

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA BISHOP-NASON,

Plaintiff-Appellee,

v

STEPHEN NASON,

Defendant-Appellant.

UNPUBLISHED

October 21, 2021

No. 355518

Marquette Circuit Court

Family Division

LC No. 19-057746-DO

Before: REDFORD, P.J., and K. F. KELLY and LETICA, JJ.

PER CURIAM.

Defendant appeals as of right the October 2020 judgment of divorce on the ground that the trial court erred by failing to award him the money paid for the down payment on the marital home and certain items of personal property. We affirm.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

Defendant met plaintiff in 2012 and they married in December 2013. At some point before their marriage, defendant sold his home in Ishpeming and received \$73,000. He purchased another property (the Halfway property) before the parties married using the proceeds from the sale of his Ishpeming home. Plaintiff and defendant gave conflicting testimony regarding whether the deed to the Halfway property featured plaintiff’s name. The parties lived in the Halfway property from 2013 to 2017 when they sold it for \$70,000. Plaintiff testified that the proceeds from that sale were distributed in both of their names. The parties used \$56,000 from the sale of the Halfway property as a down payment for a new home at 1400 N. Vandenboom Ave in Marquette, Michigan (the Vandenboom property).

In February 2019 plaintiff filed for divorce. The parties agreed that plaintiff should be awarded the Vandenboom property, but disagreed how much plaintiff should pay defendant for

half of the equity in it. Plaintiff testified that the Vandenoomb property had an “SEV”¹ of \$88,000 and a fair market value of \$176,000 in February 2019. Defendant testified that the value of the Vandenoomb property exceeded \$200,000, but he provided no evidence to substantiate his valuation. The parties also disagreed about the award of an oak cabinet and a print of a lighthouse that hung in the marital home. Plaintiff testified that she designed the oak cabinet which defendant’s brother custom built for a specific space in the Vandenoomb property. Both parties testified that plaintiff paid defendant’s brother \$700 for the oak cabinet. Defendant testified that his brother wanted him to have the cabinet and denied that the oak cabinet had been designed for an exact spot in the Vandenoomb property. Plaintiff testified that she bought the lighthouse print for approximately \$100. Defendant testified that he bought the lighthouse print.

At the final divorce hearing, the trial court found that the Vandenoomb property had a value of \$176,000. Among other things, it awarded the oak cabinet and lighthouse print to plaintiff, but granted defendant a \$350 credit for the oak cabinet and a \$50 credit for the lighthouse print. The trial court directed the parties to submit proposed findings of fact and conclusions of law regarding the value of the marital home. In August 2020, after receiving the parties’ posttrial briefs, the trial court concluded that the proceeds from defendant’s sale of his premarital Ishpeming home lost its character as separate property and found that the net equity in the Vandenoomb property equaled \$46,000 after deducting the mortgage balance, the roof repair, the furnace replacement, the new garage, and the assessment for the sewer. The trial court concluded that defendant was entitled to \$23,000 as his portion of the net equity in the Vandenoomb property.

In September 2020, defendant moved for reconsideration of the trial court’s decision, challenging the trial court’s determination that the proceeds from the Ishpeming house were not separate property. The trial court denied defendant’s motion for reconsideration and entered the judgment of divorce awarding the Vandenoomb property to plaintiff and defendant \$23,000 for his portion of the equity in the property and other assets of the marital estate. This appeal followed.

II. STANDARDS OF REVIEW

We review for clear error the trial court’s factual findings related to the division of marital property. *Cunningham v Cunningham*, 289 Mich App 195, 200; 795 NW2d 826 (2010). We review de novo questions of law. *Id.* After reviewing the trial court’s factual findings for clear error, we determine whether the dispositional ruling was fair and equitable in light of the facts. *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003). We must affirm a trial court’s division of marital property unless we are left with the firm conviction that the division was inequitable. *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992). We also review for “clear error a trial court’s findings of fact regarding whether a particular asset qualifies as marital or separate property.” *Woodington v Shokoohi*, 288 Mich App 352, 357; 792 NW2d 63 (2010). Clear error occurs when “this Court is left with the definite and firm conviction that a mistake has

¹ According to the Michigan Tax Tribunal’s glossary of terms, the “state equalized value” is one half of a property’s “true cash value,” and a property’s “true cash value” is its fair market value. See Glossary of Terms, Michigan Tax Tribunal at <https://www.michigan.gov/taxtrib/0,4677,7-187-25923-126336--,00.html>. Plaintiff calculated the fair market value of the property as \$176,000 by multiplying the SEV (\$88,000) by two.

been made.” *Id.* We give “special deference to a trial court’s factual findings that were based on witness credibility.” *Id.* at 358.

III. ANALYSIS

A trial court must include a determination of the parties’ property rights in the judgment of divorce. *Olson*, 256 Mich App at 627; MCR 3.211(B). “The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances.” *Berger v Berger*, 277 Mich App 700, 716-17; 747 NW2d 336 (2008). Factors a trial court may consider when dividing the marital estate include:

(1) the duration of the marriage, (2) the contributions of the parties to the marital estate, (3) the age of the parties, (4) the health of the parties, (5) the life situation of the parties, (6) the necessities and circumstances of the parties, (7) the parties’ earning abilities, (8) the parties’ past relations and conduct, and (9) general principles of equity. [*Id.* at 717 (citations omitted).]

The trial court may also consider additional factors that are relevant to the particular circumstances of the case. *Id.* “The trial court must consider all relevant factors but not assign disproportionate weight to any one circumstance.” *Id.* (quotation marks and citation omitted).

A. MARITAL HOME

Defendant argues that the trial court erred by failing to grant him the down payment for the Vandenboom property as his premarital property. We disagree.

Trial courts divide marital property in divorce actions, and must first determine what property is marital and what property is separate. *Cunningham*, 289 Mich App at 200. “[M]arital assets are subject to division between the parties but the parties’ separate assets may not be invaded.” *Woodington*, 288 Mich App at 364. In general, separate property is acquired or earned before the marriage and marital property is property acquired or earned during the marriage. *Cunningham*, 289 Mich App at 201. Separate property may be transformed into marital property if it is “commingled with marital assets and treated by the parties as marital property.” *Id.* (quotation marks and citation omitted). The fact that the property was held jointly or individually is not dispositive of whether the property is separate or marital. *Id.* at 201-202.

Defendant argues that the proceeds from the sale of his Ishpeming home that he used to purchase the Halfway property and then the Vandenboom property were not commingled and did not lose their character as separate property. “The actions and course of conduct taken by the parties are the clearest indicia of whether property is treated or considered as marital, rather than separate, property.” *Id.* at 209. The parties lived in the Halfway property as a marital home from 2013 to 2017. Plaintiff testified that she contributed approximately \$20,000 to \$30,000 in permanent improvements to the Halfway property. Plaintiff also testified that the deed to the Halfway property named her as an owner. When the parties sold the Halfway property in 2017, \$56,000 of the proceeds were used to buy another marital home, the Vandenboom property. Further, plaintiff testified that they deposited the money into their joint accounts and they used the money in their joint accounts for mortgage payments. The trial court did not clearly err by

concluding that the proceeds from defendant's Ishpeming home were commingled with marital funds and lost their character as separate property. See *Pickering v Pickering*, 268 Mich App 1, 12-13; 706 NW2d 835 (2005).

Defendant also argues that the value of the Vandenboom property exceeded \$200,000. Defendant, however, failed to identify this argument in his statement of questions presented, and therefore he has waived appellate review of this issue. See MCR 7.212(C)(5); *Seifeddine v Jaber*, 327 Mich App 514, 521; 934 NW2d 64 (2019). Further, defendant provided no authority to support his argument that the trial court erroneously valued the Vandenboom property. "An appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for his or her claims" and when "a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Johnson v Johnson*, 329 Mich App 110, 126; 940 NW2d 807 (2019) (quotation marks and citations omitted). Therefore, this argument is abandoned and will not be considered on appeal.

B. PERSONAL PROPERTY

Defendant argues that the trial court also erred by awarding the oak cabinet, lighthouse print, and other personal property items to plaintiff. Defendant has not provided any authority to support his argument that he should have been awarded the oak cabinet and lighthouse print, and does not even identify the "other personal property" he contends he should have received.² "A party may not leave it to this Court to search for authority to sustain or reject its position." *Johnson*, 329 Mich App at 126.

Defendant argues that the trial court erred by failing to award a lighthouse print and oak cabinet to defendant. Although defendant testified that his brother made the oak cabinet and wanted him to have it, both plaintiff and defendant testified that plaintiff paid \$700 for the oak cabinet. In addition, plaintiff testified that she designed the oak cabinet to be custom built for the Vandenboom property. The trial court did not unfairly nor inequitably award plaintiff the oak cabinet and order her to pay defendant \$350 for half of the value of the oak cabinet. See *Olson*, 256 Mich App at 622. Plaintiff also testified that she bought the lighthouse print, and that it cost approximately \$100. Defendant testified that he bought the lighthouse print. The trial court considered the parties' conflicting testimony and awarded the lighthouse print to plaintiff based on her testimony. We defer to the trial court's finding regarding the relative credibility of plaintiff and defendant. See *Woodington*, 288 Mich App at 358. The trial court did not unfairly nor

² The only other personal property items that defendant mentions in his brief on appeal are a sound system and sandwich knives. Plaintiff testified that she paid for a "Sonus" sound system and that it was installed in the Vandenboom property. She also testified that it was a fixture. According to plaintiff, the "Sonus" was purchased during the marriage for approximately \$5,000, using funds from her personal account. The trial court valued the "Sonus sound system" at \$3,000. It awarded the sound system to plaintiff and awarded defendant \$1,500 for half of the value of the sound system. It was not unfair nor inequitable to divide the property in this manner. See *Olson*, 256 Mich App at 622. In addition, the trial court awarded the sandwich knives to defendant during the final divorce hearing.

inequitably award plaintiff the lighthouse print and award defendant half of the cost of the print.
See *Olson*, 256 Mich App at 622.

Affirmed.

/s/ James Robert Redford

/s/ Kirsten Frank Kelly

/s/ Anica Letica