

STATE OF MICHIGAN
COURT OF APPEALS

CHARLOTTE A. LANHAM,

Plaintiff-Appellee,

v

ROBERT A. LANHAM,

Defendant-Appellant.

UNPUBLISHED

November 17, 2005

No. 254055

Macomb Circuit Court

LC No. 2002-003872-DM

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

Defendant Robert Lanham appeals by right from the trial court's order granting divorce to plaintiff Charlotte Lanham. Defendant specifically appeals the trial court's property division, which was based on the parties' stipulation that they would each receive equal shares of the equity in the marital home. We affirm.

Plaintiff and defendant were married on July 2, 1998, and they had one child together, a minor at the time of the trial. Plaintiff had two previous marriages, and the second ended with her husband's death, from which she received a death benefit. After plaintiff's marriage to defendant, she sold her home and applied the death benefit to a down payment for the parties' marital home. The parties also borrowed some down payment money from defendant's brother, but they repaid him. Shortly thereafter, defendant injured his back, causing ongoing back pain and disability. At the time of the trial, defendant's sole source of income was Social Security Disability and a settlement from a worker's compensation claim.

The parties stipulated to the mortgage balance remaining on the marital home, and they further stipulated that they would evenly divide the equity in the home. They submitted different estimates of the value of the home and of their vehicle. The parties took out an approximately \$23,000 home equity loan on the marital home, some of which was used to purchase the vehicle and some of which was used to remodel the basement. Defendant testified that, despite the lack of direct payments from him toward the marital home, he felt entitled to an interest in the marital home and personal property because he dedicated all of his wages to the shared expenses of their family and did most of the housework.

The trial court determined that the fair market value of the home was \$208,500, the remaining debt owing on the mortgage was \$152,749.53, the remaining debt owing on the home equity loan was \$23,179.21, and plaintiff's down payment was \$29,076.61. Defendant does not

contest these individual conclusions. However, the parties clearly had different views of what constituted “equity” below. Plaintiff proposed the equity to be the value of the home minus the mortgage amount, the home equity loan amount, and her down payment amount, for a total of \$3,494.65 in equity. Defendant submitted four different proposals, each containing a different configuration of the various sums. One permutation subtracted the mortgage and the home equity loan but omitted the down payment, whereas another subtracted the mortgage and the down payment but omitted the home equity loan. These proposals computed the equity in the home as between \$32,571.26 at the lowest and \$55,750.47 at the highest. The trial court adopted plaintiff’s proposal and ordered plaintiff to pay defendant \$1,747.33.

Defendant argues that the trial court misinterpreted the parties’ stipulation to divide evenly the marital and non-marital equity in their marital home, and he further argues that the trial court erroneously denied him a new trial on the issue of the division of the marital home. We disagree.

Absent a binding agreement, the goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). Stipulations are agreements between the parties and are consequently construed as contracts. *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000). Interpretation of clear contractual language presents a question of law that is reviewed de novo on appeal. *MacInnes v MacInnes*, 260 Mich App 280, 283; 677 NW2d 889 (2004). Whether contractual language is ambiguous is also a question of law subject to de novo review. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). “A stipulation is to be construed as a whole and in light of the facts and circumstances surrounding its making.” *Nuriel v Young Women’s Christian Ass’n of Metropolitan Detroit*, 186 Mich App 141, 147; 463 NW2d 206 (1990).

The parties’ treatment of the term “equity” shows that they agreed on its common definition as found in Black’s Law Dictionary (8th ed): “the amount by which the value of or an interest in property exceeds secured claims or liens; the difference between the value of the property and all encumbrances upon it.” A majority of the bankruptcy courts agree with this general definition. *In re Franke*, 268 BR 133, 134 (W D Mich, 2001). Also accord, 4 Powell on Real Property § 37.30, p 37-202 (“when a broker speaks of the ‘equity’ in a parcel, he is referring to the value of the property over and above the mortgage which encumbers it”). The relevant common definition is similar: “the monetary value of a property or business beyond any amounts owed on it in mortgages, claims, liens, etc.” *Random House Webster’s College Dictionary* (2001). However, in the context of property division in a divorce, equity in a marital home would ordinarily not be considered to include a down payment made from a party’s separate, pre-marital assets. *Reeves v Reeves*, 226 Mich App 490, 494-496; 575 NW2d 1 (1997). When parties use a word with a definite legal meaning, they are presumed to have intended the term to have that meaning absent a contrary intention appearing in the written instrument. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 132; 602 NW2d 390 (1999). We perceive no contrary intention.

The parties agreed that the “equity” would be the fair market value of the house, minus at least the outstanding mortgage debt. Defendant’s various proposed orders indicate that he understood both the home equity loan and plaintiff’s down payment to be sums the trial court *could* consider subtractions from the remaining equity. The parties’ stipulation was therefore not

to a final figure representing the equity in the home subject to the trial court filling in a specific list of blank sums. Rather, the parties' stipulation was to have the trial court determine the equity in the home on the basis of evidence presented to it. The parties' expenditure of time and energy presenting evidence about whether the loan from defendant's brother had been paid, the uses to which the home equity loan had been put, defendant's contribution of time and wages to other marital needs, and even their proposed orders only makes sense if they understood that the trial court would make use of that evidence. This evidence would have been surplusage if they merely expected the trial court to mechanically fill a few numbers into a predetermined formula.

We have explained that "the trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate [non-marital] assets." *Reeves, supra* at 493-494. This principle is derived from MCL 552.19, which allows the trial court to "make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money." The parties and trial court thus had a shared vocabulary with which to enter and interpret their stipulation. Plaintiff and the trial court invoked this same understanding to justify the divorce judgment, and defendant did not communicate a different meaning of the term when entering the stipulation. The trial court properly determined the "equity" in the marital home in congruence with its legal meaning within the context of a divorce proceeding.

Defendant also argues that, because the trial court misinterpreted the parties' stipulation to divide the equity in their marital home, it made a mistake of fact, thus entitling him to a new trial pursuant to MCR 2.611(A)(1). We disagree. A trial court's decision on whether to grant new trial will not be reversed absent an abuse of discretion. *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001). A new trial may be granted when the substantial rights of a party were materially affected and there was an "error of law occurring in the proceedings, or mistake of fact by the court." MCR 2.611(A)(1). Because the trial court correctly interpreted the parties' stipulation, the trial court correctly denied defendant a new trial.

Affirmed.

/s/ Alton T. Davis
/s/ E. Thomas Fitzgerald
/s/ Jessica R. Cooper