

STATE OF MICHIGAN
COURT OF APPEALS

LERROY DAVID BARNES,

Plaintiff-Appellant,

V

NORMA GENE BARNES,

Defendant-Appellee.

UNPUBLISHED

July 8, 2003

No. 238469

Oakland Circuit Court

LC No. 00-643875-DO

Before: Talbot, P.J. and Neff and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of divorce, raising issues regarding the trial court's finding of fault, property division, and consideration of defendant's future social security benefits. We affirm.

I. Basic Facts

Plaintiff and defendant's marriage endured for thirty-eight years and produced two daughters who were adults at the time of trial. Plaintiff claimed that defendant's religious practices and routine tithing to her church caused the marriage to fail, while defendant attributed the failure to plaintiff's ongoing verbal, emotional, and physical abuse. Although the parties maintained somewhat separate finances beginning in the 1980s, they both contributed to household expenses and accumulated marital property subject to division. The parties stipulated to the value of all marital assets, including defendant's pension, with the exception of the amount of cash resulting from plaintiff's sale of Ford Motor Company (Ford) stock.

Plaintiff was gainfully employed for the majority of the marriage. In 1972, he obtained a bachelors degree in accounting and in 1976 obtained a masters degree in finance. From 1979 to 1982, plaintiff worked for Ford, during which time he accumulated a significant amount of Ford stock that he sold in 1999 for \$232,000 keeping \$95,000 in his possession.¹ According to plaintiff, he kept \$32,000 in the bank to cover taxes, spent \$30,500 for property taxes and improvements to the marital home, and gave approximately \$30,000 to his daughters. Although plaintiff failed to produce any documentation of these payments, he denied secreting or misusing

¹ Throughout the marriage, plaintiff kept significant amounts of cash on hand.

any of the funds.² After 1982, plaintiff “had a party store” in Detroit. Plaintiff reported he did not work for “a couple of years” after running the store and before beginning work as an appraiser. Plaintiff began working as a self-employed real estate appraiser in 1991 and obtained commercial real estate appraiser certificate in 1993.

Defendant, who has a high school education, was employed throughout the marriage, except for short periods after the daughters’ births. In 1967, defendant began working as a court reporter five days and three of four nights each week. Defendant also typed, without compensation, plaintiff’s college assignments and the residential and commercial appraisals for plaintiff’s business. During the marriage, defendant contributed at least \$450 every two weeks to household expenses. She also paid the gas, cable, insurance bills, car payments, and bought groceries.

In a written opinion, the trial court listed the factors to be considered in an equitable property division noting that the parties’ assets would ordinarily be divided equally, but cited plaintiff’s fault as the reason for deviating from a fifty-fifty split. Accordingly, the court divided the marital estate equally between the parties with the exception of awarding defendant seventy-five percent of her state and county deferred compensation plans and 100 percent of her state and county pensions. The court concluded that there was no clear and convincing evidence that plaintiff fraudulently disposed of any proceeds from his sale of Ford stock, and ordered an equal division of the cash remaining from the sale. The resulting award was sixty-five percent of the property to defendant and thirty-five percent of the property to plaintiff.

II. Fault

Plaintiff first argues that there was insufficient evidence to support the trial court’s finding of fault. We disagree. This Court reviews a trial court’s findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A trial court’s findings are clearly erroneous when, after conducting a thorough review of the record, this Court is firmly convinced that the trial court made a mistake. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

A trial court’s findings are sufficient if they are brief, definite, and pertinent to the disputed issues; a trial court need not issue elaborate and detailed factual findings. MCR 2.517(A)(2). A trial court’s findings of fact are entitled to heightened deference when those findings are based on the court’s assessment of witnesses’ credibility. MCR 2.613(C); *Draggou v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

Here, the trial court specifically found that “[d]efendant’s emotional and physical abuse by the Plaintiff caused the breakdown.” This finding was more than sufficiently supported by the record. Defendant reported that plaintiff physically harmed and threatened to harm her. The physical abuse allegations were corroborated by one of the daughters who testified that her life growing up with plaintiff and defendant was “hell.” She attributed the fault for her home environment to plaintiff. The daughter testified the parties argued frequently, but that only

² On the second day of trial, plaintiff produced one check register for his appraisal business.

plaintiff was physically abusive. She recalled witnessing plaintiff hold a rifle to defendant and threaten to shoot if defendant left the house. She also witnessed plaintiff grab defendant by the neck and shake her, causing defendant's head to hit the wall.

We further find there was sufficient evidence to support the trial court's finding of mental and emotional abuse. Defendant testified that plaintiff burned her religious books and broke her religious record albums. She testified that plaintiff prohibited her from attending church so that she had to "sneak into a church to pray" while she was out shopping. Plaintiff called defendant names from early in the marriage. In the 1990s, defendant realized that plaintiff was no longer calling her a "b----." Defendant testified: "[a]nd so instead of being a black stupid b---- I was just black and stupid. I was the blackest, stupidest women [sic] he had ever seen in his life." Furthermore, plaintiff wanted defendant to stop believing in God, drink alcohol, and "do what everybody else did." He complained about defendant's financial contributions to the church and made fun of defendant's religious beliefs. The testifying daughter also agreed that plaintiff "made it clear" that he did not like defendant's church involvement.

After a thorough review of the record, we are not firmly convinced that the trial court made a mistake in finding plaintiff's fault. Sufficient evidence supported the finding that plaintiff's conduct presented more of a reason for the breakdown of the marital relationship than did the conduct of defendant. *Welling v Welling*, 233 Mich App 708, 711; 592 NW2d 822 (1999).

III. Property Division

Plaintiff next contends that the trial court's property division was unfair and inequitable, even if the trial court correctly determined his fault. We disagree. This Court reviews dispositional rulings to determine whether the trial court reached a fair and equitable result in light of the court's factual findings. *Sparks, supra* at 152. A trial court's disposition of property is discretionary and should be affirmed unless this Court is firmly convinced that the division was unfair. *Id.*

The goal of dividing marital assets is to reach an equitable, although not necessarily mathematically equivalent, distribution of the parties' property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). A trial court must consider all factors relevant to the circumstances of a specific case. *Sparks, supra* at 159-160. These factors include, but are not limited to: (1) the length of the marriage; (2) the parties' contributions to the marital estate; (3) the age and health of the parties; (4) the parties' life status; (5) the circumstances and necessities of the parties; (6) the parties' earning capacities; (7) the past conduct or fault of the parties; and (8) the general principles of equity. *Id.*

"[F]ault is an element in the search for a *equitable* division – it is not a punitive basis for an inequitable division." *McDougal v McDougal*, 451 Mich 80, 90; 545 NW2d 357 (1996). In *McDougal*, our Supreme Court agreed that a substantial award to the plaintiff was appropriate where the defendant's wrongful acts, particularly his assault of the plaintiff, easily allowed a finding a fault. *Id.* at 90-91. However, the trial court granted the defendant "most of the parties' financial assets," an equal share of patent and patent related income acquired during the marriage of over three million dollars, and one-third of potential income from "patents, patent applications and licensing agreements." *Id.* at 83-85. The *McDougal* Court ruled that the trial court's finding

of fault did not justify the “extreme financial penalties imposed.” *Id.* at 90. The Court only remanded for further disposition of the patent proceeds while leaving intact the trial court’s division of other assets. *Id.* at 91.

The instant case does not involve assets of such potential value, and in our opinion, does not amount to an imposition of “extreme financial penalties” related to a disproportionate weight of plaintiff’s fault. Rather, the award was fair and equitable in light of the trial court’s factual findings. During the marriage, both parties were employed. However, plaintiff was able to make significantly more income than defendant in part because defendant provided extensive clerical support for plaintiff’s appraisal business. Although both parties were employed at the time of trial, defendant planned to retire soon after trial because she lost hearing in one ear. Defendant also suffers from a medical condition requiring specialized treatment, some of which will not be covered by her insurance. Other than her pension and deferred compensation plans, defendant has no savings or investments. On the other hand, plaintiff enjoys relatively good health and a high degree of education. Even working less than full time, his appraisal business grossed in excess of \$89,000 in 2000. Although plaintiff argues that expenses reduced that amount to \$8,000, these “expenses” were not documented. Plaintiff testified only that he compiled them by “feel.”³ In addition, plaintiff caused the marital breakdown by emotionally and physically abusing defendant over the course of many years. Based on these facts, we find the division was equitable.

IV. Social Security Benefits

Plaintiff next claims the trial court erred in refusing to fashion a property division to offset defendant’s significant future social security benefits. We disagree.

Pursuant to USC 407(a):

The right of any person to any future payment under this title shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Social security benefits already received by a party, are considered a marital asset subject to division. However, because defendant’s social security benefits represent only “some future, possible benefit,” they are not a marital asset subject to division. *Evans v Evans*, 98 Mich App 328, 331; 296 NW2d 248 (1980). Here, the trial court fashioned a property division that was fair and equitable, though not mathematically equal, based on its factual findings. The trial court properly declined to divide defendant’s future social security benefits or formulate a setoff based on their amount.

³ Plaintiff testified that he performs approximately fifty to sixty appraisals per year, but did not know how many hours he worked or how he calculated the expenses. Further, he had no documentation of expenses other than one sheet listing secretarial expenses.

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Kirsten Frank Kelly