

STATE OF MICHIGAN
COURT OF APPEALS

HAMID TAAID,

Plaintiff/Counter-Defendant-
Appellant,

v

HENGAMEH TAAID,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED

May 17, 2005

No. 253821

Saginaw Circuit Court

LC No. 00-035036-DM

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiff appeals from a judgment of the circuit court entered on the parties' divorce action. We affirm.

Plaintiff and his wife were married in 1995, thereafter separating and plaintiff filed for divorce in 2000. The divorce proceedings were contentious, with a trial in October of 2002 and the trial court issuing an opinion in December of 2003, with the final judgment being entered in January 2004. On appeal, plaintiff raises five challenges to the trial court's property division.

The Supreme Court stated the standard of review to be applied in reviewing property division decisions in a divorce case in *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993):

In deciding a divorce action, the circuit court must make findings of fact and dispositional rulings. On appeal, the factual findings are to be upheld unless they are clearly erroneous. *Beason v Beason*, 435 Mich 791; 460 NW2d 207 (1990). A dispositional ruling, however, "should be affirmed unless the appellate court is left with the firm conviction that [it] was inequitable." *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

First, plaintiff argues that the trial court erred in determining that all of the equity of the parties Midland home, which plaintiff owned before the marriage, should be included in the marital estate. Plaintiff argues that his equity in the home at the time of the marriage should have been treated as separate property and not included in the marital estate. We disagree.

On appeal, plaintiff complains (1) that defendant failed to establish the value of the home at the time of the marriage and (2) that defendant failed to establish that her post marriage contributions to improvement in the property were substantial. But, in its opinion, the trial court noted that plaintiff as well failed to present any evidence of the premarital value of the home. Specifically, the trial court addressed the issue as follows:

Although Dr. Taaid owned the home in Midland, Michigan prior to his marriage, he presented no evidence to the Court of its premarital value. The Court finds that Mrs. Taaid put considerable effort into the home. She remodeled and landscaped the property herself. Because the Court cannot speculate as to the property's value at the time of marriage, the Court will consider the Midland property a marital asset. The parties stipulate that the equity of the property is \$137,000.

Premarital property may be included in the marital estate if the non-owner spouse made significant contributions to the increase in value of the property. See *Korth v Korth*, 256 Mich App 286, 291-292; 662 NW2d 111 (2003). While the trial court's opinion seems to be headed in the direction of applying that principle to this case, ultimately the trial court bases its decision on the fact that plaintiff presented no evidence of the premarital value of the house. In *Korth*, this Court concluded that the trial court in that case did not err when it found that a particular piece of property had no value at the time of trial and the defendant did not present any evidence to the contrary. Because plaintiff in this case argued that his equity in the home at the time of marriage should be excluded from the marital estate, we agree with the trial court that the burden was on plaintiff to bring forth evidence of the amount of that equity. In short, plaintiff cannot complain that the trial court failed to make a factual finding for which plaintiff presented no evidence upon which the court could base such a finding.

Next, plaintiff argues that the trial court erred in establishing the value of his medical practice. We disagree. The trial court only considered the increase in value of the medical practice during the marriage as a marital asset. Further, although the trial court accepted defendant's expert's valuation of the practice at the time of marriage, \$605,000, that figure is only \$10,000 higher than the valuation arrived at by plaintiff's expert. There is, however, a large disparity in the two experts' valuation of the practice at the beginning of the marriage. Defendant's expert, Robert Looby, testified that the practice was worth \$52,952 at that time, while plaintiff's expert, Thomas Taglauer, testified that the value was \$520,000 at the beginning of the marriage.

In accepting the Looby valuation, the trial court explained the reasons why it found that valuation to be accurate: Looby's experience in conducting business valuations, including medical practices, that he worked on the project for an extended period of time and that he had detected a number of discrepancies in plaintiff's accounting, such as the fact that gross receipts in 1999 were reported to be \$611,552 while bank deposits totaled \$954,154. Looby also expressed the opinion that plaintiff took excessive deductions for items such as meals and entertainment and professional fees. Looby evaluated five years of tax returns, beginning with 1995, which was the first full year of plaintiff's practice. He also noted that plaintiff reported an income in 1995 (the year the parties married) of \$22,943.

In rejecting the opinion of plaintiff's expert, the trial court opined that it was counter-intuitive for the practice to be worth \$520,000 in 1995 and yet only produce \$22,943 in net income. It also noted that plaintiff's expert worked with the individual tax returns, not with the practice's banking records. The expert also began his evaluation with 1996 records, rather than 1995, and only evaluated three years in reaching his opinion. The trial court also noted that Taglauer, unlike Looby, did not investigate the accuracy of the tax returns supplied to him.

