STATE OF MICHIGAN

COURT OF APPEALS

MARY CIPRIANO, Plaintiff-Appellant,	UNPUBLISHED September 5, 2006
v	No. 259818 Macomb Circuit Court
SALVATORE CIPRIANO, Defendant-Appellee.	LC No. 1991-004641-DO ON RECONSIDERATION

Before: Fitzgerald, P.J., and Saad and Cooper, JJ.

PER CURIAM.

This case is before this Court for the third time. In a prior appeal from a 1993 divorce judgment, this Court upheld the trial court's decision to award 55 percent of the marital estate to plaintiff and 45 percent to defendant, but vacated the trial court's determination that defendant's interest in a family business, Peter Cipriano Enterprises, L.P. ("PCE"), should not be included in the marital estate because plaintiff had not contributed to its acquisition, improvement, or accumulation, and remanded for reconsideration of this issue. *Cipriano v Cipriano*, unpublished opinion per curiam of the Court of Appeals, issued July 5, 1996 (Docket Nos. 171878, 174026) ("*Cipriano I*"). On remand, the trial court found that defendant's interest in PCE was his separate property and, therefore, declined to award plaintiff a share of that asset. In a second appeal, this Court reversed the trial court's determination that plaintiff did not contribute to the acquisition, improvement, or accumulation of this asset and ordered the trial court to determine plaintiff's equitable share of the increased value of this asset. *Cipriano v Cipriano*, unpublished opinion per curiam of the Court of Appeals, issued December 27, 2002 (Docket No. 233215) ("*Cipriano II*"). On remand, the trial court determined that the value of defendant's interest in PCE increased by $822,100 from 1980 to June 1993, and awarded plaintiff 50 percent of this value. The court awarded plaintiff her share of this asset in kind rather than cash. Plaintiff appeals as of right. We again reverse and remand for further proceedings.

Initially, defendant concedes, and we agree, that the trial court erroneously stated that the increase in value of defendant's interest in PCE was $822,100. The trial court appointed an appraiser, Craige Stout, to determine the increase in value of defendant's interest in PCE. In its opinion, the trial court stated that it was accepting Stout's determination that the value of defendant's interest in PCE increased by $882,100 from 1980 to June 1993. The court initially used that figure in the first part of its opinion, but then later identified the amount as $822,100. We agree with the parties that the latter references to $822,100 are in the nature of a typographical error. Accordingly, the trial court's opinion and order shall be amended to reflect

an increase in value of defendant's interest in PCE between 1980 and June 1993 of $882,100, not $822,100.

Next, plaintiff argues that this Court's determination in *Cipriano I*, that the trial court did not abuse its discretion in dividing the marital estate on a 55/45 basis in favor of plaintiff, is the law of the case and, therefore, the trial court was required to award her a 55-percent share of the increased value of defendant's interest in PCE, rather than only a 50-percent share. We agree.

"The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

In *Cipriano I*, this Court affirmed the trial court's decision to divide the marital estate on a 55/45 basis in favor of plaintiff, and remanded to the trial court to reconsider the issue of whether defendant's interest in his family business should be included in the marital estate. In *Cipriano II*, this Court remanded to the trial court with instruction "to determine plaintiff's equitable share of the increase in value of the asset." Once the trial court on remand determined the value of the asset to be divided, in this case the increase in value of defendant's interest in PCE, the law of the case as established by *Cipriano I* compelled the trial court to award plaintiff her share on a 55/45 basis.

We also agree with plaintiff that the trial court erred by awarding plaintiff her share of the interest in PCE in kind, as opposed to an equivalent cash award. As explained in *Olson v Olson*, 256 Mich App 619, 624-626; 671 NW2d 64 (2003), multiple problems can arise when stock in a closely held corporation is divided among divorcing parties. It is rare that a divorcing couple can maintain an ongoing business relationship in a closely held corporation. See also *McDougal v McDougal*, 451 Mich 80, 91 n 9; 545 NW2d 357 (1996). This rationale is equally applicable to family-owned partnerships, like PCE. We believe this case falls within this rule rather than the rare exception. Accordingly, we reverse the trial court's decision to the extent that the court awarded plaintiff an equity interest in PCE. Instead, plaintiff shall receive a cash award equivalent to her share of this asset.

We additionally hold that plaintiff is entitled to interest on her cash award. The trial court determined that plaintiff was entitled to a portion of the increase in value of PCE between 1980 and the time this matter was originally litigated in June 1993. Since 1993, defendant has continued to own and control this asset and has received the economic benefits from it. Accordingly, in order to achieve a fair and equitable division of this asset, plaintiff is entitled to interest on her share of this asset between 1993 and the date of receipt of her share of the asset. *Thomas v Thomas (On Remand)*, 176 Mich App 90, 92; 439 NW2d 270 (1989). Here plaintiff has suggested an interest calculation based on what her share would have earned if the cash equivalent had been invested in BAA bonds, net of income taxes, over the time period in question.[1] Defendant has made no counter-proposal. On remand, the trial court shall award

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[1] Filed in the circuit court (Case No. 91-4641-DO) as Plaintiff's Calculation of Current Value on December 17, 2004.

plaintiff interest on her share of this asset, $485,155, to be calculated using the variable rates of interest proposed by plaintiff, which we find to be fair and equitable.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Henry William Saad
/s/ Jessica R. Cooper