

STATE OF MICHIGAN
COURT OF APPEALS

KATHERINE STRUBLE,
Plaintiff-Appellee,

UNPUBLISHED
September 6, 2007

v

DAVID STRUBLE,
Defendant-Appellant.

No. 268763
Ionia Circuit Court
LC No. 05-024336-DO

Before: Bandstra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, challenging the spousal support and property distribution awards. We affirm.

First, defendant argues that the trial court's spousal support award was inequitable under the circumstances, which included that it was only a 3.5 year marriage and plaintiff was a healthy, 44-year-old person. We disagree. This Court reviews the trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts." *Id.* at 151-152. Dispositional rulings should be affirmed unless the appellate court is left with a firm conviction that the decision was inequitable. *Id.* at 152.

The primary objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Olson v Olson*, 256 Mich App 619, 629-631; 671 NW2d 64 (2003). Spousal support should be based on what is just and reasonable under the circumstances of the case. *Id.* In making this determination, the trial court should consider several factors, including:

- (1) the past relations and conduct of the parties,
- (2) the length of the marriage,
- (3) the abilities of the parties to work,
- (4) the source and amount of property awarded to the parties,
- (5) the parties' ages,
- (6) the abilities of the parties to pay alimony,
- (7) the present situation of the parties,
- (8) the needs of the parties,

- (9) the parties' health,
- (10) the prior standard of living of the parties and whether either is responsible for the support of others,
- (11) contributions of the parties to the joint estate,
- (12) a party's fault in causing the divorce,
- (13) the effect of cohabitation on a party's financial status, and
- (14) general principles of equity. [*Id.* (citations omitted).]

Other relevant factors may be considered. *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996).

In this case, defendant focuses his challenge to the award of spousal support on the facts that the marriage only lasted 3.5 years and that plaintiff was a healthy, 44-year old woman. Before awarding plaintiff spousal support, the trial court considered the relevant factors as follows: (1) fault for the breakdown of the marriage was attributed to defendant—he was emotionally and physically abusive; (2) it was a short-term marriage so this factor did not favor support; (3) although defendant had work-related limitations, there was evidence that he was still performing garage-type work, and plaintiff had no significant work limitations; (4) neither party had significant income producing property that would be a factor in awarding support; (5) plaintiff was 44 years old which was somewhat of a negative factor with regard to her ability to be employed, but this was also a negative factor with regard to defendant who was 45 years old and disabled; (6) and (7) neither party had an inability to pay support; (8) the needs of the parties factor did not favor either party; (9) plaintiff would have significant health expenses because of her prescription expenses and the loss of her health insurance, and defendant would have some too but not as significant as plaintiff; (10) plaintiff would experience a somewhat negative change in her standard of living and had no eligibility for retirement or pension plans while defendant would have no significant change in his standard of living; (11) it is unclear what the court found in regard to the contributions of the parties to the joint estate; (12) fault for the divorce was attributed to defendant; (13) it is unclear what the court found in regard to the effect of cohabitation on either party's financial status; and (14) general principles of equity favored plaintiff because (a) the parties had agreed that defendant would take care of plaintiff if she would take care of him after he became disabled, and (b) the parties lived together for sixteen years before they were married but, because they were not married, plaintiff was not entitled to defendant's pension or retirement plans.

There is no clear error in the findings of fact, and defendant does not claim such error. See *Sparks, supra* at 151. Therefore, we turn to whether the dispositive ruling was fair and equitable in light of the facts. See *id.* at 151-152. We are not firmly convinced that the award of spousal support to plaintiff was inequitable. See *id.* at 152. As the trial court noted, the parties had been together for almost twenty years and after defendant became disabled, plaintiff cared for him. Plaintiff had a limited ability to earn a living wage; the evidence revealed that she was earning \$9 per hour at a laundry facility and, because defendant was awarded the marital home, she would have to secure an apartment at a cost of approximately \$600 a month. On the other hand, defendant had a guaranteed income for the rest of his life, a home to live in, and leaves the marriage in a relatively stable financial position. Plaintiff would have no health insurance, but required medical care and treatment. Under the circumstances, the award of spousal support

properly balanced the incomes and needs of the parties in a way that would not impoverish either party. See *Olson, supra* at 629-631.

