

STATE OF MICHIGAN
COURT OF APPEALS

RUSSELL V. McDONALD,

Plaintiff-Appellee,

v

SHIRLEY ANN McDONALD,

Defendant-Appellant.

UNPUBLISHED

September 21, 2001

No. 223765

Presque Isle Circuit Court

LC No. 98-001670-DO

Before: Cavanagh, P.J. and Markey and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from the parties' judgment of divorce, contending that the trial court abused its discretion in dividing the parties' property. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties were married for approximately three years and their main asset was the marital home situated on twenty acres. The home, which was originally plaintiff's, had a stipulated value of \$47,750 at the time of trial and included a large garage that was constructed during the marriage. Plaintiff bought the property a year before the parties' marriage on a land contract with a down payment of \$10,684.90. He built the garage with the help of his friends and family, and defendant also assisted. The materials, totaling approximately \$7,500, were paid for with a loan in the amount of \$4,500 and funds from the parties' joint checking account. Defendant presented copies of checks from her separate checking account suggesting that she funded the monthly loan payment, but plaintiff contended that he paid for the entire structure. It was undisputed that defendant contributed \$7,000 of the proceeds from the sale of her previous residence to pay off the land contract. Defendant brought substantial personal property into the marriage, and the parties acquired additional items during the course of the marriage, but defendant removed most of the items when she moved out of plaintiff's residence. Plaintiff had a pension that he estimated to be worth \$3,000, but he indicated that his retirement account statement reported its value as \$1,070.55 at the time the parties separated.

In a written opinion, the trial court awarded both parties the personal property in their possession and awarded plaintiff the marital home. As a condition of receiving the home, the court ordered plaintiff to pay defendant \$15,000, representing monies contributed by defendant, plus "an additional amount." Finally, the Court indicated that defendant was also entitled, because of her lesser earning capacity, to \$2,500 toward her attorney fees. The judgment of divorce also awarded plaintiff his pension without valuing it.

On appeal, defendant contends that the trial court abused its discretion in not dividing the present value of the marital home and pension equally, which she asserts would have resulted in a payment to her in the amount of almost \$24,000. A trial court's dispositional ruling in a divorce action "should be affirmed unless the reviewing court is left with the firm conviction that [it] was inequitable." *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996), quoting *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). After a careful review of the record, we find no abuse of discretion in the trial court's property division.

The goal in distributing marital assets is to reach an equitable distribution of property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). "While each spouse need not receive a mathematically equal share, any significant departures from congruence must be explained clearly by the court." *Welling v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999). Here, plaintiff's down payment on the marital home, the equity built up before the parties' marriage, and any appreciation in the value of the property that occurred before the parties' marriage should be considered part of plaintiff's separate estate. *Reeves v Reeves*, 226 Mich App 490, 495-496; 575 NW2d 1 (1997). Further, defendant's assertion that plaintiff's retirement account was worth \$3,000 ignores plaintiff's account statement reporting that it had a value of \$1,070. Accordingly, her suggested award of almost \$24,000, viewed in light of the whole record, would not result in an equal or equitable distribution.

When dividing a marital estate, the trial court should consider:

the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstance. Although the significance of these factors will vary depending on the facts of a given case, each factor need not be given equal weight where the circumstances dictate otherwise. [*Welling, supra* at 710.]

In this case, on balance, we are satisfied that the trial court was justified in attempting to return the parties to the position they were in before the marriage by restoring to defendant the sum she contributed to the marital home. Moreover, even if we were to accept defendant's position that she was entitled to half the value of the marital home, the trial court's award was reasonable. The value of the home was \$47,750. Assuming that plaintiff made the \$200 per month land contract payment for the twelve months before the parties' marriage, his individual equity, inclusive of the down payment, was approximately \$13,000. Defendant's individual contribution from the proceeds of the sale of her mobile home was \$7,000, leaving \$27,750 as the value attributable to the marital estate. Half of that amount is \$13,875, an amount within the trial

court's award to defendant. The court's award was equitable and there was no abuse of discretion.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper