

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA JEAN MICHELON,
Plaintiff-Appellee,

UNPUBLISHED
December 15, 2009

v

RICKY UGO MICHELON,
Defendant-Appellant.

No. 285720
Lapeer Circuit Court
LC No. 04-034406-DM

Before: Stephens, P.J. and Cavanagh and Owens, JJ.

PER CURIAM.

In this divorce case, defendant, Ricky Michelon, appeals as of right from a judgment of divorce. We affirm in part and reverse in part.

I. Accounts Receivable

Defendant argues that the trial court erred in awarding plaintiff half the value of accounts receivable when that value had already been included in the total value of the business. We agree.

In reviewing a trial court's distribution of a marital estate, this Court first determines whether the trial court's findings of fact were clearly erroneous. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997), citing *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992), and *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made. *Draggoo, supra*. If the findings of fact are not clearly erroneous, this Court then determines whether the distribution was fair and equitable in light of those facts. *Id.* However, unless this Court is left with the firm conviction that the division was inequitable, the judgment should be affirmed. *Id.*, citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993), and *Sparks, supra* at 151-152.

Michigan law gives the courts jurisdiction to divide property. See, e.g., 552.19 (marital property), 552.23 and 552.401 (separate property), and 552.103 (jointly owned real estate). The marital estate need not be divided equally, and there are no "rigid rules or mathematical formulas" to follow. *Greaves v Greaves*, 148 Mich App 643, 647; 384 NW2d 830 (1986); *Johnson v Johnson*, 346 Mich 418, 431; 78 NW2d 216 (1956). The paramount concern is

dividing the estate fairly and equitably in light of the particular circumstances of the case. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). The following factors are also considered:

Among the factors that should be considered are: (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 support; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the parties' prior standard of living 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. [*Berger v Berger*, 277 Mich App 700, 726-727; 747 NW2d 336 (2008)].

All the factors may not apply in a given situation, and the court need not give equal weight to each factor. *Byington v Byington*, 224 Mich App 103, 115; 568 NW2d 141 (1997).

The trial court determined the overall value of defendant's business, Utica Shelby Automotive, as follows:

The evaluation experts make numerous arguments regarding value. The Court finds that the most equitable value will be an average of the two amounts being \$568,952. However, the Court also finds by overwhelming evidence that the Defendant does not report any cash receipts through the business books.

Then the trial court also stated:

The Court finds that while accounts receivable are used in determining the value of a business they are still separate assets. Therefore, \$91,557 shall be divided equally as stated above.

Plaintiff's expert valued the business at \$844,000.00 and defendant's expert's valuation was \$322,400.00. The trial court adjusted those values to \$747,875.00 and \$390,952.00 respectively¹ which, when averaged, equal \$568,952.00. Plaintiff's expert concluded that accounts receivable were worth \$47,117.00 and included this value as part of the overall sum of \$844,000.00. Similarly, defendant's expert calculated accounts receivable as \$47,100.00 and included this value as part of the overall sum of \$568,952.00. Thus, the trial court erred; first, in its use of \$91,557.00 as the value of the accounts receivable and second, in including accounts

¹ The Belken figure was adjusted by \$96,125.00, which was the difference between the Belken valuation of the used vehicles owned by the business and the Lefko Group's valuation of the used cars. The Lefko Group's total figure was adjusted by \$68,552.00, which was calculated by the addition of the value of the tire inventory and the subtraction of the value of defendant's Corvette and memorabilia. (Opinion of the Trial Court, 3).

receivable as a separate asset, when both parties' total values, from which the trial court's final figure was derived, already included the accounts receivable.

Defendant's expert, Philip Gaglio provided testimony that he included accounts receivable in his evaluation of the value of defendant's business. He stated that it would not be appropriate to use accounts receivable as a separate asset because it was already included in the business value. Furthermore, plaintiff's expert, Earl Belger, testified that he did "utilize the accounts receivable of this company as a component of [his] evaluation." Therefore, both experts agreed that the accounts receivable were already included in their respective valuations of the business.

We reverse the trial court's valuation of the accounts receivable at \$91,557.00 and its decision to treat the accounts receivable as a separate asset, and remand for recalculation of the property division, excluding the \$91,557.00 value that the trial court placed on accounts receivable in its entirety.

II. Real Property

Next, defendant argues that the trial court erred in awarding plaintiff 50 percent of the value of defendant's commercial real property. We disagree.

While a division of property in a divorce need not be equal, it must be equitable. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). The trial court granted plaintiff 50 percent of the value of the commercial property on which defendant's business is located.

Divorce actions are equitable in nature. *Cohen v Cohen*, 125 Mich App 206, 211; 335 NW2d 661 (1983). "In an equitable action, a trial court looks at the entire matter and grants or denies relief as dictated by good conscience." *In re Moukalled Estate*, 269 Mich App 708, 719, 714 NW2d 400 (2006). "Broadly speaking the sound discretion of the court is the controlling guide of judicial action in every phase of a suit in equity." *Van Etten v Manufacturers Nat'l Bank of Detroit*, 119 Mich App 277, 286; 326 NW2d 479 (1982), quoting *Youngs v West*, 317 Mich 538, 545; 27 NW2d 88 (1947) (internal quotation and citation omitted).

Based upon general principles of equity, we uphold the trial court's decision on this issue. The trial court concluded that defendant, and not his mother, was the one who received the benefit of this property. Because the court was dividing the value of the property, rather than the actual property, it was not erroneous for the trial court to award plaintiff 50 percent of the value of the commercial real property.

Affirmed in part and reversed in part and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens