

STATE OF MICHIGAN
COURT OF APPEALS

CINDY ANN SMYTH,

Plaintiff / Counter-Defendant-
Appellee,

v

DANIEL L. SMYTH,

Defendant / Counter-Plaintiff-
Appellant.

UNPUBLISHED

April 23, 2002

No. 230124

Wayne Circuit Court

LC No. 98-830979-DM

Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant, Daniel L. Smyth, appeals as of right from the judgment of divorce entered by the trial court. The judgment contained no separate findings of fact, but made three dispositions challenged by defendant on appeal: (1) \$16,000 in yearly spousal support to plaintiff, (2) an award of a 1997 Pontiac Grand Am to defendant, which he asserts was repossessed when plaintiff failed to make payments on it, resulting in defendant being unfairly obligated to pay fines and costs, and (3) an award to plaintiff of all the contents of the marital home. We reverse and remand, retaining jurisdiction.

Defendant first contends that the trial court committed error requiring reversal when it failed to make findings of fact supporting its marital property division and alimony award. In deciding the appropriate disposition of assets in a divorce case, a court must consider the following factors, wherever they are relevant to the circumstances of the particular case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). There may be other factors that are relevant to a particular case; the determination of relevant factors will vary depending on the facts and circumstances. *Id.* at 160.

On appeal, our review of a trial court's dispositional ruling is not limited to clear error or to abuse of discretion. *Id.* at 151. This Court must first review the trial court's findings of fact under the clearly erroneous standard. *Id.* If the findings of fact are upheld, we must decide whether the dispositive ruling was fair and equitable in light of those facts. *Id.* at 151-152. The trial court is given broad discretion in fashioning its dispositional ruling, and there can be no

strict mathematical formulations; while the division need not be equal, it must be equitable. *Id.* at 158-159. Further, “[e]ach spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court.” *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997), citing *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990). Where any of the listed factors are relevant to the value of the property or to the needs of the parties, the trial court must make specific findings of fact regarding those factors. *Sparks, supra* at 159. This requirement is intended to result in greater consistency and provide for more effective and meaningful appellate review. *Id.* A trial court commits an abuse of discretion when it fails to make specific findings of fact regarding the relevant factors. *McNamara v McNamara*, 178 Mich App 382, 391; 443 NW2d 511 (1989), modified 436 Mich 862; 460 NW2d 222 (1990).

The judgment of divorce issued by the trial court contains no findings of fact on any of the factors listed in *Sparks, supra* at 159-160. Furthermore, the lower court record contains no indication that the trial court ever made such findings of fact from the bench. Findings of fact should have been made to support those dispositions that defendant now challenges on appeal, and the trial court committed error requiring reversal when it failed to make such findings. We note that the trial court departed from the mediator’s recommendations when it: (1) awarded plaintiff periodic spousal support, rather than spousal support in gross, and (2) awarded plaintiff all the contents of the marital home. Furthermore, the trial court did not explain why it awarded defendant the 1997 Pontiac Grand Am, along with its attendant liabilities, when it appears that plaintiff purchased this vehicle in her sole name and allowed the vehicle to be repossessed. In essence, the trial court did not award defendant an asset when it awarded him this vehicle; the trial court awarded defendant a liability. The failure to make any findings of fact, particularly those supporting the trial court’s departure from the mediator’s recommendations, constitutes an abuse of discretion. *McNamara, supra* at 391.

Defendant next contends that the property disposition and award of alimony were inequitable. Without any findings of fact on the record, we must remand for specific findings of fact regarding the challenged dispositions. *Sparks, supra* at 163; MCR 2.517.

In *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991), this Court set forth the factors that a trial court should consider when deciding whether to award spousal support:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties’ ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties’ health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. In addition, the court may consider a party’s fault in causing the divorce.

The main objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The trial court should base its award of spousal support on what is just and reasonable under the circumstances. *Id.* On remand, the trial court shall address the above

factors with regard to its award of spousal support to plaintiff. Additionally, the trial court shall address the *Sparks* factors regarding the division of the marital estate.

Remanded for specific findings of fact regarding the challenged dispositions. On remand, the trial court may conduct additional hearings and may accept additional briefs from the parties. However, the trial court shall complete proceedings on remand and enter a written order articulating the necessary factual findings, within 56 days from the issuance of this opinion. Within 7 days from the entry of that order, appellant shall forward to this Court a copy of the order. The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

Reversed and remanded. We retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Michael R. Smolenski
/s/ Patrick M. Meter