

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER HAY MARTIN,

Plaintiff-Appellee,

v

ALAN VY MARTIN,

Defendant-Appellant.

UNPUBLISHED

June 19, 2003

No. 237595

Grand Traverse Circuit Court

LC No. 00-020341-DM

Before: Smolenski, P.J., and Griffin and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right the property distribution made by the trial court in its judgment of divorce. We affirm.

Defendant first argues that the court erred by awarding plaintiff a portion of defendant’s business, Martin Land Improvement (MLI), after determining that the business was defendant’s separate property. In reviewing a trial court’s distribution of a marital estate, this Court first determines whether the trial court’s findings of fact, including valuations, were clearly erroneous. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997), citing *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992), and *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made. *Draggoo, supra*. If the findings of fact are not clearly erroneous, this Court then determines whether the distribution was fair and equitable in light of those facts. *Id.* However, unless this Court is left with the firm conviction that the division was inequitable, the judgment should be affirmed. *Id.*, citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993), and *Sparks, supra* at 151-152.

The first consideration when dividing property is determining what property is subject to division. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997), citing *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). MCL 552.19 permits the court to divide all property that came “to either party *by reason of the marriage . . .*” *Reeves, supra* at 493, quoting MCL 552.19 (emphasis added). “By reason of the marriage” is construed to mean from the time the parties married until the time the judgment of divorce is entered. *Id.*; see also *Bone v Bone*, 148 Mich App 834, 838; 385 NW2d 706 (1986); *Kessinger v Kessinger*, 360 Mich 528, 535; 104 NW2d 192 (1960).

In most cases, the court will preserve to each party that party's separate property, but separate property is divisible in either of two situations. The first, governed by MCL 552.401, permits the division of separate property when "it appears equitable under all the circumstances of the case" and the claiming spouse contributed to the "acquisition, improvement, or accumulation" of the property. MCL 552.401. This includes instances where property appreciated because of one party's efforts where the other party, by tending to the home and family, facilitated those efforts. *Reeves, supra* at 495; *Hanaway v Hanaway*, 208 Mich App 278, 294; 527 NW2d 792 (1995).

The second situation, which applies notwithstanding the source of or contributions to the property, is when the marital estate is insufficient for the suitable support and maintenance of the claiming party. *Reeves, supra* at 494, quoting MCL 552.23; *Charlton v Charlton*, 397 Mich 84, 94; 243 NW2d 261 (1976). In either situation, the trial court's discretion surrounding the division of separate property is extremely broad. See *Hanaway, supra* at 292.

The trial court found that plaintiff had contributed to the appreciation of MLI's value in her roles as vice president and secretary. The court found that plaintiff's building license enabled MLI to obtain jobs as a licensed builder and that plaintiff's involvement with community business activities was useful to MLI. The court also found that plaintiff contributed to the company by guaranteeing a loan and that she utilized her interior design background to MLI's benefit. Further, the court found that plaintiff "assisted in construction design activities, conducted interviews, aided in the creation of building plans, assisted with bookkeeping, [assisted with] preparing of sworn statements and likewise assisted with scheduling activities." The court also determined that plaintiff's efforts were a factor when MLI made a profit in 1998 and 1999. Based on these findings, the court determined that plaintiff "contributed to the acquisition, improvement or accumulation of the property." MCL 552.401.

The court also referenced the disparity in the parties' financial need. The court found that plaintiff had interrupted her career to devote herself to MLI and her family and that defendant's income potential was greater than plaintiff's income potential. See MCL 552.23. The court's findings of fact in this regard were supported by the record and were not clearly erroneous. See *Draggoo, supra* at 429. Thus, the trial court did not err by invading defendant's separate property and awarding a portion of that property to plaintiff.

Defendant next argues that the trial court erred by characterizing defendant's down payment on the marital home as joint marital property. Again, we disagree. Defendant points out that he made a down payment on the marital home from his own personal funds before the parties were married. The trial court held that the equity of the home the parties shared and maintained together during the marriage was marital property.

In *Reeves v Reeves*, 226 Mich App 490, 495-496; 575 NW2d 1 (1997), this Court ruled that the entire equity value of the parties' marital home was not part of the marital estate. In that case, the husband had provided the down payment for and had made payments building equity for a condominium before the parties married. *Id.* at 495. Further, this Court held that the condominium was not part of the marital estate because it was possible that it had appreciated during the time the husband was making payments but before the parties married. *Id.* at 496. The present case is distinguishable. First, there is no claim that defendant built equity in the marital home before the parties married, apart from the down payment. Second, there is no

indication that the marital home appreciated after defendant paid the down payment and before the parties married. In any event, this Court in *Reeves, supra* at 495, held that the fact that both parties had shared and maintained the marital home would mean that both parties had an interest in its value but that the *entire* equity of the home was improperly characterized as marital property. Thus, as the trial court found in the present case, the equity that both parties put into the marital home during the marriage was properly credited to both of them. See *id.*; see also MCL 552.401.¹ Our review of the trial court's ruling does not reveal a clear error in the findings of fact nor the ultimate property distribution on this ground. See *Draggoo, supra*; *Sands, supra*.

Defendant last argues that the trial court's distribution as a whole was unfair and inequitable. Once more, we disagree. Defendant asserts that he received \$11,400 from the estate while plaintiff received \$109,070. However, defendant makes several calculation errors. Defendant fails to include in his portion the value of his company, MLI, and he fails to account for any of the personal property he received. After reviewing the trial court's judgment, we hold that defendant's claim of error has no merit. See, generally, *Sands, supra*.

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael R. Smolenski

¹ We note that even in *Reeves, supra* at 497, this Court remanded that case to the trial court to determine if invasion of the defendant's separate property was necessary under the circumstances. Consequently, in the present case, even if the down payment was mischaracterized as marital property, it was a harmless error, because, given the equities of this situation we have already noted, invasion of separate assets was necessary. See generally *Chastain v Gen Motors Corp*, ___ Mich ___; 654 NW2d 326 (2002) (setting forth the civil harmless error rule), citing MCR 2.613(A), and *Cox v Flint Bd of Hosp Managers*, 467 Mich 1, 15; 651 NW2d 356 (2002).