

STATE OF MICHIGAN
COURT OF APPEALS

JAY E. JOHNSON,

Plaintiff-Appellant,

v

TERRY A. JOHNSON,

Defendant-Appellee.

UNPUBLISHED

June 22, 2001

No. 218430

Oakland Circuit Court

Family Division

LC No. 98-607973-DO

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's distribution of funds in a joint checking account in this divorce action. We remand for further proceedings.

When a court divides a marital estate, it must do so in a manner that is equitable 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 significant departures from congruence must be explained clearly by the court." *Id.*, 114-115. In reviewing a dispositional ruling in a divorce case, this Court reviews the trial court's findings of fact for clear error and then decides whether the dispositional ruling was fair and equitable in light of the facts. The dispositional ruling will be affirmed unless this Court is left with the firm conviction that it was inequitable. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995).

In the instant case, the parties entered into a consent judgment of divorce, agreeing to the distribution of all their property with the exception of a \$45,000 checking account, the distribution of which they agreed to submit to the court. On appeal, plaintiff argues that the trial court clearly erred in considering a boat and motorcycle that plaintiff received as part of the consent judgment when distributing the checking account proceeds. Plaintiff argues that the consent judgment reflects an equal division of the parties' estate; that when distributing the checking account proceeds the court was supposed to consider only certain payments and distributions unrelated to the boat and motorcycle; and that the boat and motorcycle were counted against him twice because the court considered those items when distributing the proceeds from the checking account. Defendant disagrees, maintaining that the court's distribution of the checking account proceeds was intended to equitably compensate her for the unequal distribution of the property pursuant to the consent judgment, where she received nothing to offset plaintiff's award of the boat and the motorcycle.

The record does not reflect either an agreement of the parties that the distribution set forth on the record represented an equal division of the assets, or that the court was to consider only certain issues in distributing the funds in the account. On the other hand, there is nothing in the record to support the court's conclusion that the distribution was not equal. The record does not reflect the value of the other personal property awarded to the parties pursuant to the consent judgment. Therefore, we cannot determine whether the value of the boat and motorcycle awarded to plaintiff in the consent judgment was properly considered for purposes of distributing the checking account funds. Without this information, neither this Court nor the trial court can properly determine an equitable distribution of the checking account funds. Accordingly, it is necessary to remand for further proceedings.

On remand, the trial court shall determine first whether there was an agreement of the parties regarding that the distribution set forth on the record was equal, or that the issues to be considered in distributing the checking account funds were limited. Any agreement should be enforced. Absent such an agreement, the court shall determine the value of property received by the parties pursuant to the consent judgment, excluding those assets that were divided evenly. Upon determining the value of the property that each party received pursuant to the consent judgment, the court should then determine whether it is necessary to consider the value of the motorcycle and the boat awarded to plaintiff for purposes of distributing the checking account proceeds and, within its discretion, distribute those proceeds in a manner that is equitable under the circumstances. We note that we find no error in the court's declining to give plaintiff credit for the mortgage payments. However, the court's failure to consider the tuition payments is unsupported since defendant conceded the issue.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Jeffrey G. Collins