

STATE OF MICHIGAN  
COURT OF APPEALS

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BEVERLY ANN MEATTE,

Plaintiff-Appellee/  
Cross-Appellant,

v

WILLIAM H. MEATTE,

Defendant-Appellant/  
Cross-Appellee.

UNPUBLISHED  
July 22, 1997

No. 196266  
Oakland Circuit Court  
LC No. 88-350285-DO

AFTER REMAND

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Before: Hood, P.J., and McDonald and Young, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order awarding plaintiff 25% of \$117,600 as her share of rental income earned during the marriage. We reverse and remand for further proceedings.

Plaintiff filed for divorce from defendant in 1988. In 1992, the trial court entered an opinion and order that contained the following provision regarding income from certain rental properties:

Therefore, the Court finds that Plaintiff is entitled to a share in the net rental income during the pendency of the marriage and will give Plaintiff 25% credit in the amount of the rental income generated over the course of the marriage.

The court subsequently entered a judgment of divorce dissolving the marriage. The judgment awarded plaintiff 25% of the \$117,600 of rental income generated by the marriage. Defendant appealed the judgment to this Court, which affirmed in an unpublished, per curiam opinion. *Meatte v Meatte*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 1995 (Docket Nos. 152884, 158570). Defendant applied to the Supreme Court for leave to appeal. In lieu of granting leave, the Supreme Court vacated the provision of the judgment that awarded plaintiff 25% of \$117,600, and remanded to the trial court to determine the amount owed to plaintiff consistent with the trial court's opinion and order. The Supreme Court order read:

The provision of the judgment of divorce in Oakland Circuit No. 88-350285 which grants

Beverly Meatte 25% of \$117,600, which constitutes the income generated by rental properties during the period of the marriage, is also VACATED. The opinion of the trial court clearly states that the **net** income from the rental properties during the marriage is to be divided.

Both cases are remanded to the trial court and Oakland Circuit No. 90-393204 is reassigned to Judge Mester. The trial court shall identify the properties for which the net rental income during the period of marriage shall be calculated and calculate the amount due to Mrs. Meatte in accordance with his opinion and order of April 7, 1992.

At the hearing on remand, the trial court stated:

As to the issue of Plaintiff's share of the rental income, the Supreme Court directed this Court to first identify the properties for which the income shall be calculated. They include the properties on Harold and Greeley [sic] in Detroit and on Jarvis in Warren.

The Supreme Court request that this Court reconsider Plaintiff's share of the rental income in light of the fact that she was to be awarded a share of the net rental income. However, the Court must determine that amount based on the meager evidence presented at trial, because there was nothing presented to show deductions from the gross income. The net amount and the gross amount are one in the same.

The trial court issued an order which stated that "the net rents to which Plaintiff Beverly Meatte is to receive twenty five percent (25%) of is determined to be One Hundred Seventeen Thousand Six Hundred Dollars (\$117,600.00)."

On appeal, defendant argues that the trial court erred in awarding the same amount on remand because it violated the Supreme Court's specific direction to calculate the net income. We agree.

When a matter is remanded to the trial court by an appellate court, the trial court possesses the authority to take any action that is consistent with the appellate court's opinion and order. *Hadfield v Oakland Co Drain Commissioner*, 218 Mich App 351, 355; 554 NW2d 43 (1996). It is the duty of the lower court on remand to comply strictly with the mandates of the appellate court. *Rodriguez v General Motors (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994).

The only evidence presented at trial regarding the income from the rental properties was defendant's testimony. He testified that the rental income from the house on Jarvis in Warren was a total of \$525 per month for two units. The rental income from the house on Greeley in Detroit was \$395 per month. The income from the house on Andover in Detroit, which was purchased during the marriage, was \$525 per month for two units. There was no testimony regarding the rental income from the house on Harold in Detroit, which burned down. Defendant testified that he paid approximately \$18,000 for improvements to the Jarvis house, and paid approximately \$1200 per year in taxes on that house. He also testified that he paid for insurance and upkeep, and that some years he made a profit and some years he lost money.

Based on defendant's testimony, the trial court estimated \$1400 per month in rentals over seven years to arrive at its figure of \$117,600. This figure appears to include the income from the Andover house and not from the Harold house. However, the Harold house was specified in the order as one of the properties to which plaintiff was entitled to a share of the income, but the Andover house was not. Furthermore, the trial court's figure does not account for any expenses, despite the fact that defendant testified that he paid for improvements and taxes on the properties. In reviewing the remand order, it appears that the Supreme Court found that it was not clear from the lower court record how this figure was calculated. The Court required the trial court to specify the properties from which plaintiff is entitled to rental income, and to make a more definite calculation of the net rental income from the properties. We therefore reluctantly, conclude that the trial court's order on remand, stating that the net income was \$117,600, without specifically stating how the figure was calculated, did not strictly comply with the Supreme Court's order. Accordingly, we must remand this case to the trial court to make a specific determination of the net rental income based on the gross rental income less expenses. The trial court was absolutely correct in its statement that "meager evidence was presented at trial" and we are fully aware that the trial court is limited to making the required determination based on the evidence that was presented. That is all that can be expected.

Defendant requests that the case be assigned to a different judge on remand. However, because defendant has totally failed to demonstrate actual bias or prejudice on the part of the trial judge, we deny his request. *Crampton v Dep't of State*, 395 Mich 347; 235 NW2d 352 (1975); *Ireland v Smith*, 214 Mich App 235, 250; 542 NW2d 344 (1995), modified 451 Mich 457; 547 NW2d 686 (1996).

Reversed and remanded for calculation of net rental income. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Gary R. McDonald

/s/ Robert P. Young, Jr.