

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARC R. PETERSEN,

Plaintiff-Appellant,

v

MARY E. PETERSEN,

Defendant-Appellee.

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UNPUBLISHED

November 16, 2004

No. 249176

Cass Circuit Court

LC No. 99-000664-DM

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of divorce following the trial court's denial of his motion to reduce spousal support/alimony and his motion for relief from judgment pursuant to MCR 2.612.<sup>1</sup> We affirm.

I

The parties were married on September 4, 1971. In 1999, plaintiff filed a complaint for a divorce. At trial, the parties contested the value of plaintiff's family-owned<sup>2</sup> printing business, Petersen Printing Corporation (PPC). Each party presented expert testimony regarding the value of plaintiff's forty percent interest in PPC. The trial court found that PPC was an asset to be

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<sup>1</sup> This case has a lengthy procedural history following the divorce trial and issuance of the court's July 9, 2001, opinion. After entry of the divorce judgment on October 9, 2001, plaintiff filed a motion to reduce alimony and/or child support on October 23, 2001. The hearing on plaintiff's motion was delayed until October 15, 2002, pending the production of documents concerning plaintiff's business, Petersen Printing Corporation (PPC). Plaintiff's two earlier appeals were dismissed by this Court for lack of jurisdiction pending the trial court's decision on plaintiff's motion and the finality of the divorce judgment. On October 4, 2002, plaintiff filed a motion for relief from judgment. The trial court conducted a hearing on plaintiff's pending motions in January and February 2003, and the court issued its decision in April 2003. Plaintiff's appeal to this Court followed.

<sup>2</sup> Although plaintiff and his brother had previously each owned a fifty percent interest in PPC, at the time of trial, a twenty-percent interest had been sold to Michael Kile, who became president of PPC in 2000.

considered in the property settlement and that plaintiff's forty percent ownership in the company was valued at \$1,140,418.

Plaintiff filed a motion for reconsideration, contending that the trial court's valuation of PPC was incorrect because the court erred in its independent calculation of the company's annual cash flow. Additionally, the court mistakenly believed that the company had recently purchased new vehicles and equipment. Plaintiff asserted that PPC was in serious financial difficulty as evidenced by recent letters from First Madison Capital Corporation, PPC's asset lender, advising of PPC's default status and demanding payment in full of the obligations owed by PPC by the close of business on November 12, 2001. Plaintiff requested that the court reconsider the valuation of plaintiff's business interest, and the divorce asset and liability distribution, given the court's mistaken assumptions, or in the alternative, that the court grant a rehearing for additional expert testimony.

The trial court denied plaintiff's motion. The court stated:

The Court heard extensive testimony from two experts, one from each side. Both experts used the same methodology. This Court determined that George Murray's testimony was more credible. The Court's reasons are fully stated in the written Opinion. In addition, Mr. Murray indicated that to only look at losses in the financial statements was not fair because this was a very highly capitalized business. As a result of Mr. Murray's statement, the Court did a simple analysis of income loss and gain for a five-year period based upon financial statements submitted to the Court.

On October 23, 2001, plaintiff filed a motion to reduce alimony/spousal support and child support. A hearing on the motion had not yet occurred when, approximately a year later, plaintiff filed a motion for relief from judgment. At a hearing on both motions in early 2003, plaintiff presented testimony concerning PPC's financial failure following the divorce, including its filing for bankruptcy, and his personal financial situation. Following the hearing, the trial court denied plaintiff's request for relief from judgment.

## II

Plaintiff presents two claims on appeal. First, plaintiff claims that the trial court's findings of fact were against the great weight of the evidence and thus clearly erroneous. Second, he claims that the trial court's dispositive rulings were not fair and equitable. Plaintiff's arguments do not coincide with his questions presented. We address the arguments as presented and find no basis for reversal.

## III

"This Court reviews a property distribution in a divorce case by first reviewing the trial court's factual findings for clear error, and then determining whether the dispositional ruling was fair and equitable in light of the facts. *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003). The trial court's dispositional ruling is discretionary and will be affirmed unless this Court is left with a firm conviction that the distribution was inequitable. *Welling v Welling*, 233 Mich App 708, 709-710; 592 NW2d 822 (1999).

The goal in apportioning marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002); *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division need not be mathematically equal, but any significant departure from congruence must be clearly explained. *McNamara, supra*; *Byington, supra* at 114-115. This Court gives special deference to a trial court's findings when based on the credibility of the witnesses. *Welling, supra* at 709. The determination of the proper time for valuation of an asset is in the trial court's discretion. *Byington, supra* at 114 n 4.

#### IV

Plaintiff first contends that the trial court erred in including his interest in PPC in the marital estate because it was plaintiff's separate property and there was no basis for awarding defendant any portion of plaintiff's separate property. We disagree.

"The distribution of property in a divorce is controlled by statute." *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997), citing MCL 552.1 *et seq.* In granting a divorce, the trial court may divide all property that came "to either party *by reason of the marriage . . .*" *Id.*, quoting MCL 552.19.

When apportioning marital property, the court must strive for an equitable division of increases in marital assets "that may have occurred between the *beginning* and the end of the marriage." Thus, the trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets. This distinction between marital and separate estates has long been recognized in this state. Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party. [*Id.* at 493-494 (citations omitted).]

Two statutorily created exceptions apply to permit invasion of a spouse's separate estate in a divorce. First, invasion is permitted if, after division of the marital assets, the marital estate is insufficient for suitable support of a spouse. *Id.* at 494, citing MCL 552.23. Second, invasion is permitted "when the other spouse 'contributed to the acquisition, improvement, or accumulation of the property.'" *Id.* at 494-495, quoting MCL 552.401.

The trial court determined that PPC was an asset to be considered in the property settlement. The court relied on *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995), cited by both parties, which the court noted was extremely similar to this case.

In *Hanaway*, the defendant was the president of a family-owned corporation, Steel Tex. *Id.* at 283. At the time of trial, the defendant owned 41.23 percent of the corporation. *Id.* The stock had been given to him by his father over the years. *Id.* at 283, 293. The trial court ruled that it would not distribute the defendant's stock in the corporation as part of the marital estate:

"There is no evidence that plaintiff contributed to its acquisition, improvement or accumulation, and, in light of the fact that plaintiff is to receive over \$560,000 in cash and other assets, the exclusion of the stock from the estate will not result

in an award which is insufficient to maintain her. Accordingly, defendant shall receive his Steel Tex stock as his sole and separate property.” [*Id.* at 290.]

On appeal, the plaintiff argued that the Steel Tex stock, and its appreciation, should have been included as marital assets because she contributed to the company’s development and improvement by remaining at home to care for the house and children while the defendant applied himself to the company. *Id.* at 292. This Court agreed, rejecting the trial court’s determination that the plaintiff made no contribution to the company’s assets or appreciation:

While the source of defendant’s interest in the company was his father’s annual gifts of stock, the financial yield over time from that interest and the increased value of that interest necessarily reflected defendant’s investment of time and effort in maintaining and increasing the business, an investment that was facilitated by plaintiff’s long-term commitment to remain at home to run the household and care for the children. [*Id.* at 293.]

This Court further stated that although the interest in the business was given to the defendant by his father, that interest was a major asset of the marriage that the defendant was permitted to cultivate and nurture over the years. *Id.* Thus, viewed from the standpoint of whether the plaintiff contributed to the acquisition, improvement, or accumulation of the property, or from the standpoint of whether the property appreciated in value during the marriage, the trial court erred in treating Steel Tex as the defendant’s sole and separate property. *Id.* at 294.

We agree with the trial court that *Hanaway* is factually similar to this case and controlling. According to plaintiff, he received the PPC stock from his parents over the years. He owned 115 shares of stock before his marriage to defendant and received an additional 290 shares during the marriage. During the marriage, plaintiff devoted his time to making PPC a successful business, which entailed working long hours. Plaintiff testified that PPC grew significantly between 1982 and 1990. While plaintiff devoted himself to PPC, defendant was taking care of the house and the children.

Plaintiff argues that *Hanaway* is distinguishable because in *Hanaway* the value of the business interest appreciated “in real dollars terms,” whereas the value of plaintiff’s interest in PPC decreased substantially. We are unpersuaded by this argument.

