

STATE OF MICHIGAN
COURT OF APPEALS

JOAN LORRAINE ELLIS, a/k/a JOAN
LORRAINE LAARMAN,

UNPUBLISHED
March 30, 2006

Plaintiff-Appellant,

v

BRUCE DOUGLAS ELLIS,

No. 258578
Kent Circuit Court
LC No. 99-009378-DO

Defendant-Appellee.

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an amended judgment of divorce, challenging the circuit court's division of the marital home. We reverse and remand for further proceedings. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

In a prior appeal in this case, *Ellis v Ellis*, unpublished opinion per curiam of the Court of Appeals, issued September 17, 2002 (Docket No. 231671), this Court considered whether the trial court erred in how it divided the marital residence, awarding half the net proceeds from its sale to each party. Plaintiff brought the house into the marriage as her separate asset, but defendant maintained that he made major contributions to its improvement and appreciated value, which plaintiff disputed. This Court remanded the case to the trial court because the latter "failed to determine the value of plaintiff's equity interest at the time of the marriage, failed to determine the net increase, if any, in equity during the marriage, and failed to make findings indicating that invasions of plaintiff's separate equity was warranted." *Id.*, slip op at 2.

On remand, the trial court stated from the bench that plaintiff's equity in her house was \$41,900, and indicated in the amended judgment of divorce that by the end of the marriage the equity had risen to \$43,683.69. The court adjusted the latter figure to account for some marital debt, then awarded half to defendant. Plaintiff's sole argument in this appeal is that the trial court erred in failing to treat the initial \$41,900 that she brought into the marriage as her separate property. We agree.

When dividing a marital estate, the goal is to make an equitable division of the marital property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court." *Id.* at 114-115.

The trial court's factual findings are reviewed for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). The trial court's dispositive ruling is discretionary, and will be affirmed unless we are left with the firm conviction that the division was inequitable. *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005).

“Generally, . . . each party takes away from the marriage that party's own separate estate with no invasion by the other party.” *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). There are two statutory exceptions to this principle, however. The first arises where an award stemming from division of only the marital estate is “insufficient for the suitable support and maintenance of either party” *Id.*, quoting MCL 552.23(1). This Court noted in its earlier decision in this case that this exception was not applicable. *Ellis, supra*, slip op at 2 n 1. The other statutory exception arises where one party “significantly assists in the acquisition or growth of a spouse's separate asset,” in which case “the court may consider the contribution as having a distinct value deserving of compensation.” *Reeves, supra* at 495, citing MCL 552.401. The latter exception bears on the instant situation. The cited statute authorizes a court to award “all or a portion of the property . . . owned by his or her spouse, as appears to the court to be equitable under all the circumstances of the case, if it appears . . . that the party contributed to the acquisition, improvement, or accumulation of the property.” In this case, the trial court explained its disposition in this particular as follows:

I determined here that giving a substantially large portion of one's income in some case, as the testimony—twice roughly what she, [plaintiff], made, and now giving his entire income, three quarters of roughly of his inheritance, and doing actual, concrete things which make a house more attractive and more saleable, does justify an invasion of the equity.

The court did not clearly err in finding that defendant contributed substantially to making the house “more attractive and more saleable.” But we do not read MCL 552.401 as an invitation simply to disregard the distinction between an asset's value as one spouse's separate property brought into the marriage and its increased value resulting from the other spouse's contributions during the marriage. That defendant's contributions of capital and labor made the house “more attractive and more saleable” entitled defendant to invade what was primarily plaintiff's separate asset only insofar as those investments added what was then marital value to what otherwise remained plaintiff's separate property.

This approach better comports with *Reeves, supra*, according to which a court may consider a spouse's “contribution” to what was otherwise the other spouse's separate property “as having a *distinct* value deserving of compensation.” *Id.* at 495 (emphasis added). Applying *Reeves, supra*, means regarding the distinct value of the marital contributions, not the whole value of the asset, as subject to being awarded to that marital contributor.

For these reasons, we again reverse the result below and remand for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra