

STATE OF MICHIGAN  
COURT OF APPEALS

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MARTIN W. YUNCKER,

Plaintiff/Counter-Defendant-  
Appellant,

v

LISA A. YUNCKER,

Defendant/Counter-Plaintiff-  
Appellee.

UNPUBLISHED

January 15, 2009

No. 280766

Isabella Circuit Court

LC No. 06-004921-DM

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Before: Murray, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right the parties’ judgment of divorce. Plaintiff argues that the trial court erred in dividing up the marital property, particularly when it awarded the marital home to defendant. We affirm.

When dividing property in a divorce, the trial court must first classify the property as marital or separate assets. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). Generally, the marital estate is divided between the parties, and each party takes away from the marriage their own separate assets with no invasion by the other party. *Id.* Usually, assets earned by a spouse during the marriage are properly considered part of the marital estate. *McNamara v Horner*, 249 Mich App 177, 183-184; 642 NW2d 385 (2002). Marital property is property that came to either party by reason of marriage. MCL 552.19, *Reeves, supra* at 493. Typically, an inheritance that is received by a married party and kept separate from marital property is considered separate property not subject to distribution. *Dart v Dart*, 460 Mich 573, 585; 597 NW2d 82 (1999).

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Berger v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008); *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). The division does not have to be numerically equal, but any significant departure from equivalence must be clearly explained. *Berger, supra* at 717; *McNamara, supra* at 188. A court’s dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005). A trial court’s findings of fact will not be reversed unless clearly erroneous. *Berger, supra* at 717. 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 was made. *Id.*

Both of the issues raised by plaintiff relate to the court's distribution of property. Although his second issue is styled as a challenge to the court's finding with respect to alimony, no alimony was awarded by the court. Rather, the court observed that this was the type of case where an award of alimony would be "highly probable." The court considered this probability along with many other factors when dividing the marital property between the parties.

Turning first to the court's observation about the probability of alimony, we see no error in the observation. The court found that defendant was a stay at home mother, was not employed, had no education after high school, and had limited vocational skills. Furthermore, testimony indicated that defendant was willing to work, applied for jobs without success, did not have an available position at the family business, and planned to take the steps necessary to support herself. Defendant testified that the minimum wage jobs she was qualified for would have been cost prohibitive because of the need for childcare in order to work. See *id.* at 726-727. In short, defendant's ability to earn income was very limited, rather than deliberately unexercised. See *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000).

As we understand it, plaintiff is arguing that the court gave too much emphasis to its finding of fault when dividing marital property, and also failed to properly consider commingled property as marital property. As to this latter assertion, it is unclear what property he considers to have been commingled.

In dividing the property, the court reasoned as follows:

This is a long term marriage. Mrs. Yunker was a stay at home mom throughout the course of the marriage. She did work at some point during the marriage. The marriage failed in large part due to the conduct of Mr. Yunker. Mrs. Yunker is not employed and has limited vocational skills. From the Court's perspective, this is the type of case where it would be highly probable that the Court would order alimony for a period of time. However, in lieu of alimony and in consideration of the extensive use of Mrs. Yunker's inheritance to cover debts caused by the farming operation of her husband . . . [.] what I am going to do is the following.

The court then set forth the outline of the property division, which was subsequently spelled out in detail in the judgment of divorce.

No one factor, including fault, may be given undue weight in determining an equitable division. *Berger, supra* at 717. It is clear, however, that the court did not focus primarily on fault when dividing the marital property. Indeed, its main emphasis was on defendant's support needs in light of her life circumstances, as well as the use of defendant's inheritance to pay farming debt. The court did not erroneously consider money gifted to plaintiff by defendant's

parents in making its property distribution. The court did not use a mathematical formula in awarding roughly \$134,000 of equity in the home and ten years of plaintiff's pension to defendant. The court awarded plaintiff approximately \$6,000 more personal property than awarded to defendant, interest in a cabin,<sup>1</sup> \$4,000 cash value in plaintiff's 401(k), and a life insurance policy with a potential \$100,000 death benefit payable to plaintiff. Additionally, the court factored into the equation over \$60,000 in benefits received by plaintiff from defendant's inheritance used to discharge debts and no payment of spousal support from plaintiff to defendant.<sup>2</sup>

In sum, the court considered the entire situation regarding all family members, including the children, and it made an equitable distribution based on those factors. Considering all the circumstances, the trial court's division of property was equitable.

Affirmed.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Alton T. Davis

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<sup>1</sup> There was not testimony at trial about the value of the cabin. Its appraised value was \$136,000 and plaintiff noted in his deposition that the balance on the loan was around \$60,000.

<sup>2</sup> Defendant had requested \$300 a month for seven years in spousal support.