STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM W. ANDERSON,

Plaintiff-Appellant,

v

SHARON T. ANDERSON,

Defendant-Appellee.

UNPUBLISHED
November 16, 2001

No. 226666
Kent Circuit Court
LC No. 98-011443-DO

Before: Gage, P.J., and Jansen and O'Connell, JJ.

JANSEN, J. (*dissenting*).

I respectfully disagree with the majority's decision to affirm the trial court's judgment of divorce, specifically with regard to the award of defendant's pension and annuity solely to defendant. The problem is that the trial court failed to articulate on the record its reasons for awarding these assets solely to defendant. Moreover, it is unclear from the record whether these assets were considered part of the marital estate. Indeed, the value of the assets is not clear from the record, and the trial court failed to value these assets.

Although the parties stipulated to the value of the marital assets, defendant's pension and annuity were specifically not included in that valuation. Any right to a vested pension benefit accrued by a party during the marriage must be considered part of the marital estate subject to award upon divorce. MCL 552.18(1); *VanderVeen v VanderVeen*, 229 Mich App 108, 110-111; 580 NW2d 924 (1998). Further, an annuity may operate as a type of pension, *Thomas v Detroit Retirement System*, 246 Mich App 155, 157; 631 NW2d 349 (2001), and MCL 552.101(4) requires the court to determine the rights of the husband and wife to any pension, annuity, or retirement benefits in the judgment of divorce.

Unlike the majority, I am unwilling to assume that defendant's pension and annuity were awarded solely to defendant "in an effort to equalize the respective incomes of the parties." Since we do not know whether the trial court actually included these assets in the marital estate and we do not know the value of the assets, I do not see how it can be concluded that the trial court was attempting to equalize the respective incomes of the parties. While it is certainly true that a trial court's division of the marital estate need not be mathematically equal, we are hindered by the lack of factual findings by the trial court as to why the pension and annuity were awarded solely to defendant or whether these assets were even included in the marital estate. This is error because "[i]n deciding a divorce action, the circuit court must make findings of fact and dispositional rulings." *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

Accordingly, I would remand to the trial court for it to fully articulate its reasons for not dividing defendant's pension and annuity and to determine the value of those assets. I would retain jurisdiction to review the trial court's supplemental findings.

/s/ Kathleen Jansen