

STATE OF MICHIGAN  
COURT OF APPEALS

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MARIANNE K. VANMELLE,

Plaintiff-Appellant,

v

CRAIG ALAN VANMELLE,

Defendant-Appellee.

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UNPUBLISHED

July 22, 2008

No. 275863

Kalamazoo Circuit Court

LC No. 05-007108-DO

Before: Murphy, P.J., and Bandstra and Beckering, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment of divorce entered on November 6, 2006, following a bench trial. We affirm.

Plaintiff first argues that the trial court erred by declining to amend the judgment of divorce to allow her to enter the marital residence to identify and retrieve any of her premarital personal property remaining there. We disagree. This Court reviews a trial court's decisions on motions to amend a judgment and for new trial for an abuse of discretion. *Kelly v Builder's Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001); *McDonald's Corp v Canton Twp*, 177 Mich App 153, 158; 441 NW2d 37 (1989). An abuse of discretion occurs when the decision results in an outcome that falls outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Divorce actions are equitable in nature, and when acting in divorce cases, circuit courts have the authority to make any order to enforce their judgments. MCL 600.611; *Cohen v Cohen*, 125 Mich App 206, 211; 335 NW2d 661 (1983). In so doing, the trial court may use its equitable powers to fashion its relief according to the character of the case and act as is "necessary to accord complete equity and to conclude the controversy." *Id.* Here, the trial court awarded plaintiff her premarital personal property as she requested, in effect ordering defendant to provide the property to plaintiff, rather than permitting plaintiff to reenter the marital home to retrieve it. Although the trial court had the authority to permit plaintiff to reenter the former marital home, such a remedy was not "necessary to accord complete equity and to conclude the controversy." *Id.* The divorce judgment and the subsequent order awarding plaintiff her premarital personal property could be enforced as any other routine court order: under the threat of contempt. See *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998) ("a party must obey an order entered by a court with proper jurisdiction . . . or the party must face the risk of being held in contempt and possibly being ordered to comply with the

order at a later date.”). There is no reason to believe that the trial court’s orders were not sufficient to “accord complete equity and conclude the controversy.” *Cohen, supra*. Therefore, the trial court acted within its discretion when it denied plaintiff’s request to reenter the marital home to retrieve her personal property.

Plaintiff next argues that the trial court erred by concluding that defendant did not have an ownership interest in the commercial building out of which he operated his photography business. We disagree. We review a trial court’s factual findings in a divorce case for clear error. *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990). A finding is clearly erroneous if this Court, on all the evidence, is left with a definite and firm conviction that a mistake was made. *Id.*

Before attempting to make an equitable division of property in a divorce case, the trial court must first decide which assets are marital and which assets are separate. *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 141 (1997). It is generally presumed that property accumulated during the marriage is marital property. *Id.* At trial, the parties gave conflicting testimony about the ownership of the commercial building at issue. Plaintiff testified that defendant’s parents told her that defendant purchased the photography business and the building from them, and that defendant told her that he bought the business and the building from his father and his uncle. Plaintiff also noted that defendant paid for improvements to the building, retained the rental income from the first floor of the building, and that the property taxes for the property bore his name. Defendant consistently testified that he did not own the building, but instead leased it from his parents, who remained its current owners. Defendant testified that he subleased a portion of the building to recoup a portion of his own rental costs and he explained that he started receiving the property tax bill after serving as the “principal person” responsible for applying for a tax abatement.

