

STATE OF MICHIGAN
COURT OF APPEALS

KALAIMANI ANBUCHOZHAN,

Plaintiff-Appellant,

v

VIJAYALAKSHMI ARJUNAN,

Defendant-Appellee.

UNPUBLISHED

March 21, 2019

No. 344301

Eaton Circuit Court

LC No. 2017-000788-DM

Before: METER, P.J., and SERVITTO and REDFORD, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals as of right the property division contained in the Judgment of Divorce. Because the trial court did not clearly err in its award of marital assets, we affirm.

The parties were married in 2000 and had two children during the course of their marriage. The parties ceased residing together on November 25, 2016, when defendant moved out of the marital home. On July 11, 2017, plaintiff filed for divorce. The parties resolved all issues of custody, parenting time and child support regarding their two minor children and those issues are not part of this appeal. Unable to reach an agreement regarding the division of marital property, the trial court held a bench trial as to that issue on May 2, 2018. On May 29, 2018, the trial court issued a Judgement of Divorce ordering the division of marital property. This appeal followed.

We review a trial court's factual findings at a bench trial for clear error and its conclusions of law de novo. *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008). A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* The factual findings of the trial court are accorded deference, given that the trial court is in a better position to evaluate the witnesses and their credibility. *Sparks v Sparks*, 440 Mich 141, 147; 485 NW2d 893 (1992).

The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Berger*, 277 Mich App at 716-717. The trial court is not required to divide the marital estate equally, nor is it required to divide the

marital estate according to any specific mathematical equation. *Id.* at 717. Trial courts may consider the following factors in dividing the marital estate, if they are relevant to the circumstances of the specific case: (1) the duration of the marriage, (2) the contributions the parties have made to the marital estate, (3) the age of the parties, (4) the health of the parties, (5) the life situation of the parties, (6) the necessities and circumstances of the parties, (7) the parties' earning abilities, (8) the parties' past relations and conduct, and (9) general principles of equity. *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). A trial court may also consider any additional factors that are relevant to a particular case. *Sparks*, 440 Mich at 160. The trial court must consider all relevant factors but may not "assign disproportionate weight to any one circumstance." *Id.* at 158.

Plaintiff first asserts that the trial court erred in refusing to credit him \$11,421 he paid to defendant during their separation but prior to the entry of the Judgment of Divorce, and in deeming it interim spousal support when neither party requested or was granted spousal support. We disagree.

At the start of the May 2, 2018 trial, the trial court asked if either party was requesting spousal support and both parties indicated that they were not. The trial court then stated, "So no spousal support is awarded. That leaves us with property."

While discussing property, plaintiff's counsel indicated that plaintiff had provided defendant \$11,421.00 during the parties' pre-divorce separation for her living expenses and that he had obtained the money through a home equity loan on the marital home. The trial court noted that plaintiff made \$6,351.00 per month and that income was imputed to defendant by the Friend of the Court because she was currently unemployed. Defendant indicated that she was currently applying for jobs and that she had previously been employed by IBM and other large companies until the past year. Defendant reiterated that she was not seeking spousal support, stating that she was giving up any right she may have to support because she wanted the divorce completed. Defense counsel reminded the court that spousal support had never been requested and had not been an issue throughout the proceedings. The trial court nevertheless stated "I'm going to look at that [\$11,421.00] as interim spousal support" and "I'm not going to have her pay you back that money." The trial court stated that this decision was based on general principles of equity.

While the trial court did state on the record that it would be "looking at" the monies plaintiff had given defendant during the parties' separation as interim spousal support, it also stated on several occasions that it was not ordering any spousal support, including when it pronounced its determinations at the conclusion of the trial. This pronouncement could reasonably be read to include an intent *not* to award interim spousal support. The trial court's indication that it would not be awarding any spousal support remained consistent throughout the proceedings and no spousal support order appears in the Judgment of Divorce. Instead, the Judgment of Divorce provides that, "[f]or the reasons set forth on the record at trial of this matter, plaintiff's claims for reimbursement for money advanced (loaned) to defendant . . . [is] DENIED." "[A] court speaks through its written orders and judgments, not through its oral pronouncements." *Cassidy v Cassidy*, 318 Mich App 463, 509; 899 NW2d 65 (2017), quoting *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009). Thus, to the extent that the trial court's statement that it would look at the \$11,421.00 as interim spousal support differs

from the written Judgment of Divorce, the Judgment controls. *Cassidy*, 318 Mich App at 309. We thus find that the trial court did not award the monies as interim spousal support.

In addition, the trial court's refusal to order defendant to pay the monies back to plaintiff or to treat the monies as a set off against defendant's share of the marital property was not clearly erroneous. Defendant had been employed for seven years during the marriage and was currently seeking employment, but had been unemployed for the year preceding the divorce trial. Defendant testified that she lost her job with IBM after an argument with plaintiff during which plaintiff took her car keys, causing her to miss an important client meeting. While defendant denied that the incident happened, the trial court was in a better position to judge the credibility of the parties. *Sparks*, 440 Mich at 147. The trial court could have found, based on the testimony, that defendant's recent unemployment was due to actions of plaintiff. It was thus not inequitable to find that defendant would not be required to pay back the challenged monies or have them set off against her marital share of the property.

Plaintiff next contends that the trial court clearly erred in awarding disproportionate marital assets to defendant based solely on unsupported and vague allegations of domestic violence. We disagree.

First and foremost, it does not appear to this Court that the trial court based any significant part of its decision regarding the division of marital assets on alleged abuse by plaintiff. The only mention of abuse on the trial court's part appears in its oral consideration of the factors it considered in awarding the property division. There, the trial court simply stated, "[t]he Court does believe the defendant when she says that she was subjected to domestic violence. Both emotional and physical." Aside from that brief statement, there is no mention of abuse by the trial court. When determining how to divide the parties' marital assets, the trial court stated that it considered eight factors and general principles of equity. Those factors were the ones set forth in *Gates*, 256 Mich App at 423. The trial court set forth its findings on these factors and its findings were supported by the record.

To the extent that the trial court considered alleged domestic violence in reaching its decision, the conduct and past relations of the parties' is one of the specific factors a trial court is to consider when dividing the parties' assets. *Gates*, 256 Mich App at 423. And there was sufficient testimony to support any consideration of this issue by the trial court. At the final pretrial/settlement conference, while the parties were attempting to set a mediation date, plaintiff's attorney indicated that there had been a previous personal protection order (PPO) taken out by defendant against plaintiff. Defendant indicated that the PPO had been in 2014 and that she is afraid of plaintiff. She advised the trial court that she had lived with domestic violence throughout their entire time together and that she was uncomfortable sitting in a room with plaintiff and his counsel. At trial, defendant testified that after she got a job at IBM in 2014, plaintiff abused her for "being better" and that she had called 911 and obtained a PPO against plaintiff. Plaintiff acknowledged that there had been a PPO against him. Defendant further testified that plaintiff abused her by preventing her from attending her brother's wedding. Plaintiff was apparently angry at defendant for sending her brother \$900 as a wedding gift and took her car keys from her, making her miss an important client meeting which, in turn, caused her to lose her job with IBM. Given defendant's testimony, the trial court did not err in considering the alleged domestic violence.

Finally, plaintiff asserts that the trial court erred when it failed to give him credit for premarital equity he had on a property in India. We disagree.

Plaintiff is correct that the trial court in a divorce proceeding is to determine which assets are marital and which are the separate assets of each party. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). Plaintiff is also correct that if one party has purchased real property prior to the marriage, the amount that the party contributed to that property prior to the marriage should be treated as a separate asset. *Id.* In this case, however, while plaintiff's counsel represented that plaintiff had purchased a property in India prior to the marriage, contributing approximately \$22,000 to the purchase price pre-marriage, plaintiff testified differently.

Plaintiff testified that he and defendant married in 2000 and the property in India was purchased in 2001. Plaintiff also testified once that "[t]his is the agreement, basically. So how the money was paid was in installments starting from 1998." The trial court thereafter stated that a document provided to the court showed that the property was purchased in 2001 and specifically asked plaintiff if the property was purchased after the marriage and plaintiff twice responded that it was. Defendant also stated that the property was purchased in 2001. Plaintiff explains in his appeal that there was some confusion on the issue of the purchase date, as plaintiff had made installment payments on the property beginning in 1998, prior to the parties' marriage, but had received a document, written in a foreign language, in 2001 regarding the property. This Court has not been provided with a copy of the document and the trial court specifically asked the parties about the document because it could not read the foreign language.

The trial court thus had to rely upon the testimony of the parties in determining if the property was purchased during the marriage. Both parties unequivocally stated that it was. There was thus no error in the trial court's treatment of the India property as a marital asset.^{1, 2}

Affirmed.

/s/ Patrick M. Meter

/s/ Deborah A. Servitto

/s/ James Robert Redford

¹ The trial court held that plaintiff would keep any property he owned in India free and clear of any claim by defendant. It further held that defendant was entitled to a set-off on the India property to account for her marital share of its value, which it determined to be \$27,500 based on plaintiff's representation that the property was worth \$55,000.

² The trial court also noted that plaintiff had not previously provided any documentation or information to defendant regarding the property. The trial court stated that plaintiff "knew that [he] owned [the] property so there are not clean hands on this side of the aisle. He knew he used marital monies to pay for the property. And he thought he was going to come in and get away with keeping it and not giving her anything . . . he wasn't forthright" It is well established that a divorce court can consider the hiding of or failure to disclose assets when making an equitable property distribution. *Sands v Sands*, 442 Mich 30, 36-37; 497 NW2d 493 (1993).