

STATE OF MICHIGAN
COURT OF APPEALS

CRYSTAL ANN TYLZYNSKI,

Plaintiff-Appellee,

v

JON STEVEN JOSEPH TYLZYNSKI, JR.,

Defendant-Appellant.

UNPUBLISHED

March 15, 2011

No. 296949

Allegan Circuit Court

LC No. 07-042486-DM

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Plaintiff Crystal Ann Tylzynski and defendant Jon Steven Joseph Tylzynski divorced on September 28, 2009, after settling issues of child custody and the division of their personal and real property. Defendant appeals as of right, raising issues challenging the trial court's judgment of divorce. We affirm.

We begin by noting that the issues raised by defendant are abandoned because he has not properly identified the legal and factual basis for his arguments as MCR 7.212(C)(7) requires. An argument is not properly before the Court where a party fails to identify the legal and factual basis for the argument. *McIntosh v McIntosh*, 282 Mich App 471, 484-485; 768 NW2d 325 (2009). “[A]ppellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority.” *Id.* at 485. Defendant has not provided this Court with any legal authority to support his arguments on the issues presented. Defendant simply announces his positions and provides cursory treatment for the factual basis of his claims. Defendant provides citations to portions of the trial transcript, but defendant does not explain their relationship to his claim. Rather, defendant leaves it to this Court to deduce their relevance. Despite defendant's noncompliance with MCR 7.212(C)(7), we will review defendant's questions presented.

Defendant first challenges the trial court's disposition of the parties' personal and real property through the following arguments: (1) the trial court failed to find and take into account when disposing the marital property that plaintiff did not maintain the status quo; (2) the trial court erred in giving plaintiff the property adjacent to the marital residence; and (3) the trial court's division of marital personal property was not equal; and (4) the trial court's disposition of

the parties' personal property was erroneous because plaintiff's personal property appraisal was improper.

Generally, where a trial court makes findings of fact and dispositional rulings for the division of marital property, we review the court's findings of fact for clear error. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). A finding is clearly erroneous if, after reviewing the record, we are left with a "definite and firm conviction that a mistake has been made." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the trial court's findings of fact are not clearly erroneous, we determine whether the trial court's distribution of marital property was "fair and equitable" in light of the findings of fact. *Id.* We will affirm the trial court's disposition of marital property unless we are "left with the firm conviction that the division was inequitable." *Id.* at 429-430.

"A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008). Moreover, "[a] party cannot stipulate a matter and then argue on appeal that the resultant action was error." *Id.* at 588. "[C]ourts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged." *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). "This rule applies whether the settlement is in writing . . . or . . . orally placed on the record and consented to by the parties, even though not yet formally entered as part of the divorce judgment by the lower court." *Id.* at 270.

In this case, plaintiff and defendant stipulated on the record that they had reached a settlement regarding the division of their real and personal property. Defendant was represented by counsel and indicated that he understood and agreed to the settlement. The trial court's judgment of divorce was consistent with the parties' agreement. Defendant does not allege and the record does not indicate the presence of fraud, duress, mutual mistake, or severe stress. Defendant cannot stipulate to the division of property and now argue to this Court that the ensuing property disposition was erroneous. *Holmes*, 281 Mich App at 587-588.

Defendant also challenges the trial court's award of primary physical custody of the parties' only child to plaintiff. In a child custody case, we review a trial court's findings of fact and findings regarding the statutory best interest factors, MCL 722.23, under the great weight of the evidence standard and will affirm the court's findings "unless the evidence clearly preponderates in the opposite direction." *McIntosh*, 282 Mich App at 474. This Court reviews the trial court's ultimate custody decision for an abuse of discretion. *Id.* at 475. The trial court abuses its discretion when its decision is "so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008).

Parties to a divorce may stipulate child custody in a consent judgment of divorce. *Dick v Dick*, 210 Mich App 576, 584; 534 NW2d 185 (1995). Although a trial court is not bound by the custody stipulation, it may accept the parties' agreement and include it in its judgment of

divorce. *Id.* A trial court's determination that the parties' custody agreement is in the best interest of the child is implicit in its acceptance of the parties' custody agreement. *Id.* at 585.

In this case, plaintiff and defendant stipulated on the record that they agreed that plaintiff would receive primary physical custody of their child. The trial court's judgment of divorce was consistent with this agreement. As discussed above, defendant was represented by counsel and indicated on the record that he understood and agreed to the settlement. The record does not indicate the presence of fraud, duress, mutual mistake, or severe stress that prevented defendant from reasonably understanding the nature and effect of the settlement. Defendant cannot now argue that the trial court erred in awarding primary physical custody of his child to plaintiff. *Holmes*, 281 Mich App at 587-588.

Accordingly, the trial court did not err in its division of the parties' real and personal property and its award of primary physical custody of the parties' child to plaintiff.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ William C. Whitbeck/
/s/ Donald S. Owens