

Court of Appeals, State of Michigan

ORDER

Guy M Havela v Paula J Havela

Docket No. 306781

LC No. 2011-000026-DO

Amy Ronayne Krause
Presiding Judge

Elizabeth L. Gleicher

Mark T. Boonstra
Judges

The Court orders that the May 21, 2013 unpublished per curiam opinion is hereby AMENDED to correct a clerical error. Specifically, the last sentence of the first partial paragraph on page 7 of the slip opinion shall read:

“Therefore, the trial court did not clearly err by finding plaintiff more at fault in the divorce.”

In all other respects, the May 21, 2013 opinion remains unchanged.



A true copy entered and certified by Angela P. DiSessa, Acting Chief Clerk, on

JUN 06 2013
Date

Angela P. DiSessa
Acting Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

GUY M. HAVELA,

Plaintiff-Appellant,

v

PAULA J. HAVELA,

Defendant-Appellee.

UNPUBLISHED

May 21, 2013

No. 306781

Ontonagon Circuit Court

LC No. 11-000026-DO

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by right from a divorce judgment dividing the parties' marital assets, including awarding a share of a hunting camp and several vehicles to defendant, and ordering spousal support to defendant in the amount of \$400 a month for one year. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

The parties were married in September of 2007, and separated less than four years later in March of 2011. The parties had no children together. Prior to the divorce bench trial, the trial court heard several pretrial motions.

A. PRETRIAL MOTIONS

Defendant moved the trial court for temporary spousal support, stating that her only income was child support. Defendant also alleged that plaintiff shut off defendant's phone service and removed the license plate from the car she was using, denying her access to transportation. Defendant requested to be awarded one of the vehicles titled in the name of plaintiff's business and stored at the marital home. The trial court ordered \$400 per month in temporary spousal support and ordered plaintiff to title the Dodge Caravan in defendant's name and ensure that it was in working order.

At a pretrial hearing to determine the extent of the marital property, plaintiff testified that he was the sole proprietor of a business that sold used vehicles and rented snowmobiles. Plaintiff maintained that all vehicles titled in the name of the business were business inventory; defendant claimed that although all vehicles were technically for sale, many were for personal use. Defendant additionally argued that the fleet of snowmobiles purchased for the business during the marriage was marital property. However, plaintiff testified that he believed that most

of the inventory was purchased with funds earned before the marriage. Defendant argued that several specific vehicles were purchased during the marriage and designated for personal use despite being titled in the name of the business. Defendant additionally argued that two motorcycles were marital property, and that she should receive the 2006 Harley Davidson that she often drove. Additionally, defendant argued that an Army truck and trailer were personal vehicles used for tasks at their hunting camp; plaintiff responded that the truck was listed for sale on the internet.

Plaintiff owned the family home prior to the marriage. Defendant testified to improvements made on the home during the marriage. Additionally, a hunting camp was purchased and improved during the marriage. Plaintiff testified that the funds he used to purchase the camp came from the sale of another hunting camp he owned prior to the marriage, and that defendant had contributed a small amount to improving the property.

The trial court deferred property distribution until after trial, but did find at the motion hearing that defendant may have had some interest in the marital home and plaintiff's personal business as a result of contributions during the marriage. The trial court preliminarily found that the camp was marital property. The trial court found that some of the business inventory may have had dual uses as inventory and personal property that could make certain vehicles marital property.

Finally, the trial court heard plaintiff's motion to terminate defendant's personal protection order (PPO) against plaintiff. Plaintiff denied striking defendant, physically restraining her, or threatening her. Plaintiff could not explain a July 2011 photo of defendant with bruises on her arms and legs. Defendant stated that plaintiff grabbed her and threw her against the wall in a December 2009 argument. Defendant also recalled a July 2010 argument where plaintiff punched her and kicked her, causing bruises that she photographed. The police responded to the July 2010 incident, but defendant did not pursue charges. Defendant maintained that, during a January 2011 argument that occurred in her daughter's presence, plaintiff slapped a full soda can which struck defendant. Plaintiff responded that defendant had visited him while he lived at the hunting camp, and regularly contacted him by phone. Plaintiff denied hitting defendant intentionally with a soda can and explained that it accidentally hit her after he pounded his fist on a table. Plaintiff stated that he entered the marital home with police and his mother to retrieve tax papers and personal belongings. Plaintiff had his mother remove vehicles from the marital garage, and plaintiff sold vehicles used during the marriage. The trial court issued a modified PPO where the parties were allowed electronic and phone contact, but not physical contact.

B. TRIAL

During trial, defendant alleged that plaintiff was abusive to her during the marriage. She testified that he yelled at her about the condition of the home, and had physically abused her on at least three occasions. Plaintiff denied the allegations, and asserted that he had asked defendant to leave the marital homes many times; he further stated that he voluntarily left the marital home to live in the hunting camp in March 2011. Defendant visited plaintiff at work and the hunting camp several times after the separation without incident, and defendant and plaintiff both visited the other after the protection order was established.

Plaintiff alleged that defendant spent money recklessly and abused drugs and alcohol. He testified that there were several instances where defendant did not return home at night. Defendant denied that she stayed out all night, other than when she took her daughter from a previous marriage to Minnesota for parenting time. Plaintiff further alleged that defendant's substance abuse caused her to be a "horrible" housekeeper, and that the house was in disrepair since the separation. Child Protective Services routinely visited defendant at the home as a result of accusations of substance abuse, and a case worker was assigned to defendant. Defendant denied consuming alcohol since Child Protective Services became involved. As of the date of trial, defendant was no longer working with Child Protective Services. Defendant also reiterated her testimony concerning defendant's removal of the license plate and cancellation of phone service, and testified that plaintiff had failed to register the van in her name despite a court order to do so. She also characterized plaintiff as stalking her prior to trial by sending her text messages asking her where she was and with whom.

At the time of trial, plaintiff was 47 years old and defendant was 39. Defendant testified that she had worked several jobs before the marriage, including positions as a pilot and forestry technician with the State of Wisconsin, that she had left a permanent position in order to marry plaintiff, and that plaintiff had promised she would work as a partner in his business. While married, defendant worked various jobs, including bus driver, cleaning motel rooms, rental units, and three nursing facilities. Plaintiff testified that defendant had refused an employment opportunity with her parents, who owned a Canadian resort; however, defendant stated that her parents had to close their resort due to illness. Defendant acknowledged that she had been offered employment to care for her father. The \$400 per month spousal support order had expired by the time of trial. Defendant stated that she was attempting to obtain work in Wisconsin, through Wisconsin Works program, after the opportunity to work for her parents passed. Defendant was optimistic that she would soon gain employment. The trial court ordered defendant to seek employment.

The parties discussed the marital home and personal property other than vehicles, the distribution of which is not disputed on appeal. Regarding the parties' finances, plaintiff stated that defendant did not bring anything other than clothes and some furniture into the marriage. Plaintiff denied that defendant contributed money towards the purchase or improvement of any real property or to plaintiff's business. Plaintiff had one checking account that was used for both business and personal purposes. Defendant did not have a bank account and contributed her income to expenses. Plaintiff owned Lake Gogebic Sport Center as a sole proprietor, as well as the land on which the business was located. The business was a power sports rental and repair operation, and it also sold used cars. Plaintiff worked 40 to 90 hours a week at the business. Plaintiff testified that defendant worked eight different jobs during the marriage, and studied criminal justice at a community college full-time in 2009, 2010, and 2011. Defendant, by contrast, stated that she attended school for two years and decreased her course load after the first semester due to her responsibilities. Plaintiff testified that defendant occasionally assisted with cleaning work and picking up vehicles at the business, while defendant testified that she contributed to the business weekly by running errands, cleaning it, assisting with picking up purchased vehicles and helping plaintiff's mother with data entry. In the years 2008 through 2010, defendant's other income was around \$3,000 a year; she did not receive pay for her work at the business. Defendant also received child support and food assistance.

Plaintiff purchased vehicles at auto auctions for his used car business. All vehicles were in plaintiff's possession and titled in the name of plaintiff's business, with the exception of the Dodge Caravan disposed of in the earlier order. Plaintiff valued the 2004 Dodge Caravan at \$9,500. Defendant testified that, in addition to the Caravan, she drove all the business vehicles except for a Mustang. Defendant testified that a Jeep Rubicon, two Harley Davidson motorcycles, a 2007 Mustang, the Army Jeep, a Toyota truck, dune buggy, child's ATVs, and a Hummer were used as personal vehicles and not for sale at the business until after the separation. In 2011, plaintiff sold several vehicles; the proceeds of some of the sales were not included on the list of business assets he provided. Plaintiff testified that the listed vehicles were part of the business's inventory or used by the business. Plaintiff also financed new snowmobiles every other year for his other business. Plaintiff had 15 snowmobiles, six of which cost \$6,000 each, and nine of which cost \$8,400 each.

In addition to the marital home and business property, 28 acres of real estate with a hunting camp was acquired during the course of the marriage and titled solely in plaintiff's name. Plaintiff explained that he sold his previous hunting camp for \$57,000 in September 2007, before his marriage to defendant, and deposited the proceeds into the business account. Plaintiff testified that he used the proceeds of the sale to purchase the land and building materials for the new hunting camp, and did not think the funds from the sale of the previous hunting cabin were commingled with defendant's money. Defendant acknowledged that plaintiff paid for the hunting camp. However, plaintiff acknowledged that his business would have consumed the \$57,000 he received from the old hunting camp before he purchased the new camp. Plaintiff said that defendant helped construct the hunting cabin for approximately 20 hours by running a bulldozer and cutting some brush. Defendant stated that she assisted in all projects that occurred at the hunting camp, including cutting the grass and running a bulldozer. The state equalized value of the hunting camp was \$39,345.

Plaintiff's debt included a total of \$15,000 on two credit cards in his name. He maintained that the credit cards were used to purchase personal items for the home, fuel, and groceries.

After reviewing the evidence presented, the trial court analyzed the spousal support factors and found that the incomes and needs of the parties were out of balance. The trial court awarded defendant \$400 a month in temporary spousal support for one year. The spousal support was awarded in lieu of any interest in plaintiff's business or the increase in the value of the marital home. The trial court awarded sole interest in the marital home and plaintiff's business to plaintiff. The trial court awarded personal property to defendant, including the Dodge Caravan, \$10,000 for the sale of the 2006 Harley Davidson motorcycle, and \$2,000 as one-half of the value of the 1986 Chevy army truck and trailer. The trial court further found that the hunting camp was marital property and awarded defendant half the value of the property, or \$34,345.

II. PROPERTY DIVISION

Plaintiff argues on appeal that the trial court erred in finding that a hunting camp, 2006 Harley Davidson motorcycle, and 1986 army jeep and trailer were marital property subject to division. Plaintiff also argues that the trial court erred in awarding spousal support to defendant. We disagree.

The Court reviews a trial court's factual findings related to the division of marital property for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Cunningham v Cunningham*, 289 Mich App 195, 200; 795 NW2d 826 (2010). The ultimate "dispositional ruling of the trial court is discretionary and will be affirmed unless this Court is left with the firm conviction that it was inequitable." *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005).

