

STATE OF MICHIGAN
COURT OF APPEALS

RUTH A. WHISNANT,

Plaintiff-Appellee,

v

CHARLES WHISNANT,

Defendant-Appellant.

UNPUBLISHED

October 14, 2010

No. 292478

Macomb Circuit Court

Family Division

LC No. 2008-001357-DM

Before: FORT HOOD, P.J., and JANSEN and WHITBECK, JJ.

PER CURIAM.

Defendant Charles Whisnant appeals as of right a judgment of divorce. We affirm.

I. BASIC FACTS

Plaintiff Ruth Whisnant filed a complaint for divorce in March 2008, stating that she and Charles Whisnant were married in January 2002, in Florida, currently lived in the marital home, and had one minor child. According to trial testimony, at the time of trial, Ruth Whisnant was 32 years old, Charles Whisnant was 47 years old, and their minor child was 11 years old. The trial testimony indicated that in 1990, Ruth Whisnant met Charles Whisnant, when she was 13 years old, and began babysitting for Charles Whisnant and his first wife—who was Ruth Whisnant’s half-sister—when when she was 14 years old. When Ruth Whisnant was 14 years old, she lived with Charles Whisnant and his first wife for seven months, and then moved back home with her parents. In 1991, after Ruth Whisnant moved back in with her parents, Charles Whisnant divorced his first wife. While Charles Whisnant was going through his divorce, Ruth Whisnant babysat for his children on weekends and sometimes during the weekday. In 1992, when Ruth Whisnant was 16 years old, she moved back in with Charles Whisnant who was 31 years old at that time. Ruth Whisnant continued to attend high school while taking care of Charles Whisnant’s house, until twelfth grade, when she dropped out of high school at age 17 to take care of Charles Whisnant’s children full-time because he was working 60 to 80 hours a week in the construction business. In 1999, Ruth Whisnant became a licensed cosmetologist in hair and nails.

Charles Whisnant had full custody of his three children, and Ruth Whisnant raised these children until they reached the age of eighteen. Ruth Whisnant was the full-time mother and “wife” of the family. She attended all the school functions and maintained the household by cooking the meals, doing the laundry, and washing the dishes. Ruth Whisnant had a daughter with Charles Whisnant in 1997, before she and Charles Whisnant were married. After her

daughter's birth, Ruth Whisnant continued to raise the four children, and Charles Whisnant continued to work.

Over the course of their marriage, Charles Whisnant, with Ruth Whisnant's assistance, acquired a number of properties, including the property at 16594 Curtis, Roseville, which is at issue in this appeal. Apparently, all of these properties, including 16594 Curtis, were titled in the name of Charles Whisnant's parents. According to Ruth Whisnant, Charles Whisnant told her that the titles to the properties were in his parents' names because he was worried that if something happened to him, his ex-wife from his previous divorce would be entitled to the properties because of the minor children.

According to the trial testimony, during the ten years that Ruth Whisnant and Charles Whisnant lived together, before they were married, they resided at 17408 Martin Road, Roseville. Charles Whisnant apparently owned the 17408 Martin house, but, like the other properties, it was titled to his parents, Charles Edger Whisnant¹ and Jenny Whisnant. During the six years that the Whisnants were married, beginning in 2002, they resided at 16594 Curtis Street. As noted, the 16594 Curtis house was also titled to Charles Whisnant's parents.

According to the trial testimony, Charles Whisnant borrowed \$60,000 to \$70,000 from his parents to pay for the house at 16594 Curtis. The Whisnants paid Charles Whisnant's parents \$1,200 a month to repay the loan. Apparently, there was a verbal agreement between Charles Whisnant and his parents that the Whisnants would pay Charles Whisnant's parents \$1,200 a month for six years at zero percent interest. Ruth Whisnant was not aware that title to the house was in the names of Charles Whisnant's parents until she looked up the records. Ruth Whisnant believed she and Charles Whisnant were the titleholders of the house at 16594 Curtis because they owned the house.

