

STATE OF MICHIGAN
COURT OF APPEALS

NANNETTE VASQUEZ,

Plaintiff-Appellant,

v

BENITO C. VASQUEZ,

Defendant-Appellee.

UNPUBLISHED

May 25, 2004

No. 244222

Kalamazoo Circuit Court

Family Division

LC No. 00-005383-DM

Before: Gage, P.J., and O’Connell and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. We affirm. In January 2000, plaintiff asked defendant to move out of the marital home. She then filed for divorce and developed an intimate relationship with another man. On April 15, 2000, defendant arrived at the former marital home, killed plaintiff’s boyfriend, and held plaintiff hostage at gunpoint for several hours before surrendering her to police.

Plaintiff primarily argues that the trial court inequitably divided the marital estate, especially considering defendant’s heinous actions on April 15, 2000. We disagree. In considering property division issues, we first review for clear error the trial court’s factual findings, such as its valuation of particular marital assets. *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. The dispositional ruling is discretionary and will be affirmed unless we have the firm conviction that the property division was inequitable. *Id.* at 152.

Here, contrary to Plaintiff’s arguments, the trial court did not clearly err when it valued the marital assets. Specifically, the trial court did not clearly err when it valued the couple’s Florida time-share condominium at \$8,000, given the evidence regarding annual maintenance fees and the absence of an appraisal from either party. Neither did the trial court err in its determination that the 1994 Chrysler LHS automobile had no value. The evidence presented at trial indicated that the vehicle was repossessed and sold at a loss by the creditor. Although plaintiff contends that the vehicle was actually sold at a slightly greater loss, plaintiff fails to explain how this difference affects the trial court’s valuation or the equity of the final distribution.

Plaintiff further argues that the trial court clearly erred when it valued defendant's 401K plan at \$12,268.80, rather than \$13,500. We disagree. The \$12,268.80 amount represents the amount actually received by defendant after deducting a penalty for early withdrawal. Considering that defendant actually received only \$12,268.80, the trial court did not clearly err in relying on that amount for purposes of valuing the 401K.

Likewise, the trial court did not clearly err when it valued tree-trimming equipment in plaintiff's possession at \$2,000. Although plaintiff's accountant testified that the fair market value of this property was less than \$2,000, defendant testified that he had a two-year old bar saw that cost \$1,200, which plaintiff sold for \$300, and a bar husker saw worth \$900, which plaintiff also sold. The trial court additionally found that defendant had "a dozen chain saws, [including] six small [chain saws], [a] stump grinder with belts and blades, a pull saw with a number of chains, and several 200-footer ropes," which was worth about \$2 a foot. Given this evidence, the trial court did not clearly err in determining that the equipment was worth \$2,000, because it fell within the range established by the proofs. See *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

Plaintiff also argues that the trial court clearly erred by failing to assign a value to defendant's baseball bat, baseball cards, and jewelry. Although plaintiff testified about the existence of the baseball items, she failed to provide any testimony about their value. Therefore, the trial court did not clearly err by failing to assign them a value. Also, plaintiff testified that the parties had stipulated that each would keep his or her own personal jewelry. Therefore, the trial court did not err when it simply apportioned the property according to the stipulation. *Gates v Gates*, 256 Mich App 420, 426; 664 NW2d 231 (2003).

Plaintiff challenges the trial court's property division because it did not compensate her for the mental, physical, and sexual abuse she suffered during her captivity.¹ Although fault is a legitimate consideration when dividing marital property, fault is not generally attributed to conduct that occurs after the breakdown of the marital relationship. *Knowles v Knowles*, 185 Mich App 497, 500-501; 462 NW2d 777 (1990). At trial, plaintiff testified that the marital relationship was broken at the time she filed her complaint for divorce in February 2000, and that she had no intention of reconciling with defendant. In January 2000, plaintiff asked defendant to

¹ As we found in *People v Vasquez*, unpublished opinion per curiam, issued August 21, 2003 (Docket No. 239304), slip op at 1:

On the night of April 15, 2000, [defendant] arrived at his ex-wife's house armed with a backpack full of weapons, ammunition, spray paint, and duct tape. He shot his ex-wife's boyfriend three times, killing him, and then dragged his ex-wife by her hair into the basement where he stripped off her clothes, tied her up, and threatened and terrorized her with guns and a knife for approximately six hours. Throughout the night the police surrounded the house and communicated with [defendant] by telephone, while [defendant's] daughters pleaded with him over the telephone not to harm their mother. By morning, [defendant] grew tired and the police and his ex-wife convinced him to release her.

leave the marital home and began a relationship with another man. Therefore, the trial court did not err in failing to consider the events of April 15, 2000 when dividing the marital estate. Moreover, the trial court correctly noted that it had “not been asked to determine damages with respect to the Defendant’s treatment of the Plaintiff on April 15, 2000.” See *Gubin v Lodisev*, 197 Mich App 84, 88; 494 NW2d 782 (1992). Our decision should not be construed, however, to limit plaintiff’s ability to pursue a traditional tort claim for damages against defendant.

Plaintiff also contends that the trial court’s property division was unfair because it did not require defendant’s defense attorneys to remove a lien that encumbered the marital residence. Because plaintiff cites no case law or other authority in support of this argument, we consider this issue abandoned and decline to consider it. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Similarly, we will not address plaintiff’s claims that the trial court should have awarded her more spousal and child support. Plaintiff does not cite any authority to support these arguments.

Plaintiff next argues that the trial court erred when it failed to award two packets of money, totaling approximately \$30,000, to the parties’ children rather than defendant. We disagree. Defendant brought the money with him when he took plaintiff hostage. He had it in two bags with roughly \$15,000 in each bag. He had also placed the name of one of his two children on each bag. Although plaintiff argues that defendant intended the money to go to his children, the trial court could not properly order the conveyance of the money to third parties. *Smela v Smela*, 141 Mich App 602, 605; 367 NW2d 426 (1985). The trial court determined that the property did not qualify as marital property because defendant obtained this money following the marriage’s dissolution by borrowing against a credit line on which he alone was liable. Because the trial court could not distribute the non-marital property directly to the children, it did not err.

Plaintiff argues that the trial court clearly erred when it determined that the marital residence and a rental property were marital assets. The parties purchased the marital residence on land contract from plaintiff’s father in 1982 and made regular payments on the house until plaintiff’s father died in 1989. After the death of plaintiff’s father, the property was deeded to both parties and the outstanding balance on the land contract was forgiven. Throughout the marriage, the parties each invested time and money into maintaining and improving the property. In her complaint for divorce, plaintiff admitted that the parties jointly owned the marital home. With regard to the rental property, plaintiff stated in her complaint for divorce that the property was jointly owned by the parties. Further, the parties recorded a deed to the property reflecting its joint ownership, invested time and money in improving it, and claimed related rental income and expenses on their joint tax return beginning in 1995. Accordingly, the trial court did not clearly err when it determined that these properties were marital assets.

The trial court awarded approximately fifty-five percent of the marital assets to plaintiff and forty-five percent to defendant. Plaintiff was also awarded spousal support of \$5,200, and child support of \$21,680, which was to be paid from defendant’s share of the marital division. We conclude that the trial court did not clearly err in its factual findings and that its division of the marital estate was fair and equitable.

Plaintiff argues that the trial court’s clearly erroneous findings of fact demonstrated that the trial judge was biased against her and warranted the judge’s disqualification. Because we

find no clear error in the trial court's findings, plaintiff does not begin to overcome the presumption of judicial impartiality. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996).

Affirmed.

/s/ Hilda R. Gage
/s/ Peter D. O'Connell
/s/ Brian K. Zahra