

STATE OF MICHIGAN
COURT OF APPEALS

BONNIE TAYLOR,

Plaintiff/Counter-Defendant-
Appellee,

v

J. WARREN TAYLOR,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
September 13, 2007

No. 269734
Saginaw Circuit Court
LC No. 04-051270-DO

Before: Bandstra, P.J., Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's distribution of property in this divorce case following a bench trial. We affirm.

Defendant argues on appeal that the trial court's findings of fact were insufficient and that the trial court improperly found that defendant's various business ventures during the marriage were unprofitable. According to defendant, the trial court allowed this finding to improperly influence its decision in distributing the parties' marital assets. We disagree. Instead, we conclude that the court's property distribution was equitable.

In the judgment of divorce, the trial court determined that both parties worked, and that "defendant engaged in various business enterprises, none of which were fruitful, and were a drain on the marital assets that both parties were working on." The trial court also found that plaintiff had received \$93,700 during the marriage from her worker's compensation settlement and inheritances from the estates of her mother and grandfather, and that this entire sum went into the marriage. The court awarded plaintiff the marital home in part because of these factors, and also because plaintiff made significantly less money than defendant at the time of trial and ran her daycare business from the marital home.

Defendant contends that the court's decision to award the parties' home to plaintiff exclusively was error. In *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992), our Supreme Court stated that "the dispositional ruling is an exercise of discretion," and as such, it should not be overturned "unless the appellate court is left with the firm conviction that the division was inequitable." Defendant argues in part that the division was inequitable because it was based on the court's finding that defendant's businesses were a drain on the marital assets,

and that the only evidence the court had to support this finding were two tax returns offered into evidence by plaintiff. Defendant further alleges that the burden was on plaintiff to produce tax returns for years during the marriage in which defendant's businesses turned a profit.

Initially, we note that defendant's argument is built on a faulty premise. The court did not base its conclusion about the lack of success of defendant's business ventures solely on the 1988 and 2002 tax returns. In context, it appears that the court's finding regarding the failure of defendant's business enterprises was based on the totality of the record, which would include supporting testimony offered by both parties. The mention of the two tax returns was only made with respect to the conclusion that substantial business losses were sustained in those two years.

In any event, defendant's argument that an adverse presumption should have been drawn against plaintiff with respect to the profitability of the businesses is without merit. In support of this assertion, defendant cites *Ward v Consolidated Rail Corp*, 472 Mich 77; 693 NW2d 366 (2005). At issue in *Ward* was the trial court's presentation of an instruction based on M Civ JI 6.01. *Id.* at 83, 85-86. The instruction read by the court suggested that the jury could infer that evidence not presented at the trial would have been unfavorable to the defendant, but it did not explain that "no adverse inference arises if defendant has a reasonable explanation for its failure to produce the missing evidence." *Id.* at 85-86. The *Ward* Court also stated, however, that "missing evidence gives rise to an adverse presumption only when the complaining party can establish intentional conduct indicating fraud and a desire to destroy evidence and thereby suppress the truth." *Id.* at 84 (citations and quotation marks omitted). Defendant does not allege that plaintiff attempted to defraud the court by submitting only two tax returns. Moreover, nothing prevented defendant from offering his own evidence of the businesses' profitability for the 26 years of the marriage not covered by plaintiff's evidence. Thus, defendant has failed to show that the court erred in not drawing an adverse inference against plaintiff.

Defendant also argues that the court's distribution did not allow the parties to share in both the gains and losses of their marriage equally and unfairly punishes defendant for his business losses. Our Supreme Court has held that although property division is not governed by a specific set of rules, the following factors that may be considered when relevant: "(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." *Sparks, supra* at 159-160.

The trial court was within its discretion when it awarded the home exclusively to plaintiff. The court found that "both parties worked" during the marriage and noted the parties' ages and health concerns (plaintiff's impending knee surgery and defendant's diabetes). The court found that plaintiff had operated her daycare business from the marital home for 13 years by the time of the trial. Although the house was valued at \$135,000 at the time of trial, it was also encumbered by three mortgages—the original mortgage plus the two additional mortgages that defendant took out to finance a business venture. Moreover, the court correctly found that plaintiff contributed over \$90,000 to the marital estate from lump sum payments she received during the marriage and provided additional funds to the estate from her regular income. Also, as the 1988 and 2002 tax returns attest, defendant sustained substantial business losses for those years. Defendant was awarded his coin collection, guns, sporting equipment and a boat, which plaintiff valued at approximately \$2,000, as well as an \$18,000 inheritance from his mother's

estate. Both parties retained their retirement accounts; defendant's was worth approximately \$6,000, while plaintiff's was worth \$1,500 at the time of trial.

Although plaintiff was awarded a greater share of the marital estate, the court's findings do not constitute an abuse of discretion under the circumstances. Plaintiff's contributions (both direct and indirect) in support of defendant's business ventures have been appropriately balanced against the losses proven. The record evidence shows that plaintiff contributed substantial funds either directly to the businesses or to pay household expenses while the businesses attempted to survive. As the trial court noted, this was "a drain on the marital assets that both parties were working on." Further, plaintiff was not awarded the marital home free and clear. Rather, she remains responsible for three mortgages on the property, the last two of which were taken out to finance a failed business venture.

We also reject defendant's assertion that the trial court's findings and conclusions did not comply with MCR 2.517(A), which states in pertinent part as follows:

(1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

(2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.

(3) The court may state the findings and conclusions on the record or include them in a written opinion.

The trial court made several pages of factual findings, relying both on witness testimony and the parties' exhibits. The court's findings comport with the court rule's acknowledgment that factual findings can be "brief, definite, and pertinent . . . without overelaboration of detail or particularization of facts." MCR 2.517(A)(2). The trial court made the requisite findings and conclusions, deciding between the competing evidence that was placed on the record. Although defendant may not agree with the court's findings, this does not make them insufficient.

Finally, having rejected defendant's challenges to the distribution of the marital estate, we need not address his final argument that remand before a different judge is required. In any event, we find no merit in this assertion of error. See *Bayati v Bayati*, 264 Mich App 595, 602-603; 691 NW2d 812 (2004).

Affirmed.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Donald S. Owens