

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MONICA VAGHANI SUTARIYA,

Plaintiff-Appellee,

v

YASHESH SUTARIYA,

Defendant-Appellant.

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UNPUBLISHED

October 28, 2021

No. 345115

Wayne Circuit Court

LC No. 16-114520-DM

**AFTER REMAND**

Before: STEPHENS, P.J., and GADOLA and LETICA, JJ.

PER CURIAM.

This case returns to us after remand to the trial court to take additional evidence or articulate further findings of fact regarding the distribution of certain marital assets and to elaborate on the conditions of its spousal support award to plaintiff. Upon review of the record after remand, we affirm.

**I. BACKGROUND**

In the previous appeal, we affirmed the trial court’s grant of sole physical custody to plaintiff and plaintiff’s motion for change of domicile.<sup>1</sup> We held that the trial court’s division of two assets required remand. The first asset was defendant’s interest in Saturn Electronics (SE) stock. We affirmed the trial court’s finding that this property was defendant’s separate property. We also affirmed the court’s valuation of defendant’s stock interest at \$3 million as within the range established by the parties’ joint expert and defendant’s expert. We vacated the trial court’s award of one-third share or \$1 million of the stock interest to plaintiff, remanded for the trial court to articulate its reason for the amount awarded, and directed the court to consider the factors in

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<sup>1</sup> *Sutariya v Sutariya*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 345115), pp. 5, 9.

*Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995).<sup>2</sup> The second asset was defendant’s interest in a company called Chicago Circuit Boards (CCB). The court distributed half the value of the asset to plaintiff without first making a finding as to whether it was premarital property. We vacated the trial court’s distribution of CCB and remanded for the court to determine whether defendant’s interest in CCB was premarital property and whether it was subject to division. If the court found the asset divisible, we instructed that the court engage in further fact finding regarding the value of CCB.<sup>3</sup> This Court lastly held that while the terms of the spousal support award appeared to be periodic, the trial court ordered the spousal support was not modifiable. We vacated the part of the court’s opinion regarding modifiability and remanded for the trial court to elaborate on whether it intended spousal support to be “nonmodifiable spousal support in gross” or “modifiable periodic spousal support.”<sup>4</sup>

On remand, defendant requested an evidentiary hearing concerning the trial court’s distribution of SE to plaintiff. At the hearing, the court clarified that its prior judgment was based on a finding that the assets of SE and Saturn Flex were commingled, and that plaintiff contributed to the whole Saturn enterprise. The court declined to reopen the record on trial testimony already taken, but ruled that it would allow defendant to present his expert Thomas Frazee to testify regarding the commingling or transfer of business accounts between SE and Saturn Flex. Frazee however testified that transactions between SE and Saturn Flex were not the focus of his valuation analysis.

The trial court entered an order following the hearing that did as instructed and reviewed its distributions of SE and CCB, and the spousal support award to plaintiff. We now review those decisions.

## II. STANDARD OF REVIEW

We review for clear error the trial court’s factual findings regarding the division of marital property. *Cunningham v Cunningham*, 289 Mich App 195, 200; 795 NW2d 826 (2010). “A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made.” *Id.*

We review a spousal support award for an abuse of discretion. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). “An abuse of discretion occurs when the trial court’s decision falls outside the range of reasonable and principled outcomes.” *Id.*

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<sup>2</sup> *Sutariya v Sutariya*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 345115), p. 11.

<sup>3</sup> *Sutariya v Sutariya*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 345115), p. 13.

<sup>4</sup> *Sutariya v Sutariya*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 345115), p. 16.

### III. ANALYSIS

#### A. SATURN ELECTRONICS

Separate property is property that “is obtained or earned before the marriage.” *Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010). Pursuant to MCL 552.401, a party’s separate property may be invaded “if it appears from the evidence in the case that the [other] party contributed to the acquisition, improvement, or accumulation of the property.” Separate property may also become a joint asset when it has been commingled with marital property. *Pickering v Pickering*, 268 Mich App 1, 12; 706 NW2d 835 (2005).

On remand, the trial court considered the *Hanaway* factors. Those factors are: “the source of the property; the parties’ contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity.” *Hanaway*, 208 Mich App at 292-293.

There were several uncontested facts that the court addressed in its fact finding and articulation of its reasoning upon which it based its equitable distribution of property:

- 1) This was a ten-year-marriage where the parties separated after eight years.
- 2) Defendant acquired shares of SE in “late 2014, early 2015”.
- 3) Both parties are under fifty years of age.
- 4) Plaintiff underwent treatment for breast cancer shortly after giving birth to the parties’ triplets.

The court made several findings of fact regarding the SE shares. First amongst those findings was that SE was intertwined with several other Saturn entities, sharing both physical space and a major client, Glory Faith. Defendant’s efforts during the marriage contributed to the increase in valuation of SE and other entities. The court noted that the plaintiff, who worked part-time for her family owned business, was also employed during the marriage in various roles with SE and contributed to its valuation through her direct efforts. Additionally, the court found that plaintiff contributed to the value of SE indirectly because she had almost exclusive responsibility for maintaining the parties’ home and child rearing. The court noted defendant’s testimony that he worked seven days a week, many days working 12 hours, and his concession that plaintiff was both employed and fully responsible for the children while he worked long hours. The court found that defendant would enjoy the income from the Saturn entities far into the future and that his earning ability would not be impacted or compromised by the parties’ four children. Based on these findings, the trial court held that plaintiff was entitled to one-third the value of the SE asset, namely \$1 million.

In his supplemental brief after remand, defendant argues that the trial court’s distribution of the SE asset was without support because: 1) the court failed to provide a legal basis for invading defendant’s separate property, 2) the court failed to explain why plaintiff was entitled to one-third share of the asset, and 3) plaintiff did not testify. We disagree with each contention.

Defendant makes multiple arguments as to why MCL 552.401 was not a legal basis for the court to invade the SE asset. Defendant first argues that the trial court did not make a separate finding as to whether MCL 552.401 applied. To the contrary, the court made multiple findings as to the applicability of the statute. The court incorporated this Court's citation of the statute in our prior opinion and cited it as the starting point in its analysis on remand before consideration of the *Hanaway* factors. The court then proceeded to making findings under the statute, while guided by *Hanaway*, concerning plaintiff's contributions to the SE property.

Defendant also argues that MCL 552.401 was inapplicable because plaintiff did not contribute to the acquisition of the asset. Defendant acquired stock in SE before the marriage by way of a trust established by defendant's father; thus, defendant is correct that plaintiff did not contribute to the asset's acquisition. Regardless, defendant's contention is without merit. MCL 552.401 states that the court may award a party all or a portion of the property owned by his or her spouse when "the party contributed to the acquisition, improvement, *or* accumulation of the property." (Emphasis added). "The word 'or' generally refers to a choice or alternative between two or more things." *Auto-Owners Ins Co v Stenberg Bros, Inc*, 227 Mich App 45, 50; 575 NW2d 79 (1997). The fact that plaintiff did not contribute to the acquisition of the asset is not dispositive. The court made specific findings that the plaintiff contributed to the accumulation of the asset by her direct efforts as an employee and her management of the household and childcare for the couple's children. *Woodington*, 288 Mich App at 366.

Defendant additionally argues MCL 552.401 was not applicable because SE and SE shares did not appreciate during the marriage. In support of this contention, defendant cited Frazee's trial testimony that SE declined in value from 2015 to 2016. Defendant contends that the issue of the stock's appreciation was not addressed on remand. Again, returning to the plain language of the statute, MCL 552.401 provides that the court may award a party all or a portion of the property owned by his or her spouse when "the party contributed to the acquisition, improvement, *or* accumulation of the property." (Emphasis added). While an increase in stock value is a measure of the contribution of both plaintiff and defendant to SE, effort which resulted in strengthening SE are also measures. Just as the court credited the defendant's prodigious investment of time and talent into SE so could it credit plaintiff's input.

Defendant also argues that plaintiff waived application of MCL 552.401 because she did not originally seek relief under it. MCL 552.401 empowers the court, "when ordering a property division in a divorce matter, to have equitable discretion to invade separate assets if doing so is necessary to achieve equity." *Allard v Allard*, 318 Mich App 583, 600-601; 899 NW2d 420 (2017). The statute does not grant parties a statutory right to petition to invade the separate assets. *Id.* at 601. Accordingly, "parties have no discernible rights to waive under . . . MCL 552.401." *Id.*

Defendant finally argues that the court's distribution of SE was unsupported because plaintiff did not testify on remand. We disagree. Plaintiff was not required to testify. Our order on remand gave the court discretion to take additional evidence in articulating further findings of fact regarding its property distribution of SE. At the evidentiary hearing, plaintiff was available to testify concerning MCL 552.401, but the court found that such testimony would be duplicative of the trial testimony and declined to reopen the record. This finding was not clearly erroneous. Given the prior trial testimony concerning plaintiff's contribution to the accumulation of the SE

asset and this Court's prior opinion as to the asset's value, it is unclear what other support defendant believed was required of plaintiff.

## B. CHICAGO CIRCUIT BOARDS

A trial court is required to determine "what property is marital and what property is separate" when dividing marital property between two parties. *Cunningham*, 289 Mich App at 200. Property acquired before the marriage is separate property. *Id.* A party's separate property may be invaded "if it appears from the evidence in the case that the [other] party contributed to the acquisition, improvement, or accumulation of the property." MCL 552.401.

On remand, the trial court found that defendant's interest in CCB was separate property that was not subject to division as part of the marital estate. The trial court's conclusions were not clearly erroneous. At trial, defendant testified that he received CCB stock in the 1990s, many years before the parties were married in 2008. He further testified to never having worked at CCB and to not being involved with the company's day-to-day operations. Defendant estimated that over the course of a few years, he consulted with CCB for less than 20 hours. Based on this evidence, the court found defendant's interest in CCB was a passive investment.<sup>5</sup> A passive investment is not one that appreciated because of the defendant's efforts or the plaintiff's activities at home and therefore, was properly excluded from the marital estate. *Dart v Dart*, 460 Mich 573, 585 n 6; 597 NW2d 82 (1999);

## C. SPOUSAL SUPPORT

As stated in our prior opinion:

The trial court may award either periodic spousal support, or spousal support in gross. *Bonfiglio v Pring*, 202 Mich App 61, 63-64; 507 NW2d 759 (1993). Periodic spousal support payments "are subject to any contingency, such as death or remarriage of a spouse . . ." *Staple v Staple*, 241 Mich App 562, 566; 616 NW2d 219 (2000). In contrast, spousal support in gross is paid as "either a lump sum or a definite sum to be paid in installments." *Id.* Spousal support in gross is nonmodifiable. *Bonfiglio*, 202 Mich App at 63. Periodic spousal support, on the other hand, is subject to modification. *Id.* Periodic spousal support can only be rendered nonmodifiable if the parties explicitly agree to waive the right to seek modification of the award, and include that waiver in the judgment of divorce. See *Staple*, 241 Mich App at 568 (holding that "the statutory right to seek modification of alimony may be waived by the parties where they specifically forgo their statutory right to petition the court for modification and agree that the alimony provision is final, binding, and nonmodifiable."). [*Sutariya v Sutariya*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 345115), p. 16.]

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<sup>5</sup> Because we agree with the trial court's finding that defendant's CCB interest is not subject to distribution, it is unnecessary to address the valuation of this property.

The trial court originally held:

The Court finds that spousal support for rehabilitative nature is warranted here and will award spousal support in the amount of \$9,000[] per-month for two years upon entry of the Judgement [sic] of Divorce. The spousal support shall be terminated upon either the remarriage or the death of . . . Plaintiff. The spousal support is not modifiable.

On remand, the trial court clarified that its award of spousal support to plaintiff was intended to be “nonmodifiable spousal support in gross”. Because the award was subject to the contingencies of death or remarriage and instructed for the payment of a definite sum in installments, the court’s conclusion on remand was not clearly erroneous.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Michael F. Gadola

/s/ Anica Letica