STATE OF MICHIGAN

COURT OF APPEALS

MARY KAY LENGEMANN,

Plaintiff-Appellee,

v

JOHN L. LENGEMANN,

Defendant-Appellant.

UNPUBLISHED
May 9, 1997

No. 184198
Lapeer Circuit Court
LC No. 87-011780-DM

Before: Reilly, P.J., and Sawyer and W. E. Collette*, JJ.

PER CURIAM.

Defendant appeals from an order of the circuit court increasing his weekly child support obligation. We reverse.

Defendant first argues that the trial court based the child support award on income figures which were not supported by the evidence. We agree. A trial court commits clear legal error when it does not make its own independent determination with regard to child support payments, but, instead, relies solely on the Friend of the Court recommendations. *Mann v Mann*, 190 Mich App 526, 538-539; 476 NW2d 439 (1991). In the case at bar, the court did not conduct its own independent determination of the parties' child support obligations by using the information presented during the hearing. Rather, the trial court relied solely on the calculations made by the Friend of the Court regarding the child support formula. In doing so, the trial court committed clear legal error. *Id.* Furthermore, the parties' incomes as disclosed by the evidence at the hearing were drastically different from the figures arrived at by the Friend of the Court and used to apply the child support formula.

Defendant also argues that the trial court erred in the treatment of alimony payments in the calculation of child support. We note that the child support guidelines specifically provide that alimony should be included as income to the receiver and as a deduction from income of the payor. On remand, the trial court shall treat it accordingly.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Finally, defendant argues that the trial court erred in including in income for purposes of calculating child support a one-time, long-term capital gain. We agree. Defendant sold his 1/6 interest in a title company. The money realized from that sale is just that: the exchange of an asset for money. It is not income. Indeed, we note that plaintiff was apparently content to have defendant's interest in the title company treated as property, not income, for the purposes of the property settlement at the time of the divorce. It would certainly be inequitable to charge the value of the stock to defendant in determining the property division and thereafter treat that asset as income to calculate child support. Of course, if defendant reinvested that money, then any income produced by that new investment could be considered in calculating defendant's child support obligation.

Plaintiff also argues that income should be imputed to defendant for voluntarily reducing his income due to the sale of his interest in the business. While that certainly is an issue which can be considered by the trial court, it is by no means obvious that that is the case. The trial court would have to carefully consider what defendant did with the proceeds of the sale and whether he intentionally disposed of the funds so as to avoid the creation of an income producing asset in order to reduce his support obligation. Further, the trial court could consider whether defendant became unemployed or underemployed following the sale of the asset, again avoiding the production of income in order to reduce his child support obligation.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendant being the prevailing party, he may tax costs pursuant to MCR 7.219.

/s/ Maureen Pulte Reilly
/s/ David H. Sawyer
/s/ William E. Collette