

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS TASKER,

Plaintiff-Appellant,

v

BARBARA TASKER,

Defendant-Appellee.

UNPUBLISHED

January 19, 1999

No. 204895

Wayne Circuit Court

LC No. 96-612628 DM

Before: Kelly, P.J., and Hood and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right a judgment of divorce. We reverse and remand.

Plaintiff contends that the trial court's dispositional ruling was inequitable. In deciding a divorce action, the trial court must make findings of fact and dispositional rulings. On appeal, factual findings are to be upheld unless they are clearly erroneous. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks v Sparks*, 440 Mich 141, 146-147; 485 NW2d 893 (1992); A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra* at 152. The ruling should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.*

We conclude that the trial court erred in determining the amount of plaintiff's available net income. The trial court found that plaintiff earned approximately \$775 in weekly net pay. Plaintiff was paid every two weeks; thus, he had twenty-six pay periods per year. The evidence established, however, that plaintiff's overtime was limited to ten pay periods per year, resulting in a weekly net income of \$1,573 during those periods, and that plaintiff's average weekly net income for the other sixteen pay periods was \$1,104. Moreover, even considering plaintiff's part-time job, the evidence still established that plaintiff's average weekly net income was not \$775, as determined by the trial court. Because the trial court clearly erred in its determination of plaintiff's weekly net income, and because the awards of child support, alimony and the distribution of various debts were based upon this erroneous figure, we reverse and remand this case to the trial court for the purpose of reevaluating and

recalculating plaintiff's earnings as well as his alimony and child support obligations in light of plaintiff's recomputed actual weekly income.

We also conclude, nevertheless, that the trial court equitably divided the parties' remaining property. Absent a binding agreement, the goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division need not be mathematically equal, but the court should clearly explain any significant departure from congruence. *Id.* at 114-115. In dividing the estate, "the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance." *Id.* at 115. The significance of each factor will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. *Id.* The court may not assign disproportionate weight to any one factor, however. *Sparks, supra* at 158.

In this case, the equity in the marital home was the principal asset, and it was awarded one hundred percent to defendant. In making this determination, the trial court found that the parties had been married since 1985, that defendant worked during the early part of the marriage and assisted in paying off plaintiff's student loans. The trial court also found that defendant contributed financially while plaintiff furthered his education. Moreover, the court considered plaintiff's fault in the breakup of the marriage. Aside from these factors, the evidence established that defendant had a limited education and wanted an opportunity to return to school to better herself. Under the circumstances, this Court is not left with a definite and firm conviction that the division was inequitable.

Nor do we believe that the trial court erred reversibly in determining fault. While fault was heavily weighed, and was the most prevalent factor in determining the property distribution, it is clear that the trial court considered several factors apart from the issue of fault. Under the circumstances, we find no abuse of discretion.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ Jane E. Markey