Given the conflicting testimony, we do not conclude that the trial court committed clear error by finding that the commercial property was not a marital asset. Defendant testified adamantly that he did not purchase the property.<sup>1</sup> While plaintiff testified that she believed otherwise, the trial court was in the best position to evaluate the credibility of the witnesses appearing before it, and “[t]his Court gives special deference to a trial court’s findings when they are based on the credibility of the witnesses.” *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

Plaintiff also asserts that the trial court erred when it subtracted the entire amount of the parties’ home equity loan from the marital equity in the marital residence. We disagree. When

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<sup>1</sup> Contrary to plaintiff’s assertion, defendant’s testimony that he did not, to his knowledge, tell plaintiff that he owned the building, was not an equivocal answer indicating that defendant actually owned the building. Defendant’s statement merely indicates that he did not recall telling plaintiff that he owned the building; presumably because he does not own it. Without other evidence proving that defendant acquired an ownership interest in the building during the marriage, the trial court’s factual finding that defendant did not own the building during the marriage was not clear error.

reviewing a trial court's distribution of marital assets, this Court first reviews the trial court's factual findings for clear error, and then determines whether the distribution was fair and equitable in light of the facts. *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003).

An essential part of dividing marital property is the attendant allocation of marital debt. The trial court is in the best position to determine whether a particular debt is marital debt or whether it is properly allocated to one individual. See *Lesko v Lesko*, 184 Mich App 395, 401; 457 NW2d 695 (1990), overruled on other grounds by *Booth v Booth*, 194 Mich App 284, 291; 486 NW2d 116 (1992). Plaintiff argues that only a portion of the outstanding home equity loan constituted marital debt; the remainder, according to plaintiff, should have been assessed to defendant as individual debt. Here, again, the parties gave conflicting testimony about how the proceeds of the home equity loan were used. The parties agreed that they used the loan to retire a car loan of \$8,000 for plaintiff's daughter and an educational loan of \$3,000 for plaintiff's son. However, the parties disagreed about how the remaining \$17,200 was spent. Defendant testified that the remaining proceeds were used to retire plaintiff's car loan. Plaintiff testified that she did not know how the rest of money was spent, but denied that it was used to pay for her car; she suggested that defendant may have used the balance of the loan to pay for some digital photography equipment. Plaintiff notes that defendant "handled the family finances" and asserts that, because he did not explain where he obtained money to purchase the camera equipment, the trial court should have found plaintiff's testimony more credible, and should have attributed all but \$11,000 of the home equity loan to defendant as individual debt. However, the trial court was in the best position to determine whether the debt was marital or separate. *Lesko, supra*. Because the trial court's conclusion that the entire debt was marital debt hinged on a credibility determination, i.e., deeming defendant's testimony about the loan's use more credible than plaintiff's, this Court will not disturb its finding on appeal. See *Draggoo, supra* at 429.

Next, plaintiff argues that the trial court incorrectly gave less weight to plaintiff's appraisal of the marital home than defendant's appraisal. We disagree. Where the value of a marital asset is in dispute, the trial court must make a specific factual finding regarding the value of that asset. *Olson, supra*. "[W]here a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Moreover, a trial court is in the best position to judge the credibility of the witnesses and, therefore, has great latitude in arriving at a final valuation of a marital asset on the basis of divergent testimony about the asset's value. *Pelton v Pelton*, 167 Mich App 22, 25-26; 421 NW2d 560 (1988). "The trial court may, but is not required to, accept either parties' valuation evidence." *Id.* at 25.

Both parties submitted written appraisals of the marital home as evidence of the home's value. Plaintiff's appraisal stated that the home was worth \$185,000 when the parties married, and had a current value of \$285,000. Defendant's appraisal stated that the home's premarital value was \$180,000, and its current value was \$220,000. Defendant's appraiser testified that if the trial court decided that the basement was finished after the parties were married, the premarital value of the home was \$170,000 to \$175,000. The trial court found that the premarital value of the home was \$175,000, and that the house's current value was \$235,000. The trial court explained that it relied more heavily on defendant's appraiser because the comparables used in his calculations were more appropriate, but noted that, it found defendant's appraiser to have reached a current value that was "a little low." Because the trial court's

valuation of the marital home is within the range established by the proofs, the trial court did not commit clear error. *Jansen, supra*. In addition, we note that there is no requirement that the trial court “split the difference” between the parties’ appraisals. See *Pelton, supra* at 25. Rather, the trial court is required to judge the credibility of the witnesses, and independently determine the value of the marital assets. *Olson, supra* at 627. It did so appropriately in this case

Plaintiff further argues that the property division was inequitable because the trial court did not award her the separate assets that she brought into the marriage. We disagree. In cases such as this one, where parties bring separate assets to the marriage, each party is generally awarded his or her separate premarital assets upon divorce. *Reeves, supra* at 494 (“[g]enerally, the marital estate is divided between the parties, and each party takes away from the marriage that party’s own separate estate with no invasion by the other party.”). However, if a separate asset was commingled with marital property, or otherwise contributed to the marital household, the asset is no longer separate, and it is then considered marital property, subject to division. See *Pickering v Pickering*, 268 Mich App 1, 13-14; 706 NW2d 835 (2005). Such is the case here. Plaintiff sold her house, its contents and her Mustang, and contributed the proceeds to the marital household, thereby converting what was separate property to marital property. See *id.* In addition, even though plaintiff out-earned defendant during the marriage, her earnings were also marital property because they were comingled. See e.g., *McNamara v Horner*, 249 Mich App 177, 187; 642 NW2d 385 (2002). Consequently, plaintiff is not entitled to “credit” for contributing more wages to the household, and she was not entitled to the value of the separate assets that she brought into the marriage.

Moreover, failing to credit plaintiff for her contributions did not result in an inequitable division of the marital property. Plaintiff received exactly one half of the equity in the marital home that accrued during the marriage, and 50 percent of the amount that defendant’s retirement account increased during the marriage. She also received the personal property she requested. Defendant, who also contributed separate property to the marriage, including his first wife’s life insurance proceeds, did not receive credit for the separate property he brought into the marital household. Defendant did receive the premarital equity in his house and the money in his retirement account he had before the marriage, but this award was proper as those assets were not subject to division as part of the marital estate. *Reeves, supra* at 495-496; MCL 552.18(1). The trial court’s refusal to award plaintiff separate assets that she comingled into the marital estate did not render the property division inequitable. She received an equitable share of the properly determined marital estate.

Plaintiff’s final argument on appeal is that the trial court abused its discretion by failing to award her attorney fees and costs. We disagree. This Court reviews a trial court’s grant or denial of attorney fees for an abuse of discretion. *Reed v Reed*, 256 Mich App 131, 164; 693 NW2d 825 (2005). Findings of fact upon which the trial court bases an award of attorney fees are reviewed for clear error whereas questions of law are reviewed de novo. *Id.*

Attorney fees are not recoverable as of right in divorce actions. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992); *Kurz v Kurz*, 187 Mich App 284, 297; 443 NW2d 782 (1989). However, necessary and reasonable attorney fees may be awarded to enable a party to carry on or defend a divorce action. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). Attorney fees and costs in domestic relation cases are governed by MCR 3.206(C), which provides:

(1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that

(a) the party is unable to bear the expense of the action, and that the other party is able to pay, or

(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

Plaintiff argues that she is entitled to attorney fees and costs because she used the liquid assets she obtained in the property division to pay her attorney fees and court costs. We agree that a party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995); *Kurz, supra* at 289. However, although plaintiff may have used the liquid assets she obtained in the divorce to pay her attorney, plaintiff was not relying on those assets for support. Plaintiff supports herself as a registered nurse, earning the same, if not more, than defendant. Moreover, plaintiff did not satisfy either of the requirements set forth in MCR 3.206(C)(2) to justify an award of attorney fees and costs. She did not show that she is unable to bear the expense of the divorce and defendant is more able to pay, or that defendant refused to comply with a court order, thereby forcing her to incur further attorney fees and expenses. Accordingly, the trial court did not abuse its discretion when it denied plaintiff's request for attorney fees and costs.

We affirm.

/s/ William B. Murphy  
/s/ Richard A. Bandstra  
/s/ Jane M. Beckering