

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JANE DEWEY HENDERSON,

Plaintiff-Appellee,

v

JAMES H. HENDERSON,

Defendant-Appellant.

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UNPUBLISHED

January 22, 1999

No. 204336

Iosco Circuit Court

LC No. 95-009439 DM

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

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm.

Defendant first contends that the trial court erred in modifying a prior visitation order without conducting a hearing. We disagree. While a hearing is generally required before a visitation order may be modified, see *Rozek v Rozek*, 203 Mich App 193; 511 NW2d 693 (1993), here the provision regarding visitation in the judgment of divorce did not result in a substantive change to the prior visitation order.

Next, defendant contends that several of the trial court's factual findings are erroneous, and that its ultimate property distribution is inequitable. In 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, 151; 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 151-152. The ruling should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.* at 152.

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 any

significant departure from congruence must be explained by the court. *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 these factors will vary from case to case, and each factor need not be given equal weight where the circumstances dictate otherwise. *Id.*

In this case, the trial court's finding that defendant was employable is not clearly erroneous. Moreover, contrary to what defendant asserts, the trial court did consider the testimony of his expert on this issue. The trial court had the opportunity to personally observe and hear defendant at trial. Defendant's testimony demonstrated a wealth of knowledge concerning investments, and there was evidence that he amassed the funds that comprised the bulk of the marital estate. Defendant recently had been engaged in military service and he also held two degrees, including a master's degree in systems management. Under these circumstances, the trial court did not clearly err in determining that defendant was employable.

Nor did the trial court clearly err in its determination of the value of the marital home. The record indicates that the court considered the value suggested by defendant's expert, but found other evidence to be more persuasive regarding the home's value. While the appraisal relied on by the court failed to reflect all of the home's square footage, the expert who performed the appraisal testified that she was aware of the square footage in question, but by law, could not expressly include it in the calculation of square footage. The analysis performed by plaintiff's appraiser was also more thorough and detailed than that of defendant's expert. Under these circumstances, the trial court did not clearly err in according greater weight to the testimony of plaintiff's appraiser.

After considering the relevant factors, the court ultimately split the marital estate equally and we are not left with a definite and firm conviction that the division was inequitable. The division of funds will allow defendant a sufficient opportunity to provide a home for himself and maintain a decent standard of living.

Defendant's claim that the trial court improperly exercised jurisdiction over the children's trusts is without merit. The court merely indicated that the matter would be referred to the probate court if the parties could not agree on a custodian. The court did not exercise jurisdiction over the trust assets as in *Kowalesky v Kowalesky*, 148 Mich App 151; 384 NW2d 112 (1986).

Finally, defendant's claims regarding the valuation of the Colorado property and the indebtedness on that property are without merit. The court did not use the lowest possible value; rather, the court valued the property considering the three different methods for valuation. We find that the trial court did not clearly err in its valuation of the property or in its determination that the indebtedness on the property represented a true loan.

Affirmed.

/s/ Harold Hood  
/s/ Janet T. Neff  
/s/ Jane E. Markey