In fact, Taglauer's initial testimony only went to the value of the practice at the time of divorce. Taglauer testified as to that analysis and the fact that he only had reviewed tax returns for the years 1999, 2000, and 2001. He further testified that he did not investigate the accuracy of the information in those returns nor did he have access to the business records underlying those tax returns. For that matter, the tax returns themselves had only been supplied shortly before trial, with Taglauer only having the opportunity to work on the case the day before his testimony. Taglauer further testified that it was his suspicion that plaintiff had taken inappropriate business expenses, such as charging his personal legal fees from the divorce as a business expense. Taglauer further admitted that his opinion regarding the value of the medical practice would change if the amount of bank deposits were as stated by defense counsel.

Taglauer later returned to the stand to testify as to the value of the medical practice at the time of the marriage. He testified that, based upon a review of tax returns, he valued that practice at \$520,000 in 1996. He stated that he used 1996 as the base year instead of 1995 to account for the fact that 1995, as the first full year of practice, would not fully account for services performed in 1995, but payments received in 1996, and 1996 would more accurately reflect a full year's worth of activity.

By contrast, defendant's expert testified he put over forty hours into the work on his valuation, had reviewed bank and billings records, to the extent that they were available, in addition to the tax returns, and that he considered five years' worth of returns rather than three as plaintiff's expert utilized. He also opined that the tax returns were not consistent with the billing records and bank deposits. In fact, Looby stated that, in his opinion, plaintiff understated his revenues on his 1999 tax return by \$342,602 based upon the amounts collected by the billing service and deposited into plaintiff's bank account (1999 being the only year for which Looby was supplied with all of the bank and billing records). Looby also testified that he found a number of expense items on the tax returns to be questionable. He also indicated that he made adjustments to the 1995 figures for amounts billed in 1995, but not collected until 1996. Finally, Looby testified that, while he did not do an analysis for 1996, based upon the reported revenues for 1996, it was his opinion that the value of \$520,000 arrived at by Taglauer was significantly too high.

In short, defendant's expert appears to have invested a great deal more time into the matter, looking deeper into the financial records supporting the tax returns, and explained in great detail the basis for his opinion. Furthermore, even if plaintiff's expert's valuation is accurate, it is a valuation for 1996, not 1995 when the parties were married and would reflect in part an increase in equity from the time of the parties' marriage until the end of 1996.

Plaintiff argues that defendant's valuation of the practice fails to take into account that plaintiff did not start his practice from scratch, but in fact had in place a patient base from his six years of employment at a local hospital prior to starting his private practice. While it does not

appear that Looby took this into account in establishing his value, neither does it appear that Taglauer did. Taglauer testified that he based his valuation on the income reported in the tax returns. Taglauer made no reference to the value of an established patient base, nor the amount of value to assign to that patient base.

In sum, we are not persuaded, as plaintiff argues, that Taglauer's opinion was more credible than Looby's opinion. Accordingly, we are not persuaded that the trial court clearly erred in finding that the value of the medical practice was as opined by defendant's expert.

Next, plaintiff argues that the trial court erred in awarding an investment account worth approximately \$1.3 million to defendant based upon a finding that plaintiff had attempted to conceal the account. As explained in *Sands v Sands, supra* at 36-37, an attempt to conceal assets can be considered in the property division, but there is no automatic forfeiture rule:

As we explained in *Sparks [v Sparks, 440 Mich 141; 485 NW2d 893 (1992)]*, marital assets are not to be divided in accordance with any rigid formula. Rather, the circuit court must make an equitable division on the basis of the facts proven in each individual case. A party's attempt to conceal assets is a relevant consideration, but it is only one of many facts that the court must weigh. Further, a judge's role is to achieve equity, not to "punish" one of the parties. An attempt to conceal assets does not give rise to an automatic forfeiture.

The investment account at issue was transferred by plaintiff to his cousin, Soheila, in 2000. The reason given by plaintiff for the transfer was that it was in repayment of a loan by Soheila to plaintiff of \$250,000 made in 1978 to finance plaintiff's medical education. The trial court, which acknowledged that there is no automatic forfeiture rule, gave a number of reasons in support of its decision to award the investment account solely to defendant, including its disbelief of plaintiff's claim that he was merely repaying a loan. Specifically, the trial court's opinion lists the following reasons:

- The loan was supposedly made two years before plaintiff began medical school
- The investment account was marital property as it was accumulated during the marriage
- Plaintiff attempted to "confuse the issue" of how much the account was worth by subtracting the margin loan on the account from the account's net value rather than from its gross value
- That Soheila's mother testified that in 1978, when the loan supposedly was made, Soheila was a 24-year-old college student who had no money of her own, was supported by her father and had no means to loan plaintiff \$250,000
- Plaintiff continuously attempted to thwart discovery during this case
- Plaintiff did include the investment account on his answers to interrogatories, explaining that he had meant to amend the interrogatories "but never got around to it"

- Plaintiff claimed on cross-examination that he could produce a contract between Soheila and himself for the loan and when he did it was on fresh, unfolded paper signed only by plaintiff
- Plaintiff continued to trade in the account after its transfer to Soheila
- Plaintiff admitted to receiving information from Asset Protection Company containing information on how to conceal assets in divorce cases
- Defendant testified that plaintiff ordered bank directories from foreign countries and had spoken to her about Swiss accounts, Cayman Island accounts and Nevada accounts and that plaintiff made a trip to Nevada under the pretense of attending a medical conference in Detroit

The trial court then summarized its holding, opining as follows:

There is no question that the \$1,398,620 which plaintiff transferred to his cousin is marital property. This Court will not abet plaintiff's devious and deceptive conduct. It would be unjust for the Court to award [plaintiff] any share of this asset he so deviously and arduously attempted to conceal. The Court finds that [plaintiff] has perpetrated a fraud, not only on [defendant], but also the Court, and accordingly, pursuant to *Sands v Sands*, 192 Mich App 698 (1992), *aff'd* 442 Mich 30 (1993), \$1,398,620 will be awarded to [defendant]. While the Court is cognizant that the *Sands* ruling of forfeiture is not automatic, this case is replete with counter-defendant's attempts to put assets beyond the reach of the Court.

We are not persuaded that the trial court clearly erred in its findings of fact. *Sands, supra* at 34. Moreover, the trial court's opinion clearly reflects that it was aware of the issues involved, aware that the determination was discretionary rather than automatic, and stated substantial reasons for its decision. Accordingly, we are not left with the firm conviction that the ruling was inequitable. *Id.*

Plaintiff next argues that the trial court erred in failing to address the issue of a tax obligation in excess of \$350,000. But it does not appear that plaintiff ever requested the trial court to address this issue. While plaintiff did refer to such a debt to the IRS during his testimony, he did not identify what tax year(s) it applied to, whether it represented tax owed or penalties and interest, and if the latter who was at fault for incurring it (beyond general accusations that defendant had not mailed certain estimated tax payment checks). More to the point, plaintiff did not identify the indebtedness in his post-trial brief with the proposed findings regarding the property division. Indeed, his proposed findings in this regard were little more than an editing of defendant's proposed findings and, in any event, it did not add the indebtedness to the list.

In short, because plaintiff did not supply sufficient evidence to allow the trial court to determine whether any indebtedness to the IRS should be included in the marital estate and because plaintiff did not include the indebtedness in the schedule of assets filed as part of his post-trial brief, we are not persuaded that the trial court erred in failing to find that the indebtedness was part of the marital estate or in failing to include it in the property division.

Finally, plaintiff argues that the trial court's erroneous findings regarding plaintiff affected the fairness of the proceedings. Although plaintiff begins this argument by suggesting that the trial court was biased against him, his only examples are those in which he concludes that the trial court made erroneous factual findings. And those alleged errors relate to the custody issue, which determination is not challenged on appeal. At best, plaintiff cites to examples where the trial court "lost patience" with plaintiff and accused him of "playing games." Clearly there were points where the trial court lost patience with plaintiff due to his ongoing recalcitrance in complying with discovery. Plaintiff, however, cites no example that persuades us that the trial court's frustrations created a bias against plaintiff.

Indeed, ultimately the trial court divided the marital estate evenly, with the exception of the investment account, which the trial court awarded solely to defendant because of plaintiff's attempts to conceal the asset. As discussed above, we are satisfied that the trial court did not abuse its discretion in making that determination. Furthermore, we have concluded that the record supports the trial court's factual findings, which were disputed on appeal. In short, plaintiff argues in his brief that the trial court "appears to have formed a highly prejudiced opinion of Plaintiff's credibility and integrity based upon limited and unreliable circumstantial evidence rather than demonstrable evidence in the record." We are not persuaded that the trial court formed any opinion of plaintiff's credibility and integrity that was not supported by the record.

Affirmed. Defendant may tax costs.

/s/ Kirsten Frank Kelly

/s/ David H. Sawyer

/s/ Kurtis T. Wilder