

STATE OF MICHIGAN
COURT OF APPEALS

SHYVAWN K. LICORISH,

Plaintiff-Appellee/Cross-Appellant,

v

CHRISTOPHER ROGER WEBER,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED

January 28, 2003

No. 230348

Washtenaw Circuit Court

LC No. 98-013048-DM

Before: Murray, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals, and plaintiff cross appeals, from a judgment of divorce entered by the circuit court. We affirm.

The parties were married in 1994 and plaintiff filed for divorce in 1998. The matter proceeded to trial. Following oral arguments, the parties stipulated to a procedure referred to as a “conference trial.” In lieu of presenting testimony, each of the parties would submit a proposed judgment and written argument to the trial court in support of their proposed judgments. The trial court would thereafter enter a judgment. This process was followed, with the trial court entering a judgment of divorce on August 23, 1999. That judgment specifically directed plaintiff to supply defendant with updated information from her employer regarding the balance of her ESOP and 401(k) plans, as well as any other information regarding retirement or investment accounts as of the date of the marriage and the last quarter of 1998. The judgment further provided that either party could request “the court to reopen the issue of property division if this data when compared to other financial and property data in the case appears to justify a change.”

Thereafter, plaintiff moved for a new trial, arguing both that there was a large disparity of factual allegations by the parties and because plaintiff believed defendant improperly communicated with the court in responding to plaintiff’s trial brief. The trial court granted the motion, conducted an evidentiary hearing, and then entered an amended judgment of divorce.

Defendant first argues that the trial court erred by reopening the entire property settlement, rather than just the issue of retirement assets for which additional evidence was

needed.¹ Defendant's argument is without merit for two reasons. First, as defendant pointed out, it was anticipated that there may be a need for additional information on the retirement assets and the original judgment provided for the reopening of the property division upon request, not just the division of the retirement assets:

Additional Data. The Plaintiff shall supply the Defendant, through his attorney, with statements from her employer showing the balance of her ESOP and 401k and any other retirement or investment account as of the date of the marriage and the last quarter of 1998. Either party may address a request to the court to reopen the issue of property division if this data when compared to other financial and property data in the case appears to justify a change.

Thus, the original judgment reserved the right to reopen the entire property division upon request.

Second, we agree with the following observation by the trial court in its opinion granting plaintiff's motion for new trial:

Once the court ascertains there is a basis to amend its decision following a Conference trial because of inaccurate submissions, though innocent, the court feels it is obligated to permit a party, if it requests, the opportunity to present proofs on all property issues in dispute. This conclusion is for the reason a judgment is like a painting—once certain parts are erased and redone, other sections or parts may have to be readjusted and modified to make it all fit and work together.

We have no difficulty with the parties agreeing to use the "conference trial" procedure. Indeed, parties are to be encouraged to agree to methods that allow for the most efficient resolution of a matter possible.² However, defendant overlooks a couple of key points in this matter.

First, the conference trial was based on the belief that the parties agreed upon the facts and merely had to make their arguments to the judge on how the property should be divided based upon those facts. However, it became apparent that the parties did not agree on the facts to the extent previously anticipated as evidenced by defendant's August 5, 1999, letter to the trial court which points out various perceived inaccuracies with plaintiff's conference trial brief. While the conference trial procedure is well suited to efficiently resolving a case where the parties are in agreement on the facts, it is not so well suited for cases where the facts are in dispute. As the trial court diplomatically put it, when there are "inaccurate submissions" (read:

¹ Defendant devotes a great of discussion under this issue to the appropriateness of the parties agreeing to an alternate method of resolving this case under the "conference trial" method. We do not view the issue here whether the parties could agree to the method, but rather whether the trial court, after implementing that method, erred in granting a new trial.

² As noted in *Watson v Watson*, 204 Mich App 318, 321; 514 NW2d 533 (1994), the conference method is only appropriate where the parties agree to the procedure as a party cannot be compelled to submit to such a procedure.

conflicting submissions regarding the facts), the parties must be afforded the opportunity to present proofs.

Second, defendant is mistaken that it is appropriate to reopen only a portion of the property division. This may be reasonable in some cases, such as where the parties stipulate that only a portion of a property division need be reopened. However, absent such an agreement by the parties, we agree with the trial court that ordinarily the entire property division should be reopened under these circumstances. As the trial court pointed out in its opinion, a property division must be viewed as a whole and a change in one area may well necessitate a change in another, even seemingly unrelated, area. That is, while the trial court must endeavor to craft a property division that is on the whole equitable, that does not imply that each of its subparts can stand alone and is individually fair and equitable.³

In short, once the trial court determined the need to revisit the property division, it correctly determined that the entire property division had to be reviewed, not just the retirement or investment assets. The trial court did not abuse its discretion in doing so.

Next, defendant argues that the trial court erred in treating defendant's premarital employee stock account as a marital asset. We disagree. When formulating a property distribution, the trial court must first determine whether an asset is a marital asset or a separate asset. A marital asset is property accumulated through the joint effort of the parties during their marriage. *Leverich v Leverich*, 340 Mich 133, 137; 64 NW2d 567 (1954). Generally, marital assets are subject to division between the parties. *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002). Absent a valid agreement, the trial court's goal in distributing marital assets in a divorce is to reach an equitable distribution in view of the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997).

Shortly after the marriage, the parties undertook an improvement project on the marital home. Defendant argues that instead of waiting to generate "marital income" to pay for the project, he chose to invade his personal estate and use the value of his stocks to pay for these improvements. He further argues that subsequent stock purchases were merely to replace the stock that he essentially "loaned" to the marriage. Therefore, defendant argues, the stock should have been completely excluded from the marital estate. Plaintiff, on the other hand, argues that she does not seek any of the shares of stock that defendant held prior to the marriage, that she only seeks to divide the 2,536 shares of ADP stock that defendant accumulated during the course of the marriage.

Defendant's argument that the stock was somehow a "repayment" of premarital shares is without merit. First, there is no evidentiary support for defendant's claim that premarital shares were used for a home improvement project. Defendant's testimony at the hearing indicated that

³ For example, if one party is given the marital home, that, standing alone, is hardly fair and equitable to the other party. But when the property division as a whole is looked at and it is seen that the other party received the family business, the fairness of the entire property division becomes apparent. In such a case, the trial court could not merely revisit the distribution of the marital home, without also looking at the distribution of the business and perhaps even the need to redistribute the cash assets of parties to achieve an overall equitable distribution.

he put \$70,000 towards the initial purchase, but did not specify the source of the money for the improvements at issue. Furthermore, defendant testified that he would have purchased the shares at issue even if he had not sold the other shares, thus indicating that they were not actually a “repayment” as he now argues.

Finally, plaintiff argues on cross appeal that the trial court erred in awarding defendant seventy percent of the equity in the home. We disagree. The trial court did not award defendant an excessive amount of the marital assets. Rather, the trial court gave the parties credit towards the amounts invested before the marriage with their premarital assets towards the purchase and construction of the marital home. That credit weighed heavily in defendant’s favor. As noted above, we must look at the entire property division, not at a portion of the division out of context, and determine if, taken as a whole, the property division was equitable. We are not persuaded that the trial court’s division of assets was inequitable.

Affirmed. No costs, neither party having prevailed in full.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald