

STATE OF MICHIGAN
COURT OF APPEALS

JULIENNE HANUSACK,

Plaintiff-Appellant,

v

DANIEL HANUSACK,

Defendant-Appellee.

UNPUBLISHED

January 15, 1999

No. 200023

Wayne Circuit Court

LC No. 93-305922 DM

Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

SMOLENSKI, P.J. (dissenting).

I respectfully dissent. The trial court appeared to view this case as simply an unresolvable swearing contest between defendant and plaintiff and that a further hearing would constitute “a total waste of the Court’s time” because it would “provide absolutely no new insight into this case.” I disagree. This case was not simply a swearing contest. There was strong circumstantial evidence indicating that the account was a marital asset and that defendant concealed this asset. Moreover, defendant’s apparently deceptive responses to interrogatories severely undercut his credibility. *Williams v Williams*, 214 Mich App 391, 399; 542 NW2d 892 (1995). Thus, I believe that the truth of fraud allegations could not be determined in this case without reference to defendant’s demeanor. *Id.* Accordingly, I would hold that the trial court abused its discretion in failing to conduct an in-person hearing in this case. *Id.* I would further hold that the court’s denial of the motion to set aside the divorce judgment without such a hearing also constituted an abuse of discretion. *Lopez v Lopez*, 191 Mich App 427, 429; 478 NW2d 706 (1991). I would reverse and remand for an in-person hearing.

/s/ Michael R. Smolenski