However, Charles Whisnant stated that his parents purchased the 16594 Curtis house and he and Ruth Whisnant did not borrow money from his parents to purchase that house. Charles Whisnant stated the he never owned or paid rent on that house. Charles Whisnant stated the 16594 Curtis house was an investment his parents bought and let him live in for free. He further testified that he signed two promissory notes in 2000 and 2001 to his parents. However, he could not explain how the notes were signed in 2000 and 2001 on paper with a 2004 copyright date in the lower right hand corner.

On April 27, 2009, the trial court issued its opinion and order. Regarding 16594 Curtis, the trial court determined that it was a marital asset with a value of \$112,620.21 based on the provided state equalized value (SEV). The trial court found that although title to the property was held in the name of Charles Whisnant's parents, Ruth Whisnant and Charles Whisnant actually owned the house. The trial court based this conclusion on the building permit applications Charles Whisnant filled out as property owner of the house, and the homeowner's tax exemption he used on the house, along with the \$35,000 worth of improvements he put into the house.

¹ Defendant Charles Whisnant's full name is Charles Edward Whisnant.

Overall, the trial court found 11 of the 12 Whisnant properties to be marital assets. The trial court divided these 11 marital properties as follows. It awarded Ruth Whisnant: 1) 25163 Fern (\$94,030); 2) 27649 Groveland (\$7,000); 3) 17300 Martin (\$96,422); 4) 29456 Senator (\$93,030); and 5) 16234 Ten Mile (\$90,520), for a total of \$381,002. It awarded Charles Whisnant 16594 Curtis (\$112,620); 2) 25292 Dodge (\$69,116); 3) 25143 Fern (\$19,744); 4) vacant Groveland lot (\$29,280); 5) 28081 Maple (\$34,988); and 6) 17416 Martin (\$61,106), for a total of \$326,855.

The trial court noted that while the division slightly favored Ruth Whisnant (54 percent to 46 percent), the difference accounted for Charles Whisnant's initial failure to share rental income with her, Charles Whisnant's ability to live without a rental payment, the slightly greater income producing ability of the properties awarded to Charles Whisnant, the overstated value of 16234 Ten Mile, and Charles Whisnant's unauthorized use of Ruth Whisnant's credit cards.

II. 16594 CURTIS

A. STANDARD OF REVIEW

Charles Whisnant argues that the trial court's disposition of real property was inequitable given that it erroneously included the 16594 Curtis house as part of the marital estate. In a divorce action, we review for clear error the trial court's factual findings.² A factual finding is clearly erroneous if, after reviewing the entire record, the court is left with a definite and firm conviction that a mistake has been made.³ If the trial court's factual findings are upheld, then this Court must decide whether the dispositive ruling was fair and equitable in light of those facts.⁴ "A dispositional ruling is discretionary and should be affirmed unless this Court is left with a firm conviction that the division was inequitable."⁵

B. LEGAL STANDARDS

"The distribution of property in a divorce is controlled by statute."⁶ In making any distribution, the trial court must first distinguish between marital assets and separate assets.⁷ Marital assets are divided between the parties, but each party retains his or her separate assets.⁸ Marital assets are defined as those assets that have been acquired or accumulated from the beginning to the end of the marriage.⁹ Separate assets are typically those assets owned by the

² *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992).

³ *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

⁴ *McNamara v Horner (After Remand)*, 255 Mich App 667, 670; 662 NW2d 436 (2003).

⁵ *Id.*

⁶ *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997), citing MCL 552.1 *et seq.*

⁷ *Byington v Byington*, 224 Mich App 103, 110-114; 568 NW2d 141 (1997).

⁸ *Reeves*, 226 Mich App at 494.