Plaintiff first argues that the trial court erred in awarding one-half of the value of the hunting camp property to defendant. A trial court's goal while dividing a marital estate is to equitably apportion the property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997); *Reed*, 265 Mich App at 151-152. The trial court's first task when dividing property is to determine what property is included in the marital estate and what property is separate property of a party. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997); *Reed*, 265 Mich App at 150-151. Generally, marital property is divided between the divorcing parties, whereas a party's separate property may not be invaded. *McNamara v Horner (After Remand)*, 255 Mich App 667, 670; 662 NW2d 436 (2003). Usually, separate property is property that was acquired or earned before the marriage and marital property is property that was acquired or earned during the marriage. *Cunningham*, 289 Mich App at 201. Marital assets are the property that came "to either party by reason of the marriage . . ." MCL 552.19; *Woodington v Shokoohi*, 288 Mich App 352, 358; 792 NW2d 63 (2010). However, separate property can convert to marital property where the separate property is commingled with marital assets and treated by the parties as marital property. *Cunningham*, 289 Mich App at 201.

Here, plaintiff argues that the camp was purchased and built with funds that plaintiff acquired before the marriage. Plaintiff also relies on the fact that the camp was always titled solely in his name. However, whether a property was held jointly or individually is not dispositive in determining the disposition of the property as separate or marital. *Cunningham*, 289 Mich App at 201-202. The parties were married in September of 2007, and the new hunting camp was purchased in July of 2008. Plaintiff testified that he believed the funds for the hunting camp originated from the sale of his previous hunting camp prior to the marriage, the \$57,000 proceeds of which were deposited into the business bank account. However, the account was used for both business and personal activities, and was the only account used by the parties during the marriage.

Regardless of the time at which plaintiff accumulated funds sufficient to purchase property, the hunting camp was acquired during the marriage. Plaintiff testified that the money he deposited from the sale of the previous hunting camp would have been consumed by his business in the eleven months before he purchased the new camp. There was no testimony regarding seclusion of pre-marriage funds; nor did plaintiff trace the specific proceeds from the sale of the previous property to the funds used to purchase the hunting camp. Assets a spouse acquires during the marriage are part of the marital estate and subject to equitable division. *Reed*, 265 Mich App at 152; *Cunningham*, 289 Mich App at 201; *Byington*, 224 Mich App at 110, 112. Thus, the trial court did not clearly err when it characterized the hunting camp as marital property. Although plaintiff alleges that the trial court assigned disproportionate weight to its finding of plaintiff's fault, the record does not support this assertion. The trial court's

characterization of the hunting camp as marital property subject to division was not based on an analysis of other factors such as defendant's fault, but was based on when the hunting camp was acquired and used.

Plaintiff also argues that the trial court erred in awarding \$10,000 to defendant from the sale of a 2006 Harley Davidson motorcycle, which plaintiff purchased prior to the marriage. Plaintiff argues that the motorcycle could not have been marital property subject to division because it was inventory of plaintiff's vehicle sales business, which predated the marriage and was a sole proprietorship. However, while the title of the motorcycle was in the name of the business, both parties testified that defendant used it as her personal vehicle during the marriage, after plaintiff obtained another motorcycle in 2009. Defendant further testified that the parties drove their motorcycles extensively, including to out-of-state events, and that she often rode alone. The parties also had the motorcycle custom painted, and defendant performed routine maintenance and cleaning on the motorcycle. The parties further agreed that they had added a "Harley Davidson room" as an addition to the marital home. Given the testimony presented, we find no clear error concerning the characterization of the motorcycle as marital property when it was commingled with marital assets and treated by the parties as marital property. *Cunningham*, 289 Mich App at 201. Likewise, the evidence supports the trial court's determination that the jeep and trailer were marital property. These items were purchased during the marriage. The parties testified that they used these items at their hunting camp. *Id.*

III. SPOUSAL SUPPORT

Plaintiff next argues that the trial court erred in awarding spousal support to defendant. The purpose of spousal support is to "balance the incomes and needs of the parties in a way that will not impoverish either party" based on that which is "just and reasonable under the circumstances of the case." *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010). In *Berger*, 277 Mich App at 726-727, this Court enumerated the following factors for the trial court to consider in determining spousal support:

(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.

The trial court should make specific findings of fact for factors that are relevant to the case. *Myland*, 290 Mich App at 695. The Court reviews a trial court's factual findings for clear error. *Sparks*, 440 Mich at 151; *Berger*, 277 Mich App at 727. The dispositional ruling of the trial court is discretionary and will be affirmed unless this Court is left with the firm conviction that it was inequitable. *Reed*, 265 Mich App at 150.

Here, the trial court made specific findings of fact for each factor. Plaintiff argues that the trial court should have found that defendant was at fault for the divorce because of substance abuse problems and not coming home some nights during the marriage. Based on testimony

regarding defendant's substance abuse and suggested infidelity, the trial court found that defendant shared the blame for the marital break-up. However, the trial court found that plaintiff contributed more to the marital break-up due to his physical abuse of defendant, his isolation of her after their separation by taking her license plate and phone, his actions in reporting unsubstantiated accusations against defendant to Child Protective Services, and his failure to comply with a court order to provide defendant a working vehicle. Plaintiff does not argue that the trial court's findings of fact regarding this factor were inaccurate. Therefore, the trial court did not clearly err by finding defendant more at fault in the divorce.

Plaintiff argues that the trial court erred in finding that plaintiff requested that defendant leave her job in the state of Wisconsin in order to marry defendant. The trial court found that living together was a condition of the marriage for defendant, and that plaintiff had invited defendant to be a part of his business. Defendant's testimony supported this finding.

Plaintiff also argues that the trial court erred by not considering the fact that defendant was engaged in cohabitation. The trial court limited testimony regarding defendant's living arrangements during the trial as irrelevant. Defendant was reluctant to answer questions about her living circumstances, stating that she was fleeing an abusive relationship. Defendant did testify that she was not living with someone at a specific address in Wisconsin, and the trial court sustained an objection to a question about whether she was planning to move to the address. The trial court found that neither party was cohabitating, and found that defendant had temporarily stayed with a friend between hearings on August 22, 2011, and September 1, 2011. The trial court's findings regarding this factor were supported by the evidence and the trial court did not clearly err in its findings.

Plaintiff argues that the trial court erred in finding that defendant could not and would not be able to provide for herself, and that the trial court ignored testimony that defendant brought little to the marriage, contributed little, and was capable of supporting herself. To the contrary, the trial court found that defendant was able to work and that she had many marketable skills. However, the trial court also found that defendant contributed all that she had to the marriage and that she further contributed her skilled services.

Plaintiff also argues that the trial court erred in not considering what defendant's needs were and in making its determination without a budget being provided. Plaintiff argues that a budget should have been provided and that the instant case is analogous to *Lee v Lee*, 191 Mich App 73, 76; 477 NW2d 429 (1991), where the Court found fault with the failure of the parties to provide a value of the pension involved in the case. However, in *Lee*, the Court was considering a property division award, not a spousal support award. *Id.* Here, the trial court made findings under factor eight, the needs of the parties, that defendant was a single mother in good health without a job or home, and searching for a place to live, with a need for temporary support. The trial court did not clearly err in so finding.

Having found no clear error, we turn to whether the trial court's award of temporary spousal support was fair and equitable in this case. *Reed*, 265 Mich App at 150. The trial court summarized the equity of an award of spousal support by stating that the incomes and the needs of the parties were out of balance. The trial court found plaintiff was capable of paying the award, that defendant left the marriage with little property, and that defendant's lifestyle was greatly diminished after the divorce, with loss of employment and transportation, and reliance on

public assistance. In addition, the court stated that spousal support was also in lieu of awarding any interest in plaintiff's business and the marital home to defendant. Under the circumstances, plaintiff has not demonstrated that the trial court's spousal support award was unfair or inequitable.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Elizabeth L. Gleicher

/s/ Mark T. Boonstra