

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

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KATHRYN WALSH WHITE,

Plaintiff-Appellee,

v

TERRY L. WHITE,

Defendant-Appellant.

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UNPUBLISHED

November 30, 1999

No. 210146

Oakland Circuit Court

LC No. 95-502269 DM

Before: Kelly, P.J., and Jansen and White, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce, contending that the court erroneously selected the date of valuation for distributing plaintiff's pension. We affirm.

On or about August 11, 1995, plaintiff left the marital home and filed this action for divorce. After protracted negotiations, the parties reached a partial property settlement and endorsed a mediation agreement to that effect on June 25, 1997. As part of that settlement, the parties agreed to an equal division of their respective retirement plans. That agreement was based, in part, on two documents included in plaintiff's mediation statement: a pension valuation report dated June 23, 1997, and a statement of account for plaintiff's employee savings and stock investment plan for the period January 1, 1997 through March 31, 1997. The mediation agreement was silent as to the pension valuation date to be used for distribution purposes.

Defendant urged the court to adopt a pension valuation date subsequent to mediation because plaintiff's stock plan had since realized a substantial increase. Plaintiff countered that the date of separation was appropriate. The trial court reached a compromise date of October 1996. The date was incorporated into the final judgment of divorce. The parties and their attorneys endorsed the final judgment on February 12, 1998, and the judgment was entered by the court. Normally that would end the matter because a consent judgment is not appealable. An order that is approved both as to form and content is a consent judgment. *Wold v Jeep Corp*, 141 Mich App 476, 479; 367 NW2d 421 (1985). However, the Supreme Court has cast doubt on this precedent by holding that a party can still be considered aggrieved if the subsequent record contradicts the assumption that the parties, in fact,

consented to the judgment. *Ahranberg Mechanical Contracting, Inc v Howlett*, 451 Mich 74, 77; 545 NW2d 4 (1996). Defendant argues that he did not intend to give his consent to the judgment and only signed his approval to signify that the order accurately reflected the judge's oral ruling. He claims he was extending a courtesy to relieve the other party and the court from noticing up the settlement order for later hearing. We strongly believe the better practice is to waive notice of hearing.

Defendant concedes that no specific valuation date was noted in the mediation agreement. Nevertheless, he argues that the court abused its discretion by "modifying" the mediation agreement by selecting the compromise valuation date. We disagree.

The trial court has great discretion in reaching the objective of arriving at "a property settlement that is fair and equitable in light of all the circumstances." *McMichael v McMichael*, 217 Mich App 723, 731; 552 NW2d 688 (1996); *Boonstra v Boonstra*, 209 Mich App 558, 563; 532 NW2d 777 (1995). For purposes of dividing marital property, marital assets are typically valued at the time of trial or at the time judgment is entered. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). The court may, in its discretion, use a different date. *Id.*; *Thompson v Thompson*, 189 Mich App 197, 199-200; 472 NW2d 51 (1991).

This Court has affirmed a trial court's choice of the date that the complaint was filed rather than the date of the divorce judgment for determining the present value of one of the party's employee profit sharing and retirement plan. *Thompson, supra* at 199. This Court recognized that, in some situations, as when the divorce proceedings become lengthy, the termination date of the marriage for purposes of the valuation of an employee retirement plan can predate the entry of the judgment of divorce. *Id.* at 199-200. For purposes of dividing marital property, a marital estate typically closes on the date on which there has been some external public manifestation of intent by the parties to end their marriage, such as moving out or filing a complaint for divorce. *Wilson v Wilson*, 179 Mich App 519, 523-524; 446 NW2d 496 (1989); *Byington, supra*, 224 Mich App at 113. Since both of those events were present here, the trial court clearly had a plausible reason for choosing a date other than the date of mediation or the date of the divorce judgment. Because the pension distribution was fair and equitable, we find no abuse of discretion.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kathleen Jansen  
/s/ Helene N. White