STATE OF MICHIGAN

COURT OF APPEALS

FRANK M. JOHNSON,

Plaintiff-Appellee,

v

SHARON P. JOHNSON,

Defendant-Appellant.

UNPUBLISHED
November 18, 2004

No. 246484
Washtenaw Circuit Court
LC No. 99-014929-DM

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce and several orders, asserting that the trial court erred by: declining to award spousal support, reducing the value of the marital estate's principal asset to take into account the tax consequences of a potential sale, awarding plaintiff husband certain assets he acquired post-separation and before the divorce judgment was entered; and declining to order plaintiff husband to pay defendant's remaining attorney and expert fees. We affirm in part and reverse in part.

Plaintiff Frank Johnson (Frank) and defendant Sharon Johnson (Sharon) dated in high school and while attending different universities. They married in July 1974, when Frank was 23 and Sharon 22. Sharon had just graduated from Central Michigan University with a double major in psychology and sociology, and Frank was attending the University of Michigan (U-M). Frank earned a B.S. in architecture in 1975, a Master's degree in architecture in 1976, and a Master's degree in urban planning in 1977, all from U-M.

In 1977, while a student, Frank began working for a contracting firm in Ann Arbor, Robertson Morrison, Inc., (RMI), and continued working there after finishing at U-M.

Sharon worked full time for the first 5½ years of the marriage (1974-1980), first at the Plymouth Center for Human Development, and then at U-M.[1] Sharon worked until a few weeks

[1] The parties also jointly managed some apartment buildings in Ypsilanti.

before the parties' first of three children was born, on 3/23/80 (Stephanie). Ross was born two years later, on 3/19/82, and Brent, on 6/12/85.[2]

Frank rose through the ranks at RMI, eventually negotiating to purchase RMI over a five-year period. The buyout was finalized in the mid 1980's, and Frank has been the sole shareholder and president of RMI ever since. RMI employs approximately 60-75 persons and has five divisions, each reporting to Frank.

In 1986, Sharon began graduate school, first at EMU, and then at U-M. She received a Master's in social work (MSW) from U-M in December 1990. Sharon began full-time work as a social worker in February 1991 at the Downriver Guidance Clinic, earning an annual salary in the low $20,000s. Sharon was employed full and part-time for the next 8 years, until around the time plaintiff filed for divorce in July 1999. Sharon earned $ 6,903 in 1998, and $ 1,702 in 1999 (for part-time work). Sharon has not worked since 1999.

Frank's compensation from RMI was $ 668,035 in 1998; $ 722,691 in 1999; and in 2000 $ 713,000. The parties' year 2000 joint federal tax return (during which Sharon was not employed) stated an adjusted gross income of $ 931,403.

Frank filed for divorce on July 15, 1999. A Consent Order Preserving Status Quo was entered August 12, 1999.[3] Throughout most of these proceedings, the parties' two sons, Brent

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[2] At the time trial began in September 2001, Stephanie was a senior at UCLA, Ross lived with defendant at home and was a sophomore at Eastern Michigan University (EMU), and Brent lived with defendant and was a junior in high school.

[3] The status quo order provided in part:

> 1. Plaintiff shall continue to pay on a timely basis the following expenses:
>
> > Principal, interest, taxes and insurance on the marital home or any other mortgaged asset of the parties, whether individually or jointly owned, provided that if any mortgaged property is income-producing, the income may be applied toward such expenses.
> >
> > All reasonable . . . monthly balances on credit cards held by the Defendant and the children of the parties, and shall ensure that all current accounts remain open and available unless mutually agreed otherwise.
> >
> > All reasonable household utility and maintenance expenses, including household help and yard maintenance.
>
> 2. Additionally, Plaintiff shall provide Defendant with One Thousand Dollars ($1,000.00) per week in cash or cash advance availability for miscellaneous needs of the children and the home.

(high school student) and Ross (EMU student) lived with Sharon in the marital home in Ann Arbor.

Sharon testified at trial that plaintiff is a very generous man who provides well for the family, and that he made all payments required under the status quo order.