Next, defendant argues that the trial court's property distribution award was inequitable. In particular, defendant claims that the trial court improperly invaded his separate property when it awarded plaintiff one-half of the fair market value increase in the marital home because the home was purchased solely with defendant's separate property—his workman's compensation award. We disagree. The standard of review for a division of marital property is *de novo*. *Reeves v Reeves*, 226 Mich App 490, 501; 575 NW2d 1 (1997). Findings of fact are reviewed for clear error, and “where they are upheld, we determine whether the dispositional rulings were fair and equitable in light of those facts.” *Id.* “[B]ecause dispositional rulings are discretionary, they should be affirmed unless we are left with the firm conviction that the division is inequitable.” *Id.*

The goal in distributing marital assets is to reach an equitable distribution of property in light of all of the circumstances. *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005). A court “need not achieve mathematical equality.” *Id.* In determining an appropriate division of property in a divorce, the trial court considers many of the same factors considered with regard to an award of spousal support. See *Dart v Dart*, 460 Mich 573, 583; 597 NW2d 82 (1999). In this case, defendant received a worker's compensation award of \$130,000 before the parties were married. After they were married, the parties purchased the marital house for \$102,900, using defendant's settlement funds. Subsequently, the parties mortgaged the marital home for \$90,000. The fair market value of the house at the time of trial was \$130,000 and the mortgage was \$90,000, for a difference of \$40,000. The trial court awarded plaintiff half of the \$40,000, after concluding that, whether the house was part of the marital estate or defendant's separate estate, plaintiff was entitled to these funds. We agree.

“[A]ll property that came ‘to either party by reason of the marriage’” should be included in the marital estate. *Pickering v Pickering*, 268 Mich App 1, 12; 706 NW2d 835 (2005), quoting MCL 552.19. “Generally, marital assets are subject to division between the parties, but the parties' separate assets may not be invaded.” *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002). However, a spouse's separate assets can be subject to distribution if, “after the division of the marital assets, ‘the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party’” and a “party demonstrates additional need.” *Reed, supra* at 152; see, also, MCL 552.23(1). A party's separate property can also be subject to division in a divorce “when the other spouse ‘contributed to the acquisition, improvement, or accumulation of the property.’” *Reeves, supra* at 494, quoting MCL 552.401.

Here, the trial court made the following factual findings in support of its property division: (1) it was a short-term marriage; (2) plaintiff contributed everything she had to the marriage, including furnishings and she provided care to defendant, and defendant contributed his settlement but all of the assets were commingled; (3) plaintiff was 44 years old as discussed above and defendant was 45 years old; (4) plaintiff had a health issue, and defendant was disabled, but there was evidence that he was still able to provide for his support; (5) plaintiff would have a significant change in her life status because of the divorce, including a new job, no health insurance, new debts, and she would be starting over; (6) the necessities and circumstances of the parties included that defendant had a guaranteed income for life while

plaintiff was employed; (7) the earning abilities of the parties was considered as discussed above; (8) fault for the divorce was attributed to defendant; and (9) general principles of equity included that the parties agreed to take care of each other and had been together about 16 years before they were married. The court also considered the fact that at least \$15,000 of the marital debt was attributable to defendant's criminal conduct against plaintiff.

We conclude that these findings of fact are not clearly erroneous and we are not left with a firm conviction that the property division was inequitable. See *Reeves, supra* at 501. Even if the marital home was considered part of defendant's separate estate, invasion would be proper here because, as the trial court held, the estate and effects awarded to plaintiff were insufficient for suitable support and maintenance and plaintiff demonstrated additional need. See MCL 552.23(1); *Reed, supra* at 152. Because of the divorce, plaintiff faced a significant life change, had to secure housing and incur related bills, had a limited earning capacity, would have no health insurance but had need for medical care, and had no entitlement to pension or retirement benefits. In light of the circumstances, we are not left with a firm conviction that the disputed award was inequitable.

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh