

STATE OF MICHIGAN  
COURT OF APPEALS

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LINDA OLSON,

Plaintiff-Appellee,

v

JOHN M. OLSON, III,

Defendant-Appellant.

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FOR PUBLICATION

May 27, 2003

9:05 a.m.

Nos. 230588, 237244, 237288

Wayne Circuit Court

LC No. 99-915949-DM

Updated Copy

July 7, 2003

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

O'CONNELL, J. (*dissenting in part*).

I respectfully dissent. In this contentious divorce, plaintiff and defendant do not dispute that the trial court properly awarded each party approximately fifty percent of the marital estate. Defendant's main contention on appeal is the manner in which the assets were divided. Because the trial court equitably divided the marital estate by awarding each party fifty percent, I would affirm the decision of the trial court.

This Court reviews a property distribution in a divorce case by first reviewing the trial court's factual findings for clear error and then determining whether the dispositional ruling was fair and equitable in light of the facts. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). My review of the lower court record reveals no clear error on the part of the trial court. In fact, my review of the parties' briefs does not reveal any disputes concerning the trial court's factual findings.<sup>1</sup> In fact, the parties appear to agree that the trial court made certain factual findings as required by law and then awarded each side approximately fifty percent of the marital estate.

This appeal concerns "whether the dispositional ruling was fair and equitable in light of the facts." See *id.* While I agree with the majority opinion that the division of stock has the potential to cause a controversial, ongoing problem, I cannot conclude that this division was inequitable.<sup>2</sup> Nor can I

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<sup>1</sup> I note that defendant complains that the trial court failed to set a value on the stock. However, I know of no case law that requires the trial court to set a value on the stock, if it divides the stock in an equitable manner.

<sup>2</sup> I find it a bit unusual that it is defendant who claims that the stock division is unworkable. Plaintiff, on the other hand, argues that it is a fair and equitable division of the marital assets. In my opinion, the trial court is in a better position to make an equitable division of the property.

reach the conclusion that the trial court's division of assets creates an unworkable situation. If I had been the trial court judge, I cannot say that I would have divided the estate in the manner and form that it was divided. Indeed, as the majority suggests, I would have placed a value on the stock and awarded plaintiff one-half of it. However, it is not within an appellate court's authority to substitute its judgment for that of the trial court. See *Moore v Moore*, 242 Mich App 652, 654-655; 619 NW2d 723 (2000).

The dispositional ruling was fair and equitable in light of the facts of this case. See *Hanaway, supra*. Impressing personal views on the trial court does not comport with the appellate court's role in the judicial system. See *Moore, supra*. Thus, I would affirm the decision of the trial court.

/s/ Peter D. O'Connell

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As the majority notes, *ante* at 5-6, our Supreme Court in *Young v Young*, 354 Mich 254, 257; 92 NW2d 328 (1958), held:

There is no mathematical formula in Michigan for the settlement of this vexing problem; rather it is wisely left to the broad discretion of the learned chancellor who has the benefit—and often dubious pleasure—of having the feuding parties wrangle in his presence. See, generally, *Johnson v Johnson*, 346 Mich 418 [; 78 NW2d 216] (1956). With his closer view of the entire situation he is ordinarily in a better position to make an equitable division than we.