

STATE OF MICHIGAN
COURT OF APPEALS

SCOTT CAMPBELL PEAK,

Plaintiff-Appellant,

v

DEBRA JANE PEAK,

Defendant-Appellee.

UNPUBLISHED

November 24, 1998

No. 205717

Kalamazoo Circuit

LC No. 93-000300-DM

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order modifying the judgment of divorce with respect to alimony in favor of defendant. On appeal, plaintiff argues that the trial court erred in awarding defendant an equal, but inequitable, share of the Peak Technical, Inc. stock. We affirm.

The trial court entered the judgment of divorce on March 3, 1994, concluding that the shares in Peak Technical, Inc., which the trial court valued at \$108,000, were not marital assets, but were plaintiff's separate property. Defendant appealed, and this Court reversed, ruling that defendant's contribution to the marriage had facilitated plaintiff's involvement in the corporation to the extent that the shares had been rendered marital assets. *Peak v Peak*, unpublished opinion per curiam of the Court of Appeals, issued June 25, 1996 (Docket No. 174247). The case was remanded to the trial court for an equitable distribution of the shares. On remand, plaintiff's counsel noted that, after the judgment of divorce was entered, Peak Technical, Inc. had merged with Active, Inc., resulting in a tax consequence of \$34,000. Plaintiff's counsel suggested that the trial court consider the tax consequence in apportioning the Peak Technical, Inc. stock. Plaintiff also sought to discount from the stock's value the initial capital investment of \$60,000, which was attributable to the funds he inherited from his great aunt's estate. The trial court concluded that, based on this Court's opinion, the stock and the \$60,000 initial investment were to be treated as marital property. The trial court further ruled that "the tax paid as a result of . . . plaintiff's disposition of the stock should not be considered in its award, since the court would not have actually awarded the defendant one half of the stock, but would have given it to the plaintiff with a provision to compensate . . . defendant for her interest." The trial court then divided the

Peak Technical, Inc. stock equally. However, because the stock no longer existed due to the merger with Active, Inc., it awarded defendant \$54,000, representing one half of the value of the stock, as alimony in gross, to be paid at the rate of \$1,000 per month.

Plaintiff contends that the trial court erred in awarding defendant fifty percent of the value of the Peak Technical, Inc. stock. We disagree. On appeal, a trial court's dispositional ruling will be affirmed unless this Court is left with a firm conviction that it was inequitable. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996).

When dividing marital assets, the goal of the court is to reach an equitable division in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). When dividing the estate, the 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. *Byington, supra*, 224 Mich App 115.

Here, it is undisputed that plaintiff used funds from his inheritance to start Peak Technical, Inc. However, we note that the source of property is but one of the equitable factors to be considered in dividing marital assets. The facts indicate that the parties were married for nearly twenty years, that defendant does not possess the same earning abilities as plaintiff, and that defendant assumed the primary responsibility for taking care of the parties' daughter while plaintiff was involved with Peak Technical, Inc. In addition, defendant testified that she performed bookkeeping for Peak Technical, Inc. for three years, making entries several times per week. She also claimed that she had been involved in advertising job openings, interviewing prospective employees, and hiring for the corporation. Defendant also assisted plaintiff in setting up a restaurant franchise in order to develop another investment for the family, leaving plaintiff more time to spend at Peak Technical, Inc. During Peak Technical Inc.'s less profitable periods, defendant earned a real estate license in order to supplement the family's earnings. Under these circumstances, we are not firmly convinced that the trial court's ruling as to the equal split of the value of the stock was inequitable.

Furthermore, we do not believe the trial court erred in failing to consider the tax consequences of the merger between Peak Technical, Inc. and Active, Inc. A trial court's failure to consider tax consequences in a distribution of marital assets is not a per se abuse of discretion. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). However, the trial court may consider tax consequences when it would not be speculating in doing so. *Nalevayko, supra*, 198 Mich App 164. Here, Peak Technical, Inc.'s stock was valued at \$108,000. The trial court intended to award defendant fifty percent of the value of the stock, or \$54,000, as alimony in gross. Plaintiff represents that there was a \$34,000 tax consequence when Peak Technical, Inc. merged with Active, Inc., which should reduce the amount awarded to defendant by \$17,000, to \$37,000. However, we believe the trial court's property division was equitable despite the trial court's failure to consider the tax consequences. The \$54,000 awarded to defendant is payable by plaintiff in fifty-four monthly installments of one thousand dollars, with no interest. Accordingly, the present value of the amount defendant will receive is substantially less than \$54,000. Furthermore, as alimony, the payments are tax

deductible for plaintiff, but will be taxed as income to defendant. Under these circumstances, we conclude that the property division was equitable regardless of whether the trial court considered the tax consequences of the merger. *Nalevayko, supra*, 198 Mich App 165.

Affirmed.

/s/ Maura D. Corrigan

/s/ Martin M. Doctoroff

/s/ E. Thomas Fitzgerald