

STATE OF MICHIGAN
COURT OF APPEALS

JOAN LORRAINE ELLIS,

Plaintiff/Counterdefendant-
Appellant,

V

BRUCE DOUGLAS ELLIS,

Defendant/Counterplaintiff-
Appellee.

UNPUBLISHED
September 17, 2002

No. 231671
Kent Circuit Court
LC No. 99-009378-DO

Before: Murphy, P.J., and Hood and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. We reverse and remand for further proceedings.

Plaintiff and defendant knew each other as teenagers, but began a relationship while each was married to another. The parties married on April 29, 1989. Each party had children as a result of their prior marriages, but did not have children during this marriage. The parties experienced financial difficulties due to failed businesses and uncontrolled spending. Despite financial difficulties and a tax lien against defendant, the parties bought items, such as a large screen television and a boat, and had a cleaning lady. Plaintiff obtained employment performing accounting services for her family's business, and defendant was employed in automotive service. Plaintiff attributed the breakdown of the marriage to their different parenting styles. Plaintiff testified that defendant's son was involved in criminal activity, causing the couple substantial monies to defend him in the criminal justice system and to repair damages to their residence. Defendant testified that any damage was minimal, and he had made substantial improvements to the home during the course of the marriage. Defendant downplayed the role of his son in the breakdown of the marriage. Rather, he alleged that finding plaintiff asleep with another man and her refusal to attend counseling was the cause of the marital breakdown. Plaintiff denied having a sexual relationship with another man prior to filing for divorce. The title to the home was in plaintiff's name only, and she received the home following her first divorce, although a lien on the home reflected her prior husband's interest. During the course of the marriage, the parties survived financial difficulties by refinancing the home or obtaining funds from plaintiff's parents.

Plaintiff first alleges that the trial court did not follow the proper analysis for division of a separate asset. We agree. On appeal, the factual findings of a trial court are reviewed for clear error. *McNamara v Horner*, 249 Mich App 177, 182; 642 NW2d 385 (2002). If the trial court's findings of fact are upheld, the dispositional ruling is examined to determine whether it was fair and equitable in light of all the facts. *Id.* at 183. When distributing property, the marital estate is divided between parties, but each party retains their own separate estate without invasion by the other party. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). However, a separate estate may be invaded when the other spouse contributed to the acquisition, improvement, or accumulation of the property.¹ *Id.*; MCL 552.401.

It was undisputed that the marital residence was plaintiff's home from her first marriage. Plaintiff's un rebutted testimony revealed that the value of the home at the time of the marriage was between \$87,000 and \$96,000 with liens valued at approximately \$34,000. While the home ultimately sold for \$119,000, plaintiff did not net a substantial profit because of the parties' standard of living. The trial court divided the net proceeds, but failed to make a finding regarding defendant's contributions to the property. While defendant concluded that he made substantial improvements to the property and that his earnings went into home improvements, there was no other evidence to support this assertion. Plaintiff disputed the allegations of substantial home improvement and testified that home improvements were required due to the vandalism by defendant's son. The trial court failed to make any factual findings regarding the diametrically opposed versions of events. The trial court failed to determine the value of plaintiff's equity interest at the time of the marriage, failed to determine the net increase, if any, in equity during the marriage, and failed to make findings indicating that invasions of plaintiff's separate equity was warranted. Accordingly, we reverse and remand for factual determinations involving the equity and improvements to the marital home.²

Plaintiff next alleges that the trial court abused its discretion by excluding a photocopy of a notice of change in assessed valuation. Assuming without deciding that the trial abused its discretion by excluding the evidence, plaintiff has failed to meet the requirements of MRE 103(a), particularly when plaintiff testified regarding the valuations of the property.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Christopher M. Murray

¹ This is one of two exceptions to the general rule. The other exception, MCL 552.23, allows for invasion when the division of marital assets is insufficient for suitable support and maintenance of either party. This exception is not at issue in this case.

² While the parties' proofs regarding their allocation of income was sparse, the trial court nonetheless did not make factual findings. For example, the trial court questioned defendant's assessment of the value of any labor, but nonetheless equally divided the net proceeds of the sale without foundation, thereby requiring remand. Furthermore, defendant's testimony regarding his transfer of all income to home maintenance did not address the period of time when he operated two failed businesses.