As noted above, the *Hanaway* Court found distribution of the business asset proper whether viewed from the standpoint that the plaintiff contributed to the acquisition, improvements, or accumulation of the property, or from the standpoint that the property appreciated in value during the marriage. Here, as in *Hanaway*, *id.* at 294, the record indicates that over the years, PPC experienced substantial appreciation in value. The asset at issue did not increase in value simply by earning interest. *Id.* Rather, it appreciated because of defendant’s efforts, facilitated by plaintiff’s activities at home. Unlike the trust in *Dart v Dart*, 460 Mich 573; 597 NW2d 82 (1999), cited by plaintiff, plaintiff’s interest in PPC did not exist independently of his workplace activities or the marriage partnership. We are not left with a firm conviction that the trial court’s dispositional ruling concerning PPC was inequitable. *Welling, supra.*

V

Plaintiff argues that the trial court abused its discretion in denying plaintiff's motion for relief from judgment, pursuant to MCR 2.612(C)(1). Because this issue was not raised in the statement of questions presented, as required by MCR 7.212(C)(5) and (7), plaintiff has failed to properly present this issue for review. *Grand Rapids Employees Independent Union v Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999). To the extent that plaintiff argues that he was entitled to relief based on the trial court's alleged erroneous findings and inequitable dispositional rulings, we find no abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

A

Plaintiff argues that he was entitled to relief under MCR 2.612(C)(1)(a), based on mistake or inadvertence in the court's valuation of plaintiff's forty percent interest in PPC. Further, plaintiff argues that he was entitled to relief pursuant to MCR 2.612(C)(1)(e) on the ground that it is no longer equitable to enforce the divorce judgment because the demise of PPC has rendered the actual value of plaintiff's interest in PPC zero. We are unpersuaded that the trial court abused its discretion in denying relief from the judgment on these grounds.

"A trial court has great latitude in determining the value of stock in closely held corporations, and where a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

William Wilson, plaintiff's expert, testified that plaintiff's forty percent interest was worth \$397,000. Wilson testified that PPC's assets totaled \$6,948,000. Wilson then subtracted the debts (\$4,902,000), for a net value of \$2,046,000. After applying minority interest and marketability discounts, Wilson calculated plaintiff's interest at \$397,000.

Defendant's expert George Murray testified that he adopted the "adjusted fair value of assets method" in valuing PPC. Murray testified that the net assets totaled \$4,999,589. After applying a marketability discount, he concluded that the value of plaintiff's forty percent interest was \$1,480,000.

The trial court found that defendant's expert was more credible. The court valued plaintiff's forty percent interest in PPC at \$1,140,418. Based on the above testimony, the trial court's determination was within the range established by the proofs. Thus, the trial court did not err with regard to the value of plaintiff's interest in PPC.

Further, while marital assets are typically valued at the time of the trial or at the time judgment is entered, the trial court may, in its discretion, use a different date. *Byington, supra* at 114 n 4. In the case at hand, it appears that the experts and the trial court used December 31, 2000, for their valuation date of PPC. We find no abuse of discretion.

Citing *Stahl v Dyer*, 244 Mich 521; 221 NW 442 (1928) for a court's power to grant relief from a judgment on the basis of changed circumstances, plaintiff contends that the trial court erred in denying his motion for relief from the divorce judgment because the judgment was

no longer equitable given that PPC had filed bankruptcy and had zero value. We find *Stahl* inapposite, and plaintiff cites no other authority to support his claim. “A party may not leave it to this Court to search for authority to sustain or reject its position.” *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987).

B

Plaintiff also argues that because the alleged value of PPC has been reduced to zero, the trial court’s dispositional rulings resulted in defendant receiving eighty-eight percent of the marital estate while plaintiff received only twelve percent. He argues that he was therefore entitled to relief on the ground that the property division was incongruent or that he was entitled to relief from the judgment pursuant to MCR 2.612(C)(1)(f), based on extraordinary circumstances. We disagree.

The trial court determined that the total value of the marital property was \$2,098,637. The court awarded plaintiff \$1,240,329 and defendant \$729,270. Plaintiff was awarded his forty percent interest in PPC valued at \$1,140,418 and his 401k valued at \$227,349. Plaintiff was also awarded debt totaling \$127,438. Defendant received property valued at \$729,270, including the Eagle Lake home, insurance policies, and IRA’s.

The court acknowledged that it deviated from congruency (in favor of plaintiff) for the following reasons: the value of PPC was such that if the court split the assets 50/50, plaintiff would have received only the business and would have had to pay defendant; without an award of the 401k to plaintiff, he would be without a retirement package or savings for retirement; PPC was a family business of substantial value, but on the decline; defendant was awarded long term alimony; and defendant received substantial assets, savings, future retirement accounts, and a home that was without debt. We are not left with a firm conviction that the property distribution was inequitable, *Welling, supra* at 709-710, or that the court abused its discretion in denying relief pursuant to MCR 2.612(C)(1)(f).

Affirmed.

/s/ Janet T. Neff  
/s/ Michael R. Smolenski  
/s/ Bill Schuette