

STATE OF MICHIGAN
COURT OF APPEALS

TINA MARIE MORELL,
Plaintiff-Appellee,

UNPUBLISHED
May 29, 2003

v

RONALD PAUL MORELL,
Defendant-Appellant.

No. 242815
Chippewa Circuit Court
LC No. 00-005048-DM

Before: Smolenski, P.J., and Griffin and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right the trial court’s judgment of divorce. We affirm.

Defendant claims that the property division was inequitable and that the trial court erroneously considered defendant’s post-separation conduct. We disagree.

In reviewing a trial court’s distribution of a marital estate, this Court first determines whether the trial court’s findings of fact were clearly erroneous. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997), citing *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992), and *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made. *Draggoo, supra*. If the findings of fact are not clearly erroneous, this Court then determines whether the distribution was fair and equitable in light of those facts. *Id.* However, unless this Court is left with the firm conviction that the division was inequitable, the judgment should be affirmed. *Id.*, citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993), and *Sparks, supra* at 151-152.

Michigan law gives the courts jurisdiction to divide property. See, e.g., MCL 552.18 (pension and retirement assets), 552.19 (marital property), 552.23 and 552.401 (separate property), and 552.103 (jointly owned real estate). The marital estate need not be divided equally, and there are no “rigid rules or mathematical formulas” to follow. *Greaves v Greaves*, 148 Mich App 643, 647; 384 NW2d 830 (1986); *Johnson v Johnson*, 346 Mich 418, 431; 78 NW2d 216 (1956). The paramount concern is dividing the estate fairly and equitably in light of the particular circumstances of the case. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). The following factors are also considered:

[T]he source of the property; the parties' contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity. *Sands, supra* at 35; *Sparks, supra* at 159-160. In addition, the court may consider the interruption of the personal career or education of either party. [*Hanaway, supra* at 292-293, citing *Sands, supra* at 36.]

All the factors may not apply in a given situation, and the court need not give equal weight to each factor. *Byington v Byington*, 224 Mich App 103, 115; 568 NW2d 141 (1997); *Sparks, supra* at 159. The trial court should clearly explain its rationale if the distribution of marital assets is significantly disparate. See *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994); *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990). To reach an equitable division, the trial court may consider fault, past misconduct, or any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks, supra* at 158-160.

Here, the trial court noted that after the parties had separated and plaintiff had admitted she was having an affair, defendant climbed over plaintiff's balcony with a gun and attempted to enter her home, causing plaintiff significant "grief and aggravation." Defendant was imprisoned for attempted home invasion. Our review of the trial court's ruling does not reveal a clear error in the findings of fact nor the ultimate property distribution on the issue of fault. See generally *Draggoo, supra*; *Sands, supra*.¹ As the court below observed, defendant's choice to commit criminal conduct and subsequent imprisonment put him in a compromised economic position. See *McDougal, supra*; *Sparks, supra*.

Affirmed.

/s/ Michael R. Smolenski
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell

¹ In *Knowles, supra* at 500, this Court held that post-separation marital infidelity is not a relevant factor for consideration the distribution of property following a divorce. We note that *Knowles* is not binding precedent because it was issued before November 1, 1990, see MCR 7.215(I)(1), and that the principle set out in *Knowles* concerned marital infidelity, not a criminal act of violence.