

STATE OF MICHIGAN
COURT OF APPEALS

DUSTIN E. HOLLINGSHEAD,

Plaintiff-Appellant,

v

MICHELLE L. HOLLINGSHEAD,

Defendant-Appellee.

UNPUBLISHED

May17, 2007

No. 268450

Osceola Circuit Court

LC No. 05-010423-DM

Before: Schuette, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, challenging its division of marital assets. Plaintiff argues that the trial court's failure to identify the parties' separate estates was clearly erroneous; that the resultant invasion of plaintiff's separate assets was an abuse of discretion; and that the record did not support the trial court's penalization of plaintiff for concealing assets. We affirm.

The parties met in July, 2001, and moved into the same house together in November, 2001. The parties commingled their incomes in 2002, and they married on May 17, 2003. Defendant worked as a full-time administrative assistant, whereas plaintiff was a residential contractor with a 50% ownership interest in three corporations that were incorporated before the parties' marriage. The corporations owned several parcels of real estate, and although the parties debated the value of defendant's contribution, it is not disputed that defendant assisted in the construction of several buildings during the marriage. In October, 2003, plaintiff sold the house the parties were living in, and they bought property on which they built the marital home. The parties again disputed the extent and value of defendant's assistance, but agreed that defendant performed some of the work on the building. They moved into the marital home in August, 2004, by which time defendant was pregnant with the parties' son. The parties' relationship deteriorated rapidly after plaintiff returned from a trip to Las Vegas in December, 2004. The parties' son was born February 6, 2005. Defendant alleges that plaintiff met and had an affair with his current girlfriend in Las Vegas, but plaintiff contends that he did not meet her until April, 2005, at a trade show in Mount Pleasant. Plaintiff filed for divorce on February 24, 2005.

We review a trial court's findings of fact regarding the valuations of particular marital assets under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). If the trial court's findings of fact are upheld, we must decide whether the dispositive ruling was fair and equitable in light of those facts. *Draggoo v Draggoo*, 223 Mich

App 415, 429-430; 566 NW2d 642 (1997). The trial court need not make a precisely equal distribution or apply any mathematical formulas, but only determine a fair distribution in light of the existing circumstances. MCL 552.19; *Wilkins v Wilkins*, 149 Mich App 779, 788; 386 NW2d 677 (1986).

Plaintiff first argues that the trial court failed to identify the separate estates of the parties and improperly invaded the separate estate of plaintiff. We disagree.

The trial court's first obligation is to determine what property constitutes the marital estate and what property is the parties' separate property. *Byington v Byington*, 224 Mich App 103, 110-111; 568 NW2d 141 (1997). The trial court's inquiry is limited to the length of the parties' actual marriage; the court may not consider the entire length of the parties' relationship. *Korth v Korth*, 256 Mich App 286, 290; 662 NW2d 111 (2003). "Generally, 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." *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). However, two statutorily created exceptions exist where a spouse's separate estate may be opened for redistribution. *Id.* Under MCL 552.23(1) and MCL 552.401, the trial court may reach a party's separate assets "if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party" or "if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property," respectively. Both statutes nevertheless require the division to be equitable under all of the circumstances of the case.

There is no contention here that defendant's award was insufficient for her support and maintenance. Plaintiff contends that the trial court erroneously found that defendant contributed to any of his property during the parties' marriage. Overall, there was evidence that defendant provided several types of work, including shingling, cleaning, scraping grout, laying tile, setting trusses, sheeting, pounding Durock, staining, working on the fireplaces, and working on the books for all three corporations. However, we agree the trial court's analysis must be limited *only* to the time the parties were married. See *Reeves, supra* at 492-493, 493 n 1; *Korth, supra* at 290; *Bone v Bone*, 148 Mich App 834, 837-838; 385 NW2d 706 (1986). Michigan does not recognize common-law marriages. *Carnes v Sheldon*, 109 Mich App 204, 211, 216-217; 311 NW2d 747 (1981). Accordingly, the trial court was required to consider defendant's contributions only after the date of the marriage. Defendant testified that she did some work on the books and participated in constructing at least one house after the parties married. Although plaintiff's testimony contradicted hers, the trial court is the judge of credibility. It was not clear error for the trial court to find that defendant contributed during the marriage.