The parties jointly commissioned Plante & Moran's Joseph Cunningham to value RMI as of November 30, 1999. Per the parties' agreement, Cunningham updated his valuation as of June 30, 2001, valuing RMI at $4.5 million**,** a figure adopted by the trial court and not in dispute. (It is the trial court's reduction of this $4.5 million figure to take tax consequences of a sale into account that is disputed).

The parties stipulated that health would be an issue only to the extent it affected Sharon's ability to work. Pursuant to a consent order, the issue of Sharon's health was referred to Dr. Elissa Benedek for an independent medical examination, the results of which would be binding on the parties and court.

The trial court declined to award Sharon spousal support, reserving the issue. Pertinent to that determination was the court's view that Sharon should be employed. The court reduced RMI's value from $4.5 million to $3.9 million, concluding that a sale of RMI was "contemplated" and that it was appropriate to reduce RMI's value by the amount of tax Cunningham testified to. Regarding Sharon's remaining attorney fees, the trial court ordered that she pay all attorney and expert fees and costs not already paid by Frank. This appeal ensued.

I

Sharon first asserts that the trial court reversibly erred in declining to award spousal support. We agree.

This Court reviews factual findings relating to spousal support for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). A finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.* at 654-655. If the court's factual findings of fact are upheld, this Court must decide whether the dispositional ruling was fair and equitable in light of the facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. This Court may modify judgments to rectify mistakes, interpret ambiguities, and alleviate inequities. *Hagen v Hagen*, 202 Mich App 254, 258; 508 NW2d 196 (1993).

The award of spousal support is in the trial court's discretion. *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). The main objective of spousal support is to balance the incomes and needs of the parties in a way which will not impoverish either party, and spousal support is to be based on what is just and reasonable under the circumstances of the case. *Moore*, *supra* at 654; *Hanaway v Hanaway*, 208 Mich App 278, 295; 527 NW2d 792 (1995). In determining whether spousal support is appropriate, the court is to consider, wherever they are relevant to the circumstances of the particular case, the following factors:

> (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. There may even be additional factors that are relevant to a particular case. For example, the court may choose to consider the interruption of the personal career or education of either party. The determination of relevant factors will vary depending on the facts and circumstances of the case. [*Sparks,* 440 Mich at 159-160.]

Under *Sparks* factor one, the parties had been married 25 years when Frank filed for divorce and 27 years at the time of trial. Regarding factor two, the parties stipulated that Sharon's unequal contribution to the marital estate would not be considered in any issue. As to factor three--Sharon was 51, and Frank 52. Regarding factor four (health) the parties stipulated that health would not be an issue except to the extent it affected defendant's ability to work. Regarding factor eight (past relations and conduct of the parties), the parties stipulated that fault would not be considered in any issue.

Regarding factor seven, the parties' earning abilities, Sharon last worked in 1999. In the year 2000, when Sharon earned no money, the parties reported AGI was $931,403.00 (figure includes interest, dividends, capital gains and net rental real estate income). At the time of trial in the fall of 2001, Frank continued to receive $12,000 a week in gross salary from RMI. When Sharon worked as a full-time clinical social worker in the 1990's, she earned in the low $20,000s annually. She testified that she stopped working in 1999 because of the difficulty of the divorce and because the children needed her to be at home.

The issue of Sharon's health was referred to Dr. Benedek, and the parties' agreed that Dr. Benedek's recommendations would be binding on the parties and the court. The trial court interpreted Dr. Benedek's report as positing that Sharon should be working. Dr. Benedek's report did state that it may be beneficial for defendant to work, but heavily qualified that statement by saying that Sharon is incapable of working in her chosen field (clinical social work), that she would require a highly-structured position not involving public contact (probably clerical/administrative), and that she may need education or retraining before obtaining such a position. Dr. Benedek's report states working may "even be beneficial" for Sharon, but an objective reading of that report in no way suggests that Sharon is able to, or could, work in the short-term. Dr. Benedek stated that Sharon's prognosis is poor, that continued psychotherapy and pharmacotherapy are necessary, that Sharon is unable to work in her chosen field, that she may be able to work at a clerical or administrative job with little public contact, that she may need retraining and/or education, and that her position must be highly structured.

We conclude that the trial court either misinterpreted Dr. Benedek's assessment of Sharon's health and of the impact of Sharon's health on her ability to work, or imposed its own views, contrary to the consent order under which the parties and the court were bound by Dr. Benedek's findings**.** The court's ruling to reserve the issue of spousal support was based in part on this misinterpretation, and was inequitable in light of the circumstances, including the vast disparity in the parties' incomes and earning potential, the length of the marriage, and the parties' stipulations regarding unequal contribution, health, and division of the marital estate. We reverse and remand for an appropriate award of alimony.

II

Sharon's next argument is that the court reversibly erred when it reduced Frank's interest in RMI, at Sharon's expense, by factoring in tax consequences of a potential sale or taxable event of RMI. Again, we agree.

The court reduced the $4.5 million valuation by $523,712, to $3,976,288, to distribute equally between the parties the anticipated tax burden that would accompany a future sale of RMI.

The goal in distributing marital assets 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). Valuation of a marital asset is a factual finding, reviewed for clear error. *Sparks, supra* at 151-152. However, if a factual finding is based on an erroneous application of the law to facts, or may have been influenced by the trial court's incorrect view of the law, this Court's review is not limited to review for clear error. *Id.* at 150, n 8.

In *Hanaway, supra*, 208 Mich App at 300-301, the defendant challenged on appeal the trial court's valuation of his corporate stock without considering tax consequences. This Court found no error, stating: "In light of the court's determination that ***no sale or other taxable event was planned or contemplated***, we find no clear error or abuse of discretion in its decision not to discount the stock value in anticipation of such consequences." [Emphasis added.] In *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993), this Court noted:

> [A]n abuse of discretion per se does not occur where a trial court declines to consider tax consequences in the distribution of marital assets. However, if the parties have presented evidence that causes the court to conclude that it would not be speculation to do so, the court may consider the effects of taxation and other inchoate expenses in distributing the assets.

The parties stipulated to divide the marital estate 50-50, although Frank did not so stipulate with respect to property he acquired from the time he separated from Sharon to the entry of the divorce judgment. The parties' jointly-retained expert, Joseph Cunningham, valued RMI at $4.5 million as of June 30, 2001. Cunningham offered the additional opinion that it was appropriate to reduce RMI's value by $539,312 to take into account tax consequences of a stock sale which, in 1998, Frank contemplated would occur ten years hence. The trial court did so. The record is clear that Sharon did not agree that the tax consequences of a future sale of RMI should be considered in valuing RMI, or that Cunningham would offer an opinion on the matter. Cunningham himself testified that the tax-consequences of a potential sale were not part of his valuation assignment as stipulated by the parties and that Frank alone requested that Cunningham opine on the tax matter.

Sharon acknowledges that it was within the court's discretion to admit Cunningham's testimony regarding the tax-consequences of a sale of the business. Sharon asserts that the court erred in the weight it assigned Cunningham's testimony on that point because Sharon did not stipulate to it. We agree.

Cunningham testified at length regarding his valuation of RMI and, over defense counsel's objection, was permitted to testify regarding whether and to what extent it would be appropriate to adjust the $4.5 million gross RMI valuation by potential taxes on a sale of RMI. Cunningham opined that it was appropriate to tax-affect RMI based on Frank's November 1998 Business Plan for RMI, and based on Frank's age (51). Cunningham testified that it's normal for persons to retire at age 62.[4]

The trial court's Findings of Fact and Conclusions of Law state in pertinent part:

> Plaintiff [Frank] suggests the following division of property. The information below is reproduced from Plaintiff's submission following trial.
>
> The principal asset in this case is the business. Plaintiff has presented evidence to support his contention it is worth $ 3,976,288. Defendant has presented evidence to support her position it is worth $4,500,000. The court accepts plaintiff's position.
>
> 1. The appropriate date to value RMI is 6/30/01.
>
> 2. The gross non-tax-effected value of RMI is $4.5 million.
>
> 3. It is appropriate to tax-effect the RMI value.
>
> **4. In accordance with the opinion of the neutral, jointly commissioned expert, Joseph Cunningham, the gross value of RMI should be reduced by $523,712 for the present value of anticipated future taxes.**
>
> 5. Frank's 100% ownership interest in RMI should be awarded solely to him.
>
> **Arguably, more testimony was given on the issue of the appropriateness of tax-effecting the value of the business than any other. Most of it was by Joe Cunningham hired by both parties in this case. He was not simply the expert hired by plaintiff. It now turns out his testimony is more satisfactory from the point of view of plaintiff. That does not change his status.** [Emphasis added.]

We conclude that the trial court's determination that RMI's value should be reduced by the amount Cunningham opined would be the tax consequence of a sale of RMI was partially

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[4] Sharon's expert, CPA Gary Leeman, testified at trial in response to Cunningham's testimony on the issue, that nothing in plaintiff's 1998 Business Plan indicated an "imminent" sale, and that it is proper to take tax-consequences into account as to a closely held corporation such as RMI only if the sale is "imminent" (which he defined as a sale within a year), or if the stock is to be sold in an effort to reach a fair and equitable distribution in a divorce. Leeman testified that he had not taken into account the tax consequences of a sale of a closely held corporation in a divorce case where there was no imminent sale or a sale directed by the court.

based on the erroneous assumption that Sharon's participation in the joint commission of Cunningham meant that she was stuck with his opinion regarding the propriety of taking tax consequences into account, when the record clearly shows she did not jointly commission Cunningham to opine on tax consequences in the event of a sale of RMI or other taxable event, and that Frank alone commissioned him to do so.

Looking beyond the trial court's misimpression, however, we conclude that while Frank's 1998 Business Plan does discuss the possibility of a sale or other taxable event involving his ownership of RMI, the taxable event was nevertheless speculative. The November 1998 Business Plan expressly states that Frank's "current intent" is to phase out his active involvement in RMI in the next ten years, i.e., by the end of 2008, but it contemplates the various ways in which he might do that and explicitly states that Frank was not contemplating a change in ownership of RMI. The Plan states:

> SUCCESSION PLANNING
>
> THE OWNER'S CURRENT INTENT IS TO PHASE OUT OF ACTIVE INVOLVEMENT WITHIN THE NEXT TEN YEARS. SIGNIFICANT DAILY INVOLVEMENT TO DECREASE IN THE NEXT FIVE YEARS. MANAGEMENT SUCCESSION PLANNING IS PART OF THE CONCEPT OF THE ROBERTSON MORRISON BEING COMPRISED OF INDIVIDUALLY MANAGED DIVISIONS IS TO ALLOW THE COMPANY TO OPERATE WITHOUT RELYING A [sic] LIMITED NUMBER OF KEY EMPLOYEES. TO FACILITATE FLEXIBILITY OF SCHEDULES AND VACATION TIMES THERE IS ADEQUATE CROSS TRAINING BETWEEN THE VARIOUS MANGERS [sic] TO ALLOW AN UNEXPECTED MANAGEMENT TO BE COVERED. THE OTHER ADVANTAGE TO THIS STRUCTURE IS THAT IF THE COMPANY WAS SOLD THE CURRENT OWNER WOULD NOT BE REQUIRED TO CONTINUE TO OPERATE THE BUSINESS FOR THE BUYER AND ALLOWS FOR ANY NUMBER OF ORDERLY TRANSITION POSSIBILITIES.
>
> THE FOLLOWING IS THE CURRENT OWNER SUCCESSION CONCEPT THAT HAS BEEN OFFERED IN WRITING TO PERSONNEL WHEN THE QUESTION ARISES.
>
> THE POSSIBLE OWNERSHIP TRANSITIONS CONSIDERED ARE AS FOLLOWS:
>
> - OFFER THE OPPORTUNITY TO KEY EMPLOYEES TO PURCHASE STOCK IN THE COMPANY
>
> - PLAN WOULD HAVE TO BE FAIR TO ALL KEY EMPLOYEES
>
> - PARTICIPANTS WOULD HAVE TO BE ABLE TO WORK TOGETHER AS CO-OWNERS

