

STATE OF MICHIGAN  
COURT OF APPEALS

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AMY JO BECKEY,

Plaintiff-Appellant,

v

DAVID BECKEY,

Defendant-Appellee.

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UNPUBLISHED

April 17, 2003

No. 237472

Clare Circuit Court

LC No. 00-900307-DM

Before: Talbot, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Plaintiff Amy Jo Beckey appeals as of right from a judgment of divorce entered after a bench trial. We reverse and remand.

The parties had been married for twenty-one years and had three minor children. During the course of the marriage, the parties had accumulated substantial debts. Defendant earned about \$70,000 a year and plaintiff earned less than \$10,000 a year selling artwork and performing other sporadic jobs from the marital home. At the time of trial, plaintiff was working as a car salesperson, earning a base salary of \$249 a week, excluding commission. Prior to filing for a divorce, plaintiff vacated the marital home and left the physical custody of the three minor children with defendant.

On appeal, plaintiff challenges the trial court’s property distribution and argues that the court failed to value the marital assets and debts. Specifically, plaintiff argues that the court failed to determine whether two houses were marital or separate assets and failed generally to determine the overall value of the marital assets. Plaintiff also argues that the property distribution was inequitable because she received about 7.65 percent or twelve percent of the marital assets, depending on whether the houses were marital or personal property respectively.

“In deciding a divorce action, the circuit court must make findings of fact and dispositional rulings.” *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996) (citations omitted). The appellate standard of review for matters of property distribution is two-fold. First, this Court must review the trial court’s findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous if the appellate court, on all of the evidence, is left with a definite and firm conviction that a mistake has been made. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). When a trial court’s findings are based on the credibility of witnesses, they are given special deference.

*Id.* Second, if the trial court’s findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152. The trial court’s dispositive ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable. *Id.* at 152. Several factors may be relevant to the determination of an equitable property distribution, including:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. . . . [T]he court may choose to consider the interruption of the personal career or education of either party. The determination of relevant factors will vary depending on the facts and circumstances of the case. [*McDougal, supra* at 89 (citations omitted).]

Where any of the factors are relevant to the value of the property or the needs of the parties, the trial court is required to make specific findings of fact regarding those factors. *McDougal, supra* at 88. “The trial court is given broad discretion in fashioning its rulings and there can be no strict mathematical formulations.” *Id.* However, “while the division need not be equal, it must be equitable.” *Id.* An equitable distribution of marital assets means that they will be roughly congruent, and any significant departure from that goal should be supported by a clear exposition of the trial court’s rationale. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

Plaintiff first argues that the trial court failed to value the personal property. However, plaintiff testified that she was satisfied with the manner in which the parties had previously distributed the personal property. She testified that she left much of the personal property with defendant because it was needed for the children’s use. Defendant did not seriously dispute the matter.<sup>1</sup> Although the trial court failed to make any findings of fact with respect to the value of the personal property, there is nothing in the record to show that the undisputed distribution of the personal property was inequitable or unfair.

Plaintiff next argues that the amount of credit card debt she received was inequitable. We disagree. The record shows that plaintiff expressly accepted responsibility for the debts of the credit cards that were issued under her own name so long as defendant was responsible for the debts that were issued under his name. We conclude that the court properly adopted plaintiff’s express distribution recommendation and that the distribution was neither inequitable or unfair.

Plaintiff next argues that the trial court failed to determine whether the houses that defendant owned were marital or personal assets. We agree. A trial court’s first consideration when dividing property in divorce proceedings is the determination of marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). Generally, marital

<sup>1</sup> Plaintiff argues on appeal that the trial court failed to take into consideration the net value of the marital vehicle. This misstates the record because it does not appear that the vehicle had any value. Plaintiff first testified that the vehicle had a net value of about \$2,000 but later testified that the vehicle could only be sold for an amount equal to the outstanding payments.

assets are subject to division between the parties but the parties' separate assets may not be invaded. *Id.* at 494. A party's separate assets may be invaded for distribution when the other party contributed to the acquisition, improvement, or accumulation of the property, or when a division of the marital assets alone is insufficient for suitable support and maintenance. MCL 552.401; *Reeves, supra* at 494-495. 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).

It is undisputed that the St. Clair Shores house once belonged to defendant's father. In an effort to help the parties financially, defendant's father granted defendant up to \$100,000 in cash over the course of the marriage. The trial court was not presented with any proofs indicating how the parties spent that money. In 1997, when defendant's father had no more cash to give the parties, defendant's father granted defendant joint ownership with him in the St. Clair Shores house to allow defendant to obtain a mortgage against the equity in the house. Plaintiff was not granted joint ownership in the St. Clair Shores house. Over the course of the next two years, defendant twice refinanced the home to satisfy the original mortgage and other marital debts, bringing the amount of the mortgage to about \$60,000. It appears from the record that shortly after plaintiff vacated the marital home, defendant's father deeded the St. Clair Shores house to defendant as a gift but continued to reside in the house. Defendant then refinanced the house for about \$92,000 from which he paid off the previous mortgage and used part of the money toward the purchase of a home in the city of Ithaca where he and the minor children resided at the time of the trial. At trial, plaintiff did not provide any evidence that she "contributed to the acquisition, improvement, or accumulation of the property." *Reeves, supra* at 494-495.

Based on the above, a proper finding might be made that both houses are defendant's separate property. While it appears from the property distribution that the court determined that the houses were defendant's separate property, the court failed to make any finding on the record. Moreover, the court first stated that it could not determine whether the houses were marital assets and then it stated that such determination was moot because defendant would probably lose one or both houses. The court failed to explain the grounds upon which it made such a conclusion.

Plaintiff next argues that she did not receive her equitable portion of defendant's retirement benefits. According to this Court's decision in *Magee v Magee*, 218 Mich App 158; 553 NW2d 363 (1996):

Pensions are considered part of the marital estate subject to an award upon divorce. Pensions may be distributed through either the division of property or the award of alimony, depending on the equities and circumstances of the specific case. Generally, the party seeking to include a pension for distribution in the property settlement bears the burden of proving the reasonably ascertainable value of the pension. If the party does not meet this burden, then the pension should not be considered an asset subject to distribution. However, where alimony is awarded as a substitute for a share of a pension, a remand may be appropriate to determine the value of the pension even if no valuation figures were provided to the trial court during trial. [*Magee, supra* at 164-165 (citations omitted).]

Here, the trial court directed the parties to provide it with documentation that would properly reflect the amount and nature of the retirement benefits. We cannot determine from this record whether the court received those documents.

Nonetheless, as part of plaintiff's equity share in the retirement benefits, the trial court awarded her alimony payments in the total amount of about \$21,117, representing thirty percent of the \$70,392 retirement benefits. It is clear from the record that the court grounded its ruling on plaintiff's fault in the breakdown of the marriage for her relationship with a third party that began three to five months before she vacated the marital home. The court expressly rejected plaintiff's claim of the presence of spousal abuse but noted that the financial burdens caused a strain on the marriage that resulted in one argument that necessitated police involvement. "[F]ault is an element in the search for an equitable division---it is not a punitive basis for an inequitable division." *McDougal, supra* at 91. "[T]he conduct of the parties during the marriage may be relevant to the distribution of property, but the trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance." *Sparks, supra* at 158. We conclude that the trial court assigned disproportionate weight to plaintiff's fault in this matter.

However, it appears from the record that the court also partly grounded its ruling to award plaintiff only thirty percent of the retirement benefits to offset a total of about \$10,500 of marital assets that plaintiff obtained "by hook or by crook" without defendant's authority. At trial, defendant testified that plaintiff made several unauthorized withdrawals totaling about \$5,500 from the \$6,000 annuity account. Further, plaintiff obtained a \$5,000 loan by signing defendant's name without his permission. These matters were disputed at trial, but it appears that the court found defendant's testimony credible. Assuming that plaintiff was entitled to half of the retirement benefits which would be about \$35,196, the above \$10,500 that plaintiff obtained without authorization would roughly constitute the difference between what plaintiff was actually awarded (\$21,117) and what she would have been awarded absent fault (\$35,196). Nonetheless, we cannot conclude from the record whether this was a factor in the trial court's distribution of the retirement funds.

Plaintiff presents on appeal what appears to be a separate retirement benefits account for the amount of \$25,851. We cannot conclude from the record whether this account was before the trial court.

We remand this case for the trial court's determination whether the two houses constitute marital or personal assets, the value of the retirement benefits, the nature of the above \$25,851 account pursuant to the rule articulated in *Magee, supra* at 164-165, and for the court's proper findings of fact with respect to the distribution of the retirement benefits. Because the houses and the retirement benefits constitute the majority of the marital assets, we grant the trial court the latitude to revisit the question of the property distribution and, if needed, to revise the property distribution in accordance with the equitable guidelines enunciated in *McDougal, supra* at 88-89.

Reversed and remanded for further proceeding in accordance with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot  
/s/ David H. Sawyer