STATE OF MICHIGAN

COURT OF APPEALS

CAROLYN MARIE HANSEN,

Plaintiff/Counterdefendant-Appellant,

v

KYLE WAYNE HANSEN,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
December 14, 2023

No. 360403
Livingston Circuit Court
LC No. 2020-055517-DM

Before: REDFORD, P.J., and SHAPIRO and YATES, JJ.

PER CURIAM.

In this divorce case, plaintiff appeals as of right the judgment of divorce entered by the trial court. The sole issue on appeal concerns the treatment of a farm, located in Wilton, Iowa (the farm), which defendant inherited from his late grandfather. The trial court determined the farm was defendant's separate property and plaintiff was not entitled to invasion on the basis of contribution or need under MCL 552.401 and MCL 552.23, respectively, which plaintiff contends was in error. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties married in 2008, and were able to purchase a home in 2016 with proceeds from the sale of their previous home in addition to gifts from their parents. Over the course of the marriage, the parties had three children, and both parties worked outside the home while also being active in parenting the children. However, plaintiff served as their primary caregiver, and only worked part-time after the children were born.

Defendant's grandfather passed away in 2017, leaving the farm, among other things, to defendant. The farm was comprised of approximately 155 acres and a farmhouse. The land was farmed by defendant's relatives pursuant to an ongoing rental contract, for which they paid defendant about $15,000 in biannual rental payments. Defendant deposited these rental payments in a joint savings account he shared with plaintiff, and any excess monies left over after the farm's expenses were paid went toward supporting the family. Sometime in December 2019, defendant's mother bought the farmhouse and about two acres of surrounding land (the farmhouse) for about $200,000, the proceeds from which were deposited into the parties' joint savings account.

In September 2020, defendant admitted to having an affair, and plaintiff filed for divorce in October 2020. Defendant also filed a counterclaim for divorce shortly thereafter. Defendant moved for summary disposition on the issues concerning his inheritances from his grandfather, including the farm, under MCR 2.116(C)(8) (failure to state a claim) and (10) (no genuine issue of material fact). Defendant argued the farm was his separate property, and that neither of the statutory exceptions for invading separate property, i.e., contribution, under MCL 552.401, and need, under MCL 552.23, were satisfied. After hearing oral argument, the trial court denied defendant's motion, finding that a genuine issue of fact remained regarding whether the farm was separate property.

Both parties testified multiple times over the course of the six-day bench trial about the farm, plaintiff's involvement in the farm's financial management, and which assets defendant treated as marital property. There were numerous other witnesses involved in the trial as well, including defendant's mother and plaintiff's parents. During closing arguments, plaintiff's counsel argued defendant inherited the farm, the farmhouse, and the rental income as a "package deal," not as separate assets, and that deal included plaintiff helping with the sale of the farmhouse and management of the farm's finances. Plaintiff's counsel further argued that, even if the farm was separate property, plaintiff was entitled to a portion through invasion. Defendant's counsel, in closing, requested the trial court calculate the amount of child support defendant owed using the farm as "an income-producing asset," while awarding the farm as a separate asset to defendant. Defendant's counsel emphasized that, while the proceeds from the sale of the farmhouse and the rental income were treated as marital property, this did not mean the farm itself was ever marital.

The trial court issued its opinion and order after the trial in December 2021. The trial court used the rental income from the farm when computing the amount of child support defendant owed. Regarding whether plaintiff was entitled to a portion of the farm, the trial court's reasoning is set forth below:

> The mirrored estate plans are not relevant to the issue of conversion or co-mingling [sic], since those documents do not convey anything to the Plaintiff-wife, or confer on her any authority to dispose of the Iowa farmland, the Ameriprise account, or the Halliburton stock. Any estate planning documents naming the Plaintiff-wife as a fiduciary and beneficiary will be undone by this divorce. The partitioning of the farmhouse and subsequent sale of the farmhouse to Defendant-husband's mother are not relevant, as the proceeds from the sale of the farmhouse were deposited into the parties' joint marital account and the proceeds were used for marital expenses. No party contests that the proceeds of the farmhouse and subsequent deposit of the said proceeds into the parties' joint marital account converted this once separate property to marital property. The issue is whether or not the farmland, not the farmhouse (which the parties already sold) has been converted from the sole and separate property of the Defendant-husband to a marital asset. Likewise, the rental income being deposited into the parties' joint marital accounts converts the rental income once deposited into the parties' joint marital accounts to marital property, but the farmland always remained in the sole name of the Defendant-husband. There was never an intent by the Defendant-husband for the Iowa farmland, . . . to be co-mingled [sic] with the marital estate in such a way that would give the Plaintiff-wife an interest in those assets. Lastly,

paying expenses such as insurance and taxes on the Iowa farmland and including any income received from such inheritances on the parties' joint tax returns does not persuade this Court that the Defendant-husband had any intent to give the Plaintiff-wife a marital interest in the Iowa farmland[.]

* * *

Here, the farmland, [is an asset] that Defendant-husband inherited from his grandfather, and then the asset[] produced income during the course of the marriage. Plaintiff-wife was unable to present any evidence that she contributed to the growth of asset[] or the rental income generated by the farmland. Indeed, from the sum total of the evidence, Defendant-husband did not take an active role in growing the asset[] or helping the farmland generate rental income. Most of the value and income from the inherited asset[] was passively generated. The evidence produced at trial does not show that Plaintiff-wife's [sic] shouldered the responsibility of running the household and raising the children to such an extent that her domestic labor is what enabled Defendant-husband to generate rental income from the farmland and increase the value of his inherited assets. In fact, the evidence at trial shows that both parties worked outside the home at least part time during the marriage, and both parties were very involved parents who divided the responsibilities of child rearing.

* * *

Here, Plaintiff-wife did not provide substantial in-home care services to Defendant-husband's grandfather before he passed away. Indeed, Plaintiff-wife and Defendant-husband lived in an entirely separate household from [defendant's grandfather]. In addition, Plaintiff-wife has a doctorate, and earns $67,646.00 annually at her teaching job. She is both more highly educated than Defendant-husband and this Court has determined above that while Defendant-husband is voluntarily underemployed, the parties have very similar earning capacities. . . . Plaintiff-wife has not substantially contributed to the inherited property or the reason the property was left to Defendant-husband, nor is a portion of Defendant-husband's separate property needed for Plaintiff-wife's support post-divorce.

In sum, the testimony and exhibits clearly show that the Iowa farmland . . . [is] separate property, as [it was] inherited by the Defendant-husband alone, and the asset[] [was] kept separate and not co-mingled [sic] with marital assets. The evidence also is clear that the Plaintiff-wife has not contributed to the increase in value of the asset[]. The Court further finds that the parties both contributed to maintain the household and rearing the children during the course of the marriage. The Plaintiff-wife has a doctoral degree and is gainfully employed. She earns more than Defendant-husband currently earns through his employment, and she earns more than Defendant-husband historically has at his employment. She is more than capable of supporting herself and does not need a portion of Defendant-husband's separate property.

The trial court therefore awarded the farm to defendant "as his sole and separate property, free and clear of any claim by [plaintiff]." The trial court ultimately entered a judgement of divorce reflecting its earlier opinion in terms of awarding the farm to defendant as his sole, separate property. Plaintiff now appeals.

II. ANALYSIS

Plaintiff first argues the trial court erred by determining the farm was defendant's separate property. We disagree.[1]

A "trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). "The distribution of property in a divorce is controlled by statute." *Id.* at 493. Under MCL 552.19:

> Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.

"The categorization of property as marital or separate, however, is not always easily achieved." *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010). "While income earned by one spouse during the duration of the marriage is generally presumed to be marital property, there are occasions when property earned or acquired during the marriage may be deemed separate property." *Id.* (citation omitted). "For example, an inheritance received by one spouse during the marriage and kept separate from marital property is separate property." *Id.*

The parties do not dispute that the farm, as defendant's inheritance, was, at least initially, defendant's separate property. However, plaintiff contends the farm was converted to marital property through commingling. "[S]eparate assets may lose their character as separate property and transform into marital property if they are commingled with marital assets and 'treated by the parties as marital property.' " *Id.* (citation omitted). Plaintiff provides a list of defendant's actions which she contends constitute commingling, thus converting the farm to marital property.

[1] "We review the trial court's factual findings on the division of marital property for clear error." *Skaates v Kayser*, 333 Mich App 61, 81; 959 NW2d 33 (2020). "Clear error occurs 'when this Court is left with the definite and firm conviction that a mistake has been made.' " *Id.* at 81-82 (citation omitted). "If the trial court's 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 82. "Given that the trial court's 'dispositional ruling is an exercise of discretion[,] . . . the ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable.' " *Id.* (citation omitted, alterations in original). "Questions of law are reviewed de novo." *Id.*

However, none of the instances identified by plaintiff suffice to convert the farm to marital property.

As a preliminary matter, while plaintiff is correct that defendant inherited the farm, the farmhouse, and the rental agreement as one asset after his grandfather's passing, this does not mean the farm *remained* a single entity. During the marriage, there is no dispute defendant treated the rental proceeds from the farm as marital property. They were regularly deposited into the parties' joint bank accounts and used to pay for the family's expenses. Similarly, it is not disputed that defendant treated the sale proceeds from selling the farmhouse as marital property, by depositing it into the parties' joint bank account and using it to pay for the family's expenses. Defendant's actions involving these assets necessarily separated them from the remaining "farm" now in dispute. This is particularly evident given the trial court's use of the rental proceeds in calculating defendant's child support payments, and its determination that the sale proceeds from the farmhouse already in the parties' joint bank account were marital property.

There is nothing in the record indicating defendant ever treated the remaining farmland, after the sale of the farmhouse, as marital property. The farm was deeded to, and remains deeded to, defendant alone, and, while plaintiff contends defendant had an argument with his mother about giving plaintiff survivorship rights to the farm, plaintiff had no evidence of any such disagreement indicating defendant's intent beyond her own testimony, which defendant and his mother refuted. Similarly, as the trial court noted, plaintiff's reliance on the parties' earlier estate plans is irrelevant, because the plans would be undone by the divorce, and did not speak to any affirmative action by defendant to treat the farm as marital property.

Plaintiff argues the farm was converted to marital property because its taxes and insurance were paid for using the parties' joint bank account. However, defendant explained that while the payments may have been taken from the joint account, they were entirely covered by the farm's rental proceeds. The farm was self-sustaining in this respect, and neither of the parties' other marital assets, be it gifts from parents or their paychecks, went toward managing the farm. Considering that the balance of the rental proceeds was used to pay for the family's expenses, it makes sense that defendant deposited the checks into the parties' joint accounts and paid for the farm's expenses from those accounts, but using the rental money. Using a portion of the farm's rental proceeds to pay for the farm's taxes and insurance does not raise the farm to the level of being "treated by the parties as marital property." *Cunningham*, 289 Mich App at 201. Similarly, plaintiff's modest participation in the financial management of the farm does not convert the farm to marital property. While it is true plaintiff was involved in the farm's financial management and wrote checks for payment of the farm's bills, the record indicates defendant did so as well. Furthermore, plaintiff's writing of some checks to pay for the farm's taxes, when considered in light of the fact that defendant never added plaintiff's name to the deed and never took any affirmative action indicating an intent to treat the farm itself as marital property, was insufficient to convert the farm into marital property. We conclude that the trial court did not clearly err when it determined the farm was defendant's separate property.

Plaintiff next argues that even if the trial court correctly determined the farm was defendant's separate property, she is entitled to half the property through invasion on the basis of contribution or need. The trial court disagreed, and we see no error.

"Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party." *Reeves*, 226 Mich App at 494. However, "[t]he trial court may utilize its equitable powers under MCL 552.23(1) and MCL 552.401 to award separate property to the parties in order to reach an equitable result." *Skaates v Kayser*, 333 Mich App 61, 82; 959 NW2d 33 (2020). The two recognized causes for invasion are contribution and need. Invasion on the basis of contribution is set forth in MCL 552.401:

> The circuit court of this state may include in any decree of divorce or of separate maintenance entered in the circuit court appropriate provisions awarding to a party all or a portion of the property, either real or personal, owned by his or her spouse, as appears to the court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property.

"In essence, the statutory language is a codification of the concept of the equitable trust, also known as the constructive trust." *Allard v Allard*, 318 Mich App 583, 597; 899 NW2d 420 (2017). "Such trusts recognize 'the broad doctrine that equity regards and treats as done what in good conscience ought to be done.' " *Id.* (citation omitted). "In other words, if a 'party contributed to the acquisition, improvement, or accumulation of . . . property,' MCL 552.401, and therefore should have an interest in that property, equity will make it so." *Allard*, 318 Mich App at 597.

Plaintiff's primary argument for invasion on the basis of contribution revolves around her role in managing the farm's finances and preparing tax returns. However, as already noted, plaintiff was not the sole person with a hand in managing the farm's finances. Additionally, plaintiff's management did not give rise to any active improvement of the farm, MCL 552.501. Plaintiff argues on appeal the farm increased in value, but there is no evidence in the record that any alleged increase in value had anything to do with her efforts. The record indicates the farm passively increased in value over the duration of the parties' marriage, and plaintiff's involvement was more akin to "maintenance" than "management." Plaintiff has not provided sufficient evidence of contribution to warrant invasion under MCL 552.401.

The other basis for invasion concerns the needs of the parties. Invasion on the basis of need is set forth in MCL 552.23(1):

> Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage who are committed to the care and custody of either party, the court may also award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.

Plaintiff's primary argument in this respect is that the parties continuously lived beyond their means while married, and relied on various incomes to support themselves. Thus, plaintiff asserts,

she will be unable to maintain the standard of living to which she and the children had become accustomed with her income alone.

The record, however, indicates that the farm, as it now stands, was never used by the parties for financial support during their marriage. During their marriage, the parties achieved their lifestyle with funds obtained from employment income and gifts from their parents, as well as profit from the sale of the farmhouse and the rental income from the farm, both of which were treated as marital property. The farmhouse sale was a one-time event, and the trial court already included the rental proceeds when calculating the amount defendant owed in child support. The record indicates the proceeds from the farmhouse sale were almost entirely used up by the time of the trial, and, regardless, any remaining amount would have been properly divided and awarded to the parties as marital property. While plaintiff expressed concern about not being able to rely on her parents financially in the future because her father was terminally ill, the fact remains that all the sources of financial support the parties used during their marriage were considered when dividing the property. The farm was never used as collateral for a loan, nor did the parties ever discuss living on the farm or portioning off another parcel to sell for additional financial support. While plaintiff is correct that defendant has the option to use the farm as a financial safety net if needed, this does not change the fact that it was not used to maintain the parties' lifestyle thus far.

The trial court was empowered to invade defendant's separate property on the basis of plaintiff's demonstrable need, but it was not required to do so. See *Allard*, 318 Mich App at 601 ("These statutes do not afford the parties to a divorce any statutory right to petition for invasion of separate assets—at least none that is distinct from the parties' right to petition for divorce in the first instance. Rather, the statutes simply empower the circuit court."). This Court undertook a similar analysis in *Ellis v Ellis*, unpublished per curiam opinion of the Court of Appeals, issued December 17, 2020 (Docket No. 349962),[2] noting:

> There appears to be no dispute regarding the amount defendant was entitled to receive under the terms of the antenuptial agreement. There also appears to be no dispute that the value of the separate property retained by plaintiff, and his income, substantially exceeded the value of the property defendant received under the terms of the antenuptial agreement and defendant's income. However, from these undisputed facts, the trial court determined that defendant had adequate support and that there was no discernable need justifying invasion of plaintiff's separate assets. Defendant has not provided any evidence or argument that she cannot live comfortably on the amount she received under the antenuptial agreement combined with her spousal support. Even accepting as true her claimed monthly budget and that this budget reflected her monthly spending before the divorce, defendant has not cited any binding authority for the proposition that having suitable support to live in the manner to which she was accustomed means continuing to have every luxury available after the divorce that was previously

[2] We recognize that unpublished opinions are not binding on this Court, but they can be used as persuasive authority. *Zaremba Equipment, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 42 n 10; 761 NW2d 151 (2008).

> available. See *Charlton v Charlton*, 397 Mich 84, 99; 243 NW2d 261 (1976) ("In the tragic event of divorce involving children, it is rare that either party (or the children) can financially continue in the same lifestyle as when living together."). [*Ellis*, unpub op at 8.]

While plaintiff submitted evidence the parties lived well beyond their means while married, she has presented no legal authority establishing she is entitled to continue living *as far beyond* her means as she did while she was married. While it is true "need" does not mean the bare minimum to survive, it also does not mean the all the luxuries one enjoyed while married, which, in many situations involving children, is simply unachievable for either party. See, e.g., *Charlton*, 397 Mich at 99. Plaintiff has failed to establish that the trial court's division of the parties' property does not allow her to maintain a comfortable standard of living with her children. If plaintiff is truly unable to live comfortably under the current arrangement, she can also later petition the trial court for increased support, MCL 552.17(1), but, as the facts stand before us, there is no evidence the trial court clearly erred when it found plaintiff failed to demonstrate adequate need for invasion.

Lastly, we recognize the division of property must be fair and equitable. *Skaates*, 333 Mich App at 82. Because plaintiff has not established any need or contribution entitling her to invasion of the farm, and plaintiff was awarded her fair share of the marital property, there is nothing in the record suggesting the trial court's decision was inequitable.

Affirmed.

/s/ James Robert Redford
/s/ Douglas B. Shapiro
/s/ Christopher P. Yates