STATE OF MICHIGAN

COURT OF APPEALS

KIM MARIE NORRIS,

Plaintiff-Appellee,

v

CHARLES EDWARD NORRIS,

Defendant-Appellant.

UNPUBLISHED
January 15, 2013

No. 308877
Cheboygan Circuit Court
LC No. 11-009330-DO

Before: OWENS, P.J., and FITZGERALD and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce entered following a bench trial. We affirm.

Defendant first argues that the trial court should have exercised its discretion to sua sponte grant an adjournment because defendant did not have legal representation at trial. Defendant never requested an adjournment and, therefore, review is for plain error which affected a substantial right, which generally requires a showing that it affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 763–764; 597 NW2d 130 (1999).

Defendant does not cite authority mandating a duty to sua sponte order an adjournment, nor does he cite precedent holding that it is inequitable, as a matter of law, to require a party to represent himself at trial. Notably, defendant was aware approximately 20 days before trial that his attorney had withdrawn from representation. Defendant even testified that he communicated with other attorneys during that time. Defendant had ample time to attempt to secure counsel, or, in the least, to secure advice on how to handle the possibility or likelihood of being unrepresented. Moreover, defendant never made any type of request for an adjournment, as is required under MCR 2.503. Merely because a trial court has discretion to grant an adjournment on its own initiative does not mean that it erred in not exercising that discretion. Defendant has failed to establish plain error affecting a substantial right.

Defendant next alleges an inequitable and unbalanced distribution of property. "In deciding a divorce action, the circuit court must make findings of fact and dispositional rulings." *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). "On appeal, the factual findings are to be upheld unless they are clearly erroneous." *Id.* A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake was made. *Smith v Smith*, 278 Mich App 198, 204; 748 NW2d 258 (2008). "A dispositional ruling,

however, 'should be affirmed unless the appellate court is left with the firm conviction that [it] was inequitable.'" *Sands*, 442 Mich at 34, quoting *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3); *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003). 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 v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008). To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *Sparks*, 440 Mich 158-160. The trial court must make specific findings regarding the factors it determines to be relevant. *Id.* at 159. The trial court must clearly explain any significant departure from congruence, *id.* at 717, and it must make specific findings regarding the factors it determines to be relevant. *Sparks*, 440 Mich at 159.

Defendant asserts that most of the marital "assets" that were encumbered by debts were assigned to him, and that this distribution was not roughly congruent. The trial court awarded the parties the miscellaneous personal property in their possession, which had been divided upon separation, together with all associated debt. Regarding vehicles, defendant consented to plaintiff retaining the 2001 Jeep. Therefore, defendant cannot contest this distribution. *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999). Plaintiff had possessed, maintained, and made all payments on the 2001 Jeep since the parties' separation just as defendant had possessed the 2004 Dodge truck awarded to him and made all necessary payments. Defendant does not expressly challenge distribution of the fifth wheel recreational vehicle to him. However, the trial court cited valid and explicit reasons for this distribution in that the fifth wheel could only be hauled by the 2004 Dodge truck, which was in defendant's possession.

Defendant argues that he should not have been awarded both of the parties' real properties. However, defendant consented to accept the Ypsilanti home, which was rented to a tenant, and cannot now contest this distribution. *Quade*, 238 Mich App at 226. With regard to the Cheboygan home, the trial court calculated that it had a secured debt of $61,000 and was listed for sale for $79,900. The trial court noted that, in the difficult market, the sale could potentially net as much as $10,000 or as little as breaking even. Taking the alimony payments and other debts into account, the trial court found that defendant was in the best position to make the monthly maintenance payments on the home because his income will be almost double plaintiff's income over the next five years. Given these considerations, the trial court did not err in the distribution of the parties' marital property.

Defendant further argues that the trial court erred in awarding alimony to plaintiff. He premises this argument on the trial court's alleged failure to consider that his income will be reduced by fifty percent in five years due to the termination of his annuity payments.

The objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is just and reasonable under the circumstances of the case. *Berger*, 277 Mich App 726. Here, the trial court balanced the incomes of both parties, noting that defendant's income would be double the amount of

plaintiff's income for five years. It also assessed the parties' needs in an attempt to avoid impoverishment by factoring the amount of debt defendant was allocated in proportion to the amount that was awarded to plaintiff. *Id.* at 726. Specifically, the trial court took into account that defendant was assuming the entire $7,000 IRS debt, half of which was plaintiff's responsibility, and that defendant was spending approximately $850 per month to maintain the unoccupied Cheboygan home. The trial court limited the alimony award to 30 months at a rate discounted proportionally with the amount of debt that both parties were assessed. The alimony award was based on what was just and reasonable under the circumstances, and ensured that defendant's alimony obligations would not extend into the years that he would not be receiving annuity payments. We have no firm conviction that a mistake has been made and find no abuse of discretion. See *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010).

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Michael J. Riordan