Plaintiff argues that defendant's contributions were minimal and therefore irrelevant, relying on *Reeves, supra*, and *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995). However, in *Hanaway*, we held that where one spouse stayed home and cared for the house, enabling the other spouse to invest long hours and efforts in the family business, the business was a marital asset, rather than separate property. *Hanaway, supra* at 293-294. The business "appreciated because of defendant's efforts, facilitated by plaintiff's activities at home." *Id.* at 294. In *Reeves, supra* at 496-497, we distinguished *Hanaway* and declined to make a finding of marital property where a party's interest in a rental property remained passive, so it could not be said that any of the spouse's efforts at home increased the value of the property. *Id.* Here, plaintiff's interest in the corporations was active, and defendant's direct contributions to the

financial and physical aspects of the business went beyond taking care of the home to permit plaintiff to work. There was evidence she worked on the books, did some physical labor, and delivered lunches to plaintiff. Defendant chose to expend her own energy helping to make the family-held business successful. Accordingly, the trial court did not abuse its discretion when it considered the property at issue in calculating the division of assets.

Plaintiff next argues that the trial court erred in penalizing him for concealing assets. We disagree.

A party's failure to comply with discovery requests is pertinent to a court's equitable determination of the division of assets, in part because it is "tantamount to an attempt to conceal assets" and in part because the party responsible for depriving the court of accurate information simply should not be heard to complain that the trial court's factual findings are inaccurate. *Draggoo, supra* at 430. The situation here is different because it does not appear that the trial court issued any discovery orders with which plaintiff failed to comply; however, it does appear that plaintiff was not as cooperative with defendant's discovery efforts as he could have been. For instance, a motion to compel discovery filed by defendant on May 24, 2005 indicates that plaintiff failed to sign interrogatories sent on March 23, 2005. A July 2005 letter from defendant to the trial court indicates that defendant apparently proceeded to "attempt" to argue a motion to compel, and that the presiding judge directed plaintiff to comply with discovery demands. At the same time, defendant's discovery efforts were themselves not as thorough as they should have been: the record clearly shows that plaintiff directly and truthfully answered defendant's second interrogatories dated May 5, 2005. The fact that he did not provide the information defendant apparently sought seems more attributable to defendant's imprecisely-worded questions. In addition to imprecise interrogatories, defendant made no attempt to depose the corporate accountant or plaintiff before trial. Furthermore, at trial, defendant examined the corporate accountant but did not call additional witnesses to demonstrate the value of the corporation.

Nevertheless, defendant alleged in opening statements that she sent more interrogatories on August 31, 2005, and that plaintiff failed to answer these interrogatories. Plaintiff does not dispute defendant's contention on appeal that he failed to respond to additional interrogatories sent after May 2005. Presumably, these interrogatories were designed to obtain information about plaintiff's corporate holdings. Although defense counsel did not place on the record whether the questions he asked in the August 2005 interrogatories were more precisely worded, the content of the questions is irrelevant in light of other instances of plaintiff's failure to cooperate. For example, in addition to failing to respond to the August interrogatories, plaintiff did not comply with a subpoena sent by defendant. Defendant requested from plaintiff's accountant "all records 2002 through [2005], regarding Dustin E. Hollingshead, Dustin Hollingshead and Michelle Hollingshead, Hollingshead Builders, Hollingshead Leasing, Inc., White Pine Meadows Subdivision, Inc., Hollingshead Construction Co." Plaintiff does not dispute that he sent only a partial response of a few documents and failed to fully comply. Although plaintiff's actions are not a "steadfast refusal" to comply with court orders to compel as in *Draggoo*, plaintiff did not fully comply with discovery, either. We believe it was not clear error for the trial court to consider plaintiff's refusal to cooperate as a relevant factor in determining an equitable division of assets.

Finally, plaintiff argues that the trial court's decision was clearly erroneous because it failed to establish the value of the corporations at issue, and as a result, its dispositional ruling

was unfair and inequitable. We agree that the trial court clearly erred by failing to place a value of the corporations on the record. However, at oral argument the parties stipulated on the record that they did not wish a remand solely on this issue. Because we decline to find either party solely at fault for the failure to place on the record a value of the corporations, and because we otherwise find no fault in the trial court's actions in this case, we will not further consider this issue.

Affirmed.

/s/ Bill Schuette
/s/ Peter D. O'Connell
/s/ Alton T. Davis