⁹ *Bone v Bone*, 148 Mich App 834, 837-838; 385 NW2d 706 (1986).

parties prior to the marriage or received during the marriage without contribution or affirmative action by the other spouse.¹⁰

C. APPLYING THE STANDARDS

Based on the evidence presented at trial, we conclude that it was not clear error for the trial court to find that the 16594 Curtis house was a marital asset and that Charles Whisnant's parents merely held title to the property in their names. The evidence presented at trial showed that in 2002, Charles and Ruth Whisnant purchased the 16594 Curtis house for \$60,000, using money that Charles had borrowed from his parents. The Whisnants paid Charles Whisnant's parents \$1,200 a month to repay the loan. In 2002, Charles Whisnant filled out and signed a bid proposal and a building permit application for the house. In 2005, Charles Whisnant filled out and signed, as the property owner, a building permit application and an electrical permit application. In 2006, Charles Whisnant filled out and signed, as the property owner, a Homeowner's Principal Residence Exemption Affidavit. The evidence presented also showed the parties invested \$35,000 into the house and that they resided in it together from 2002 until Ruth Whisnant moved out, first in 2007 for seven months, and then permanently in 2008. Additionally, Ruth Whisnant believed that the property was titled in her name and her husband's name until she reviewed the title records in 2008. Thus, we are not left with a definite and firm conviction that a mistake was made.

In addition, we conclude that the trial court's dispositive ruling, that the 16594 Curtis house was a marital asset awarded to Charles Whisnant was fair and equitable in light of these facts. Ruth Whisnant testified that she and Charles Whisnant purchased the house by borrowing money from Charles Whisnant's parents. Furthermore, despite Charles Whisnant's assertions to the contrary, he acted as the true owner of the property, as evidenced by the multiple permits he signed for and the tax benefits he enjoyed. Additionally, the parties resided in the house throughout much of their marriage and invested \$35,000 of their own money in house improvements. Under these circumstances, the trial court's disposition was equitable.

III. OVERALL PROPERTY DISTRIBUTION

A. STANDARD OF REVIEW

Charles Whisnant argues that because the trial court erroneously concluded that the 16594 Curtis house was a marital asset, its entire property determination, including the parties' assets and debts, must be redistributed. Again, in a divorce action, appellate review of the trial court's factual findings is limited to clear error.¹¹ A factual finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made upon reviewing the entire record.¹² If the trial court's factual findings are upheld, then this Court must

¹⁰ *Reeves*, 226 Mich App at 494-495.

¹¹ *Spark*, 440 Mich at 151.

¹² *Draggool*, 223 Mich App at 429.

decide whether the dispositive ruling was fair and equitable in light of those facts.¹³ A dispositional ruling is discretionary and should be affirmed unless this Court is left with a firm conviction that the division was inequitable.¹⁴

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of the property in light of all the circumstances.¹⁵ The division need not be mathematically equal, but any significant departure from congruence must be clearly explained by the trial court.¹⁶ The trial court's disposition of marital property is closely related to its findings of fact.¹⁷ The following factors are to be used in the division of marital property:

(1) the 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.^[18]

B. APPLYING THE STANDARDS

Given that it was not clear error for the trial court to determine that the 16594 Curtis house was marital property and that the disposition was equitable, as previously discussed, we conclude that the trial court's division of the marital property was also equitable in light of all the facts. The trial court achieved approximate congruence in its division of the 11 marital properties. It awarded Ruth Whisnant approximately \$381,002 in rental properties, and it awarded Charles Whisnant approximately \$326,855 in rental properties. While the trial court's determination regarding the marital property slightly favored Ruth Whisnant, Charles Whisnant's past relations and conduct towards Ruth Whisnant, the circumstances of the parties, the earning abilities of the parties, and general principles of equity justified this difference. Thus, the trial court's division of the parties' marital property was equitable.

We affirm.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ William C. Whitbeck

¹³ *McNamara*, 255 Mich App at 670.

¹⁴ *Id.*

¹⁵ *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Sparks*, 440 Mich at 159-160.