

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

MARY FRANCES VANALSTINE,

Plaintiff-Appellee,

v

KENNETH EDWARD VANALSTINE,

Defendant-Appellant.

---

UNPUBLISHED

September 22, 2005

No. 254655

Mecosta Circuit Court

LC No. 02-015041-DO

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

Defendant appeals to contest the property division and spousal support awarded in a judgment of divorce. We affirm.

I. Basic Facts and Procedure

The parties were married in 1974. In 1963, the couple began living in a trailer on a twenty-acre parcel of land defendant already owned. Defendant deeded the land to his parents as security for a loan. In 1966, his parents quitclaimed the land to plaintiff and defendant jointly. The couple had a son and a daughter together and then married in 1974. They built a house on the land in 1976, where they lived when plaintiff filed for divorce in 2002. A quitclaim deed indicates that, in 2000, the parties deeded the property to themselves and their adult daughter, who lived in a trailer on the parcel. Defendant claimed the 2000 deed was fraudulent because he signed it while it was blank and that it was supposed to have been used to deed the property to both of their children and not just their daughter. Throughout the marriage, defendant was a heavy equipment operator; plaintiff did not work outside the home. Plaintiff suffers from heart disease, has had heart valve replacements, and uses an implanted pacemaker. After filing for divorce and moving in with her daughter, plaintiff received an inheritance of \$36,000.

In the divorce judgment, the court revised an otherwise-equal division of marital property by increasing the award to plaintiff for fault, awarding plaintiff \$87,444 and defendant \$67,444. The court considered the homestead land as marital property and plaintiff's inheritance as non-marital property. The court ordered defendant to pay plaintiff \$462.50 in monthly spousal support, "the difference between one half the total Social Security received by the parties and the amount of Social Security received by the Plaintiff each month." The court discussed defendant's fault:

There's things I already said about Mr. – about the husband and his credibility and his actions during the trial, plus the testimony of the wife going to the issue of physical abuse and emotional harassment, emotional abuse, I'm going to guess probably throughout most of the marriage. I'm putting fault of \$10,000.

## II. Analysis

Defendant first argues that the trial court improperly awarded plaintiff \$10,000 as part of her share of the property settlement based on defendant's fault. We disagree. We review property division in a divorce case as follows:

The appellate court must first review the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. But because we recognize that the dispositional ruling is an exercise of discretion and that appellate courts are often reluctant to reverse such rulings, we hold that the ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable. [*Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992) (citations omitted).]

We give “special deference to a trial court's findings when they are based on the credibility of the witnesses.” *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997) (citation omitted). Fault is still an element that a court must consider when dividing a marital estate:

Notwithstanding Michigan's no-fault divorce law, fault is still one of many valid considerations in matters of property division and a trial judge's consideration of fault in determining a property division will not be disturbed absent an abuse of discretion. A determination of property division necessitates an examination of 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. One of the circumstances to be considered in the determination of property division is the fault or misconduct of a party. [*Davey v Davey*, 106 Mich App 579, 581-582; 308 NW2d 468 (1981) (citations omitted).]

Thus, the court did not err by considering fault.

Defendant also claims “there were no findings made for each of the factors” listed in *Sparks, supra* at 159-160:

We hold that the following factors are to be considered *wherever they are relevant* to the circumstances of the particular case: (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. [*Id.* (citation omitted; emphasis added).]

To the contrary, the record shows that the court addressed those factors relevant to its decision. The court specifically noted defendant's fault and also his lack of credibility, which the court stated was "instrumental in my decision." The court considered the duration of the marriage, as well as the parties' ages, health, and earning abilities, and their financial needs and income. And the court carefully balanced the equities when dividing the homestead between the parties. Defendant has not shown that this deviation from an even split is so extreme that it should create a "firm conviction that the division was inequitable." *Sparks, supra* at 152.

Defendant next argues that the court erred by failing to assess the needs of the parties or his ability to pay spousal support. Reviewing the question for an abuse of discretion, we again disagree. "Whether to award spousal support is in the trial court's discretion, and we review the trial court's award for an abuse of discretion." *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003) (citation omitted). "The trial court's decision regarding spousal support must be affirmed unless we are firmly convinced that it was inequitable." *Id.* at 433 (citations omitted).

"The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. Alimony is to be based on what is just and reasonable under the circumstances of the case." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000) (citations omitted). This Court has listed some of the factors to be considered when setting an award of spousal support:

Among the factors that should be considered are: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. [*Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

In this case, the court made a critical finding: "As far as the alimony is concerned, it doesn't look like there's enough money for either party to make their expenses no matter which way we go." The court continued: "And, as far as I'm concerned, based upon the length of the marriage, the length of time these people have been together, social security is going – would probably be split." Defendant claims the court made no needs assessment. However, the court heard lengthy testimony from the parties about their monthly income and expenses before drawing its conclusions about their financial situation. Therefore, defendant's argument here is entirely without merit.

Defendant also argues that spousal support is inappropriate because he will have to mortgage his property to pay his share of the property settlement. Defendant's reliance on

*Schaffer v Schaffer*, 37 Mich App 711; 195 NW2d 326 (1972), for the proposition that where one party receives a substantial cash award and the other party must take on substantial debt, no spousal support is appropriate, is misplaced. *Schaffer* is readily distinguishable and did not establish a general rule. In any event, defendant is not acquiring any existing debt, as he is allowed to choose whether to liquidate or mortgage the property to pay plaintiff for her share of its worth. Therefore, this argument is similarly without merit.<sup>1</sup>

Defendant's final claim is that the court erred by finding that the parties' land was marital property. We find that this conclusion was not clearly erroneous. "The appellate court must first review the trial court's findings of fact under the clearly erroneous standard." *Sparks, supra* at 151.

Defendant argues that the land where the marital home was located should have been treated as non-marital property because he bought it before he knew plaintiff. Defendant relies on *Reeves v Reeves*, 226 Mich App 490; 575 NW2d 1 (1997), claiming that, in *Reeves*, this Court "held that real estate equity accumulated before the parties were married was the husband's property . . . even though the property was titled in both parties<sup>[1]</sup> names." However, it is apparent that the defendant-husband in *Reeves* prevailed precisely because his plaintiff-wife was *not* listed on the title to the condominium at issue in that case, so that the equity in that condominium established before the marriage was his separate property. See *id.* at 492-493. This case is entirely different. Defendant does not dispute that plaintiff joined him as a titled owner of the property in 1966, before their marriage. Thus, unlike in *Reeves*, the entirety of the relevant property was jointly owned by the parties before the marriage and, thus, none of it was defendant's separate property.

Affirmed.

/s/ Patrick M. Meter  
/s/ Christopher M. Murray  
/s/ Bill Schuette

---

<sup>1</sup> Defendant's final argument on this issue is a brief assertion – with no citation to primary authority – that "a state court does not have the authority to divide Social Security Benefits in a divorce proceeding." Defendant has abandoned this issue by giving it merely cursory treatment in his brief. *Houghton v Keller*, 256 Mich App 336, 340; 662 NW2d 854 (2003).