

STATE OF MICHIGAN
COURT OF APPEALS

SUE A. SELLERS,

Plaintiff-Appellant,

v

ROBERT LYLE SELLERS,

Defendant-Appellee.

UNPUBLISHED

September 14, 2006

No. 260590

Lenawee Circuit Court

LC No. 01-024126-DM

Before: Murray, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Plaintiff appeals by leave granted a circuit court order granting a receiver's motion to pay attorney's fees, make partial distribution of proceeds, and determine a sum certain owed to defendant. Because the receiver accurately tabulated the credits and deductions apportioned to plaintiff, but the order proposed by the receiver and adopted by the trial court contained a mathematical error, we affirm in part, reverse in part, and remand.

Divorce proceedings were initiated in this matter in 2001. Hearings were thereafter conducted and a settlement placed on the record regarding division of the parties' marital property. A judgment of divorce was ultimately entered on February 12, 2003. Upon the parties' stipulation, the court subsequently appointed a receiver to distribute the parties' marital assets and apportion the marital debts. In September, 2004, the receiver motioned the court to pay attorney fees, make a partial distribution of proceeds, and determine the balance owed defendant, attaching a sheet explaining his calculations. After an evidentiary hearing, the court granted the receiver's motion and entered an order requiring plaintiff to pay defendant \$106,830.04. Plaintiff's subsequent motion for reconsideration, based upon an alleged erroneous calculation, was denied.

Plaintiff first argues that the court erred in granting the proposed order of the receiver because it contained a clear mathematical error. Findings of fact, such as a trial court's valuations of particular marital assets, will not be reversed unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002).

Here, the record indicates that the trial court, by using the receiver's final calculation, made a clearly erroneous factual finding when it determined the amount of money plaintiff was required to pay defendant. The judgment of divorce evidenced that the parties were to receive equal equity in their assets on divorce. After the receiver made his calculations, it was clear plaintiff had been awarded (after adjustments) \$488,516.21 while defendant was awarded \$381,686.17. The same was set forth in the court's order of July 23, 2004. The divorce judgment indicated that where there were insufficient monies from the sale of real and personal property to bring defendant equal to plaintiff, plaintiff was to pay the difference to defendant to bring defendant's equity equal to hers. The receiver indicated, however, and the trial court ordered, that plaintiff was to pay defendant \$106,830.04, which was the full amount of difference between the parties' awards.

If plaintiff were, however, to pay defendant the \$106,830.04 difference between their two awards, her total assets would decrease by that amount and defendant's would increase by that same amount. The net effect would be that plaintiff had \$381,686.17 while defendant received \$488,516.21. This calculation clearly does not make the awards equal between the parties; it simply reverses their positions. In order to achieve an equal split of the marital estate, it is necessary to divide the \$106,830.04 in half, leaving \$53,415.02 to be paid by plaintiff to defendant. By subtracting this amount from plaintiff's award and adding this amount to defendant, both parties final award would exactly equal \$435,101.19. This would comply with the judgment of divorce.

On remand, the trial court may either correct or modify the disparity in its judgment to accurately reflect its intention to divide the property equally or, if it intended a disparity in the property division, to articulate more specifically its intent to do so.

Plaintiff next argues that the trial court erred by adopting the figures set forth by the receiver because there was an inaccurate tabulation of credits and deductions as apportioned to plaintiff. Specifically, plaintiff claims that the receiver improperly credited her for only \$100,000 on a \$200,000 debt that she paid. We disagree.

In reviewing dispositional rulings in a divorce case, this Court must first review the trial court's findings of fact for clear error, and then decide whether the dispositional ruling was fair and equitable in light of those facts. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). Property dispositional rulings will be affirmed unless we are left with the firm conviction that the distribution was inequitable. *Sands v Sands* 442 Mich 30, 34; 497 NW2d 493 (1993). A division of property in a divorce action need not be equal, but it must be equitable. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). To reach an equitable division, the trial court is given broad discretion in fashioning its rulings, is not held to a strict mathematical formula, and is only required to consider those factors relevant to the case before it. *Sands, supra*, at 34-35.

Upon reviewing the record, we conclude that the trial court did not err by adopting the receiver's numbers with respect to the debt at issue. The debt was a second mortgage on the marital home, which was awarded to plaintiff. Per the divorce judgment, this second mortgage debt of approximately \$200,000 was to be the responsibility of both parties. In order to avoid foreclosure, plaintiff paid the entire debt. At this point, she became entitled to a credit for one-half of that amount because defendant did not fulfill his obligation to pay his one-half of the

debt. To credit plaintiff with the full \$200,000 payment would be a clear error because half of that debt was hers to pay. Plaintiff mistakenly argues that she should be credited the full \$200,000. If she received the full credit, defendant would be charged with paying the entire debt. This is contrary to the terms of the judgment.

The receiver, staying within the bounds of the divorce judgment, properly took into account the second mortgage and correctly applied the credit in determining the amounts awarded to the parties. There was no clear error in the receiver's calculations, and we do not conclude that the trial court erred in adopting the contested figure as calculated by the receiver.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Michael R. Smolenski

/s/ Deborah A. Servitto