

STATE OF MICHIGAN
COURT OF APPEALS

FELICIA WILLIAMS,

Plaintiff-Appellee,

v

STEPHEN FARROW,

Defendant-Appellant.

UNPUBLISHED

February 16, 2001

No. 214716

Wayne Circuit Court

LC No. 98-800534-DO

Before: Markey, P.J., and Murphy and Collins, JJ.

Markey, J. (dissenting).

I respectfully dissent from the majority's conclusion that the trial court's factual findings and conclusions of law were fair and equitable because the trial court did not, in fact, make a finding as to the value of the marital home. Nor is there other evidence from which this Court can accurately calculate its value. Consequently, it is impossible for this Court to conclude that the property settlement at issue was fair and equitable.

We review a trial court's findings of fact for "clear error and then determine whether the ultimate dispositional ruling was fair and equitable in light of the facts, reversing the disposition only if we are left with the firm conviction that the distribution was inequitable." *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997); see, also, *Sands v Sands*, 442 Mich App, 30, 34; 497 NW2d 493 (1993).

As the majority notes, plaintiff proffered testimony that the marital home was appraised at \$195,000. Defendant, on the other hand, stated that he believed the home to be worth \$135,000. The couple purchased the home for \$109,900. The record is silent as to the balance of the mortgage.¹ The trial court, though specifically asked, refused to set a value on the marital home. Instead, the court simply awarded it to defendant.

¹ The majority opinion relies on a representation in defendant's appellate brief as to the outstanding balance of the mortgage. It is improper however, for this Court to rely on facts outside the record.

The majority, despite the fact that the trial court assigned no value to the marital home and therefore could not calculate the amount of equity the parties had in the home, concludes that defendant “realized an additional \$55,000 to \$115,000 in equity.” I do not believe that conclusion can be made from this record. Plaintiff testified that she *offered* defendant \$115,000 of the equity in the home, but that he declined to accept it. She said he wanted half. Defendant testified that he thought the home was worth approximately \$135,000, and no one presented any evidence as to the amount of the mortgage of the “critical date” of December 7, 1997.

If the home were worth \$195,000 as plaintiff asserts, then the appreciation in the value of the home is \$84,900. If, on the other hand, the home is worth only \$135,000 as is defendant’s position, then the additional value in the home from the time of purchase is only \$25,100. It is impossible for the majority to conclude that the equity in the house was between \$55,000 and \$115,000. Indeed, the entire problem stems from the fact that at trial neither the value of the home nor the amount of the mortgage balance was ever determined. Certainly, there is clear error if in respect to a pivotal fact, there is no finding of fact. Given the approximate \$60,000 difference in the possible value of the home as a marital asset, I believe it is error for us to attempt to evaluate and decide this issue without there having been a factual determination as to the amount of equity in the marital home which, of course, could only have been calculated by determining the then current value of the marital home and the balance due on its mortgage.

The majority concedes that there was a “mathematical disparity in the value of assets awarded” each party but contends that there is no inequity.

My point is simply that we cannot properly determine there is no inequity without these crucial facts. In relying on inadmissible hearsay and facts outside the record to reach its conclusion, I believe the majority errs. For these reasons, I dissent and would remand to the trial court for a specific finding as to the value at the critical time of the marital home.²

/s/ Jane E. Markey

² In essence this finding results from deducting the mortgage balance from the market value of the home at the time the parties agreed, December 7, 1997.