for a reevaluation of the value of the business consistent with this opinion. The cost of an independent appraisal should be shared equally by the parties involved. Further, given that the value of the jewelry business will be reevaluated, the trial court, in its equitable powers, should fully reevaluate the property division and award of alimony in gross, so as to provide for an appropriate division of marital property. We do not retain jurisdiction.

/s/ Patrick M. Donofrio

/s/ Karen Fort Hood

/s/ Bill Schuette