> - IT WOULD HAVE TO BE AS FINANCIALLY BENEFICIAL TO THE CURRENT OWNER AS ANY OTHER POSSIBLE OWNERSHIP TRANSITION OPTION
>
> - CONTINUE TO BE SOLE OWNER OF THE COMPANY AND ALLOW IT TO OPERATE AS IT CURRENTLY IS SET UP
>
> - MIGHT INCLUDE A PROFIT SHARING PLAN
>
> - MIGHT INCLUDE A STOCK PURCHASE OPTIONS OF SPECIAL CLASSES OF COMPANY STOCK
>
> - IF I [sic] "OFFER THAT COULDN'T BE REFUSED" WAS PRESENTED, IT MAY BE SERIOUSLY CONSIDERED AND POSSIBLY ACTED ON. (HAVE BEEN CONTACTED BY PARTIES INTERESTED IN POSSIBLE PURCHASE)
>
> THE OWNER HAS ATTENDED OWNERSHIP SUCCESSION SEMINARS AND HAS A NUMBER OF RESOURCE MANUALS ON THE SUBJECT. AS PLANS GO FORWARD THE INVOLVEMENT OF LEGAL AND ACCOUNTING SPECIALISTS WILL BE REQUIRED.

At page 2, Frank's RMI Business Plan states:

> **THE COMPANY OWNER IS NOT CONTEMPLATING ANY TRANSFER OF OWNERSHIP BUT HAS STRUCTURED THE MANAGEMENT TO ALLOW FOR AN ORDERLY TRANSITION IN ANY NUMBER SCENARIOS** [sic]**.** [Emphasis added.]

Although Frank's 1998 Business Plan did mention that a taxable event might possibly occur ten years later, it also mentioned his continuing ownership. Frank cites no authority to support that taking into account tax consequences of a sale or succession of ownership that might possibly occur ten years hence is not speculative. *Nalevayko* prohibits "speculation," stating "if in the opinion of the trial court the parties have presented evidence that causes the court to conclude it would not be speculating in doing so**,** it may consider the effects of taxation . . ." *Nalevayko,* 198 Mich App at 164, citing *Lesko v Lesko,* 184 Mich App 395, 402; 457 NW2d 695 (1990)[5], overruled in part, *Booth v Booth,* 194 Mich App 284; 486 NW2d 116 (1992). We conclude that Frank's claim thus fails.

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[5] *Lesko* sheds no light on the matter. Nor does *Everett v Everett*, 195 Mich App 50; 489 NW2d 111 (1992), because the stock options at issue in *Everett* were

> . . . neither transferable nor assignable. The right to exercise the options **expires on certain dates.** The options were contingent upon plaintiff's continued

(continued…)

III

Sharon next challenges the trial court's award to Frank of assets he acquired post-separation but before entry of the divorce judgment of nearly $200,000, consisting of a bank account, a condominium and its contents, and $7,000 he spent on gifts for others.

This Court reviews the court's factual findings pertaining to property distribution for clear error. *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). This Court then determines "whether the ultimate dispositional ruling was fair and equitable in light of the facts, reversing the disposition only if . . . left with the firm conviction that the distribution was inequitable." A court may not alter stipulations of fact made by the parties. *Nuriel v YWCA of Metropolitan Detroit*, 186 Mich App 141, 147; 463 NW2d 206 (1990).

Defendant has not shown that the trial court's determination to exclude these assets from the marital estate was unfair and inequitable. The record shows that Frank's counsel made clear at the start of trial, that these post-separation assets were not part of the stipulation that the marital estate be divided 50-50. The trial court accordingly noted that the parties "stipulate all property except for that acquired after the status quo order was entered in this case may be divided equally between them." The issue was thus properly before the trial court, and does not contravene the parties' stipulation regarding equal division of the marital estate. The record shows that while this case was pending, Frank paid $228,624.59 under the status quo order for Sharon's support and the support of the minor child, plus 108 payments of $1,000 to Sharon for the 108 weeks this case was pending, totaling $336,624.59. Frank argued below that in light of these payments under the status quo order, equity dictated that he be awarded the assets he accumulated post-separation and before entry of the divorce judgment. We conclude that the trial court's ruling was fair and equitable in light of the facts.

IV

Sharon's next argument is that the trial court abused its discretion by ruling, without explanation or elaboration, that except as to payments Frank already made to Sharon's attorneys, Sharon shall pay her attorney fees, expert fees and other costs.

(…continued)

> employment with his employer, and any options that are not matured at the time plaintiff ends his employment are forfeited.
>
> * * *
>
> We agree with plaintiff that the trial court erred in valuating the options without taking into consideration the tax consequences. See *Lesko* [*supra*] . . . Plaintiff's expert testified that even though the options are not subject to immediate taxation, they will be taxed when they are exercised because they are a form of employment compensation. Indeed, the record indicates that options exercised by plaintiff in 1988 were taxed. Thus, the trial court clearly erred when it valued the options without considering the tax consequences. [195 Mich App at 54-55. Emphasis added.]

This Court reviews the trial court's determination regarding attorney fees for an abuse of discretion. *Gates v Gates*, 256 Mich App 420, 438; 664 NW2d 231 (2003). "Attorney fees in a divorce action are awarded only as necessary to enable a party to prosecute or defend a suit. It is well settled that a party should not be required to invade assets to satisfy attorney fees when the party is relying on the same assets for support." *Id.*[6]

The trial court adopted Frank's position on the issue of attorney fees "in full as if fully set forth here."[7] The parties stipulated below to all attorney and expert fees and costs through December 18, 2001. Frank asserted that Sharon's attorney fees are unreasonably high; nearly three times the amount of his attorney fees, and that his payment of $41,936 of Sharon's fees is a "sufficient and fair amount."

On appeal, Frank reiterates these arguments, and adds that "Given the substantial estate awarded to the appellant, and the income she can earn on the property, when combined with her own ability to work, this is an adequate contribution to the appellant's attorney fees."

We conclude that Sharon alleged facts sufficient to show that payment of her remaining attorney and expert fees would require her to invade her property settlement, on which she relies for support. Frank's arguments, adopted by the trial court, and his appeal brief do not adequately respond to Sharon's contention that she will have to invade her property settlement. Given that fact, and the vast disparity in the parties' incomes and earning potential, we conclude that the trial court abused its discretion by ordering Sharon to pay her remaining attorney and expert fees and costs.

On the question whether to award Sharon appellate fees, the record establishes Frank's ability to pay them and, under the circumstances presented, we conclude that appellate fees should be awarded to Sharon.

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[6] Appellate attorney fees and costs are available under MCR 3.206(C)(1), *Gates*, *supra*, "a party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action," and that MCR 3.206(C)(2) requires that a party requesting attorney fees and expenses "must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay." *Id.*

[7] The trial court stated:

> The court, likewise, has reviewed the remainder of the issues in the case and believes they are amply, appropriately, and fairly dealt with in plaintiff's settlement proposal and proposed judgment, which, together with the reasoning, is adopted as if fully set forth here—with the exception of the alimony reservation. The judgment of divorce is entered in accord herewith.

V

Sharon's last argument is that this case should be remanded to a different judge than the one who tried this case. We disagree. On the record before us, we cannot conclude that the trial court would be unable to follow this Court's directives on remand. See *Feaheny v Caldwell,* 175 Mich App 291, 309-310; 437 NW2d 358 (1989), and *People v Evans*, 156 Mich App 68, 72-73; 401 NW2d 312 (1986) (discussed in *Feaheny, supra*).

We affirm the trial court's determination to not include in the marital estate the challenged assets Frank accumulated post-separation and pre-entry of the divorce judgment. We vacate the trial court's reservation of the spousal support issue and remand for calculation of a figure supported by the record, not contrary to the parties' stipulations, and retroactive to the date of entry of the divorce judgment, with interest; 2) we vacate the trial court's determination to reduce the value of RMI to take into account tax consequences of a sale, and order that on remand RMI's value of $4.5 million dollars be split 50-50; 3) we reverse the court's order regarding attorney fees, and order Frank to pay Sharon's outstanding attorney and expert fees and costs from December 18, 2001 forward, and that he pay Sharon's appellate fees as well.

Affirmed in part, reversed and remanded in part. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot