

STATE OF MICHIGAN  
COURT OF APPEALS

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EDITHA LIM WARREN,

Plaintiff-Appellee,

v

THOMAS SHAWN WARREN,

Defendant-Appellant.

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UNPUBLISHED

April 22, 2008

No. 281035

Oakland Circuit Court

Family Division

LC No. 2006-723482-DM

Before: Jansen, P.J., and Donofrio and Davis, JJ.

PER CURIAM.

Defendant appeals by right the judgment of divorce. He challenges the trial court's rulings concerning attorney fees, property division, and child custody, which were made following a bench trial. We affirm.

Defendant first challenges the trial court's award of \$15,000 in attorney fees to plaintiff. We review a trial court's award or denial of attorney fees in a domestic relations proceeding for an abuse of discretion. *Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007).

[A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome . . . . [W]hen the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment. [*Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006) (citations and quotation marks omitted).]

We review any underlying factual determinations for clear error and questions of law de novo. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). We also review a trial court's denial of a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Pursuant to MCL 552.13(1), a party to a divorce action may be required "to pay any sums necessary to enable the adverse party to carry on or defend the action . . . ." The award of attorney fees in domestic relations actions is also controlled by MCR 3.206(C)(2):

A party who requests attorney fees and expenses must allege facts sufficient to show that

(a) the party is unable to bear the expense of the action, and that the other party is able to pay, or

(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

The party requesting attorney fees has the burden to establish “facts sufficient to justify the award.” *Borowsky, supra* at 687.

Plaintiff presented evidence at trial regarding her inability to pay her attorney fees compared to defendant’s relative ability to pay. Plaintiff has only a high school education, and working full-time, she earns only \$35,000 per year to support herself and the parties’ three children. Among her expenses, plaintiff paid car insurance, health insurance premiums for her and the children, and, following the trial court’s opinion and order, the payment on a car loan. Defendant, while unemployed since the fall of 2006, had a higher earning capacity, earning \$90,000 per year at his previous employment.

Plaintiff also established that defendant’s uncooperative conduct and dilatory actions caused her to incur unnecessary attorney fees. Plaintiff’s counsel filed two motions to compel defendant’s participation in the discovery process and made several attempts to secure his cooperation. Defendant failed to provide complete discovery in violation of a court order. Defendant also failed to respond when asked to confirm his attendance at court-ordered mediation. As a result, the mediator cancelled the mediation session and the court sanctioned both parties. Defendant filed notice of his intent to present certain exhibits at trial without providing those documents to plaintiff and attempted to conduct discovery in an improper fashion after the ordered close of discovery. Plaintiff was then required to file additional motions to preclude defendant from presenting the improperly obtained evidence and to prevent further late discovery; she incurred further attorney fees for the related hearing. Defendant also failed to attend the scheduling conference and a post-trial Friend of the Court (FOC) hearing on his own motion to reduce his child support obligation.

Defendant correctly points out that plaintiff never presented any evidence regarding her accumulated attorney fees. When the award of attorney fees is based on the misconduct of one party, the other party must present evidence regarding the specific costs and fees incurred as a result of the misconduct. *Reed, supra* at 165. Under either theory of recovery, the trial court must conduct a hearing to determine whether the requested attorney fees are reasonable if the other party contests the requested fees. *Id.* at 165-166. Despite defendant’s awareness that the trial court had awarded attorney fees in its June 2007 opinion and order, and despite his active objection to the proposed judgment drafted by plaintiff, defendant did not challenge the specific amount of awarded attorney fees or the reasonableness of the fees in the two months preceding the entry of the judgment. In fact, defendant did not challenge the award of attorney fees until his motion for reconsideration, more than a week after the entry of the judgment.

Pursuant to MCR 2.119(F)(3):

[A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

A trial court has the discretion to deny a motion for reconsideration when the moving party relies on arguments or legal theories that could have been raised prior to the judgment. *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Defendant could have raised his objections to the award of attorney fees before the court entered the judgment of divorce. Accordingly, the trial court acted within its discretion in failing to reconsider the award of attorney fees despite the fact that plaintiff failed to present specific evidence in this regard.

Defendant also challenges the trial court's award of sole legal and physical custody of the parties' three children to plaintiff. Defendant was awarded parenting time three weekends each month.

There are three different standards of review applicable to child custody cases. The trial court's factual findings on matters such as the established custodial environment and the best-interests factors are reviewed under the great weight of the evidence standard and will be affirmed "unless the evidence clearly preponderates in the opposite direction." In reviewing the findings, this Court defers to the trial court's determination of credibility. A trial court's discretionary rulings, such as the court's determination on the issue of custody, are reviewed for an abuse of discretion. Further, pursuant to MCL 722.28, questions of law in custody cases are reviewed for clear legal error. [*Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006) (internal citations omitted).]

The trial court determined that the children had an established custodial environment with both parties, and defendant does not challenge that determination. A trial court may not change a child's established custodial environment unless it determines by clear and convincing evidence that a change is in the child's best interests under the factors set forth in MCL 722.23. MCL 722.27(1)(c).

The trial court found the parties equal with respect to factors a, b, e, and h, and found that factors c, d, f, g, and j favored plaintiff. On appeal, defendant challenges the trial court's findings of fact and ultimate decision with respect to factors c, d, f, g, and j.

Under MCL 722.23(c), the trial court must consider "[t]he capacity and disposition of the parties involved to provide the child with food, clothing, medical care . . . and other material needs." The court credited plaintiff under this factor because, although defendant has a higher earning capacity, he was then unemployed and his "sporadic employment history" had created instability for the family. Defendant challenges the trial court's findings in relation to his employment history.

In *LaFleche v Ybarra*, 242 Mich App 692, 701; 619 NW2d 738 (2000), this Court upheld the trial court's determination that the parties were equally capable of providing for the child's material needs. When employed, the plaintiff was capable of earning much more than the

defendant; however, the defendant had proven capable of providing for the child's needs. Further, the plaintiff was voluntarily unemployed. *Id.* In this case, the trial court correctly noted that defendant is capable of earning much more than plaintiff. However, defendant has experienced extended periods of unemployment in the past eight years. Defendant's failure to immediately notify plaintiff of his current unemployment and the receipts for adult entertainment plaintiff found after defendant's prior termination raise suspicion regarding defendant's fault in causing the termination of his employment. Plaintiff testified that defendant had failed to consider the financial needs of his family in the past, such as when he failed to apply for unemployment benefits for eight months or when he drained his children's bank accounts. During defendant's periods of unemployment, plaintiff used her income—which she admittedly kept in a separate bank account—to pay utility bills and to provide food and clothing for the children. Further, although plaintiff makes only \$35,000 per year, she is entitled to child support, and will therefore have an improved ability to provide for the children.

Under MCL 722.23(d), the court must consider “[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.” In crediting plaintiff with this factor, the court recognized that plaintiff's home was less than ideal. However, the court found that defendant's uncertain financial situation and excessive home equity loan created instability. The evidence supports the trial court's findings. Defendant owes a substantial sum on the home equity loan and currently has no income to make the payments. In the event he were required to sell the house, it appears that he would owe his mother a large portion of the proceeds making it difficult to secure appropriate replacement housing. It is irrelevant under this factor whether plaintiff knew that defendant transferred an interest in the property to his mother or took out a home equity loan. Defendant's tenuous financial situation and reduced interest in the house create an unstable environment for the children. Plaintiff's housing at the time the judgment was entered was clearly not ideal. The small apartment had only two bedrooms for five people. However, plaintiff's steady employment over the past eight years is evidence of her ability to provide a continually stable home for the children.

Under MCL 722.23(f), the court must consider the “moral fitness of the parties involved.” The focus is not on which parent is “morally superior.” Rather, the court must consider the effect of the parents' behavior on the parents' relationship with the children to determine their “relative fitness” as parents. *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994). In doing so, the court may consider, among other factors, “verbal abuse, drinking problems, driving record, physical or sexual abuse of the children, and other illegal or offensive behaviors.” *Id.* at 887 n 6.

The trial court noted that each party accused the other of having a “drinking problem,” but found defendant's testimony incredible. The court also cited defendant's failure to obey court orders, defendant's failure to immediately apply for unemployment benefits to avoid interaction with the government, and the fact that he was placed on probation for two years following an operating under the influence of liquor (OUIL) charge. The court also cited the facts that defendant took out a home equity loan on the home without telling plaintiff, denied paternity of his oldest son, and accused plaintiff of being an unfit mother without providing substantiating evidence.

Each party accused the other of having a drinking problem and testified regarding incidents when the other party was intoxicated. Defendant admitted that he was convicted of

OUIL in 2001, but asserted that the conviction was expunged from his record two years later and his license was reinstated without restriction. It is within the trial court's discretion to judge the credibility of the witnesses. *Sinicropi, supra* at 155. The trial court acted within its sound discretion in deciding to believe plaintiff's testimony over that of defendant in relation to alcohol abuse, and we may not interfere with the trial court's decision based on the conflicting testimony.

There was also evidence that defendant was verbally abusive toward plaintiff. Plaintiff accused defendant of yelling at her in front of the children, denigrating her, calling her names, insulting her job, and treating her as inferior because of her ethnicity.

Defendant also exhibited a problem with authority and government regulation. Plaintiff testified that defendant failed to file for unemployment benefits for eight months because he did not want to interact with the government. In these proceedings, defendant repeatedly disregarded filing deadlines and court orders, refused to respond to requests to schedule mediation, failed to appear at two court hearings, and illegally served subpoenas on plaintiff's creditors.

The parties also accused each other of making "secret" financial transactions to the detriment of the family. Defendant drained his children's bank accounts without plaintiff's knowledge or consent. Although plaintiff knew that defendant's mother had made some house payments on the home, plaintiff was unaware until much later that defendant transferred an interest in the property to his mother. Defendant secured a home equity loan without plaintiff's consent. He ran up \$17,000 in "business expenses" on the parties' joint credit card, including charges for adult entertainment. Defendant cancelled plaintiff's auto insurance in March 2006 without telling her. As a result, plaintiff drove for several months with the children in an uninsured vehicle.

Plaintiff admitted that she kept the money she earned in a separate account and treated it as her personal money. She admitted that she never used her income to reduce the debt on the home but claimed that she used her income to purchase food and clothing and to pay utility bills. Defendant accused plaintiff of sending money to her family in the Philippines even when he was unemployed. Plaintiff claimed that she only sent money to relatives on their birthdays. She also claimed that defendant voluntarily helped pay for her sister's schooling. Defendant accused plaintiff of charging over \$4,000 on the parties' joint credit card to finance her father's trips from the Philippines to the United States. Plaintiff again claimed that defendant voluntarily paid for her father's travel expenses. Defendant also accused plaintiff of wasting the family's money at the casino when he was unemployed. Plaintiff admitted that she had visited the casino in the past, but claimed that she no longer had enough money or time to gamble. As noted above, we must defer to the trial court's determination regarding witness credibility. *Sinicropi, supra* at 155. The trial court determined that defendant's testimony regarding plaintiff's alleged immoral conduct in this regard was incredible. Viewing the various accusations raised by the parties against each other, it is clear that neither is perfect. However, the trial court's finding in relation to factor f was supported by the evidence.

Under MCL 722.23(g), the court must consider "[t]he mental and physical health of the parties involved." Defendant asserts that the court should have considered plaintiff's alcohol

abuse under this factor. However, the trial court acted within its sound discretion by finding defendant's testimony in that regard to be incredible.

Under MCL 722.23(j), the court must consider "[t]he willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent . . . ." There is significant evidence to support the trial court's determination that this factor favored plaintiff. Throughout these proceedings, plaintiff expressed her desire to get along with defendant. She wanted to share joint legal and physical custody and wanted defendant to care for the children while she was working. Defendant, on the other hand, sought sole custody of the children. He did not want the children to spend the night with plaintiff at her apartment and admitted that he sent the children to stay with his sister, rather than their own mother, when he had to travel for work. Plaintiff testified that defendant never allowed her extra time with the children on weekend evenings. Since the separation, defendant's family had become hostile toward her. She claimed that defendant's mother called her a "whore" and a "bloodsucker" in the hallway of the courthouse. Plaintiff also claimed that she left defendant because he yelled at her, called her names, and denigrated her in front of the children.

Defendant exhibited an unwillingness to communicate with plaintiff. He failed to inform plaintiff when he became unemployed during these proceedings and allowed the children's health insurance to lapse. He failed to tell plaintiff that he cancelled her auto insurance and thereby caused her to drive the children in an uninsured vehicle for several months. Defendant refused to respond to requests to schedule mediation. During the marriage, defendant made important financial decisions without informing plaintiff, such as taking out a \$100,500 home equity loan and transferring a half-interest in his house to his mother. Moreover, defendant did not challenge plaintiff's testimony that he withheld the children's report cards and school pictures. He asserted that he did not want the children to spend time with plaintiff's mother because she has inactive tuberculosis, despite the fact that the children have been vaccinated and there is no indication that they are in any danger of contracting the disease. The trial court's decision in relation to this factor clearly comports with the evidence given defendant's failure to communicate with plaintiff and his admitted interference with the children's relationship with their mother and grandmother.

The trial court made its decisions regarding the best interest factors based on the evidence and the testimony of the parties. None of the court's findings were against the great weight of the evidence. In making the ultimate custody determination, the court need not give the factors equal weight. *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998). Ultimately, however, the court found the parties equal in relation to four factors and found that five factors favored plaintiff. We find that the trial court acted within its discretion in awarding plaintiff sole legal and physical custody of the children.

Defendant also challenges the trial court's division of the marital property. The division of marital property is within the trial court's discretion. When the trial court's findings of fact are not clearly erroneous, we must affirm unless we are left with the firm conviction that the division was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *Gates v Gates*, 256 Mich App 420, 422-423; 664 NW2d 231 (2003). When dividing marital property in a divorce action, the trial court's goal is to reach an equitable division based on the

circumstances. *Id.* at 423. However, the division need not be mathematically equal. *Id.* The court must take the following factors into consideration whenever relevant:

(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, supra* at 159-160.]

This list of factors is nonexhaustive and the court may consider any other factor deemed relevant. *Id.* at 160.

At the time the judgment was entered, the parties had been married for ten years. Plaintiff was then 35 years old, defendant was 44, and both were in good health. Both were capable of working, but defendant was then unemployed. Defendant had extended periods of unemployment throughout the marriage and was left with \$17,000 of questionable business expenses on a personal credit card from restaurants and adult entertainment from his past employment. Defendant was capable of earning a high income and made \$90,000 per year at his last employment. Plaintiff was a housewife until 2000, when she began working part-time because defendant had become unemployed. She has worked in the shipping department of Tiffany and Company since August 2000, working both part-time and full-time, and currently earns \$35,000 per year. Plaintiff used her income to purchase food and clothing for the family and to make utility payments.

With respect to the home, defendant took out a home equity loan without plaintiff's knowledge and has paid off only \$500 since. He transferred titled to his house to his mother without plaintiff's knowledge. The court found that the parties had \$50,000 equity in the home, which was valued at approximately \$150,000 with a \$100,000 balance on the home equity loan. Neither party testified regarding their monthly expenses. The court found that plaintiff drove a 2005 Chevrolet Malibu with an outstanding debt of \$16,500; however, the parties also owned a 1995 Chevrolet Lumina and 2001 Pontiac Aztec with no outstanding debt.

Ultimately, the court found that the division of property should be "roughly congruent." The court awarded the home—and the debt from the home equity loan—to defendant. Defendant was ordered to reimburse plaintiff her equal share of the equity in the home, i.e., \$25,000. The parties were awarded their individual bank accounts and retirement benefits and were ordered to divide any joint accounts. Plaintiff was awarded the 2005 Chevrolet Malibu and ordered to assume responsibility for that debt while defendant was awarded the other two vehicles. Plaintiff was awarded her real estate in the Philippines.

Defendant contends that the trial court's property division was erroneous and inequitable because the court refused to consider the evidence that he could have presented. We review a trial court's decision on a motion to compel and a decision to impose sanctions for discovery violations for an abuse of discretion. *Borgess Medical Ctr v Resto*, 273 Mich App 558, 582-583; 730 NW2d 738 (2007). Pursuant to MCR 2.313(B)(2)(b), a trial court may sanction a party who fails to comply with discovery orders by preventing that party from "support[ing] or oppos[ing] designated claims or defenses, or prohibiting the party from introducing designated matters into evidence." Defendant contends that he did provide some answers to interrogatories and

document requests and, therefore, should not have been completely barred from presenting evidence. However, “an evasive or incomplete answer” is “treated [the same] as a failure to answer.” MCR 2.313(A)(4).

In order to be timely, defendant should have served his answers to plaintiff’s interrogatories and document requests by September 26, 2006. Despite plaintiff’s stipulations to extend the deadline, repeated reminders by plaintiff’s counsel, and two court orders to compel, defendant never provided complete answers or followed through with the production of documents. Among the missing documents was information concerning defendant’s bank account, retirement benefits, the home equity loan agreement, the quitclaim deed to defendant’s mother, and an agreement giving his mother the option to purchase the home. Although defendant proposed to present this evidence at trial, he did not serve the exhibits on plaintiff’s counsel. Given the vast amount of important information that defendant had not served on plaintiff with only two weeks left to prepare for trial, allowing defendant to present evidence only in relation to child custody was within the range of “reasonable and principled outcomes” at the court’s disposal. See *Maldano*, *supra* at 388.

The trial court did make an erroneous finding of fact in dividing the parties’ vehicles. There is no record evidence that plaintiff drove the 2005 Chevrolet Malibu. Plaintiff testified that she drove the 2001 Pontiac Aztec. The division was equitable in any event. Plaintiff admitted that defendant paid off the loans on the Aztec and the 1995 Lumina with the proceeds from the home equity loan. Given that the court ordered defendant to assume full responsibility for the home equity loan, it was reasonable to award defendant the cars that were included in that debt. Plaintiff was not left without transportation and was given responsibility for a relatively small portion of the parties’ combined debt.

We find that the trial court properly divided the equity in defendant’s house while awarding the property to defendant and holding defendant solely accountable for the home equity loan. It is undisputed that defendant owned the home in Madison Heights prior to the marriage. When one party owned real estate prior to the marriage, “the down payment, the equity built up before the parties’ marriage, and any appreciation that occurred before the marriage should be considered part of [the record owner’s] separate estate.” *Korth v Korth*, 256 Mich App 286, 293; 662 NW2d 111 (2003). However, there are two grounds to award a portion of one party’s separate assets to the other.

Pursuant to MCL 552.401, “the sharing and maintenance of a marital home gives both spouses an interest in any increase in value during the course of the marriage. This increase in value is part of the marital estate.” *Korth*, *supra* at 292-293. Accordingly, if plaintiff contributed to the maintenance of the home during the marriage, she would be entitled to an equal share of the increase in value during the marriage. The parties lived together in the home for a short period in 1997 and then from 2000 through November 2005. Plaintiff was initially a “housewife” and took care of the children and home so defendant could work full-time. Plaintiff has worked outside of the home continually since 2000, either full or part-time. Although plaintiff never used her income to make payments on the home equity loan, she paid utility bills and provided food and clothing for the family.

In *Hanaway v Hanaway*, 208 Mich App 278, 281-282; 527 NW2d 792 (1995), the plaintiff wife was a “housewife” for over 20 years and only began to work outside the home



when she decided to file for divorce. The defendant husband worked as the president of a company started by his father. *Id.* at 283. Among the defendant's separate assets was a significant amount of stock in the company that was given to him by his father. *Id.* The trial court declined to award the plaintiff any portion of that stock, finding that she had not worked to increase the value of the stock. *Id.* at 290. This Court disagreed, finding that the value of the stock increased because the defendant worked long hours and made the family company a success. The defendant was only able to work those hours because the plaintiff cared for the home and children. *Id.* at 293-294. Accordingly, the plaintiff was entitled to her share of the increased value of the stock. *Id.* at 294.

Similarly, the increase in value of the home during the marriage is a marital asset. Plaintiff contributed to the increased value through her work in the home as a wife and mother and through her financial contributions to the upkeep of the family. However, plaintiff presented no evidence regarding the value of the home at the time of the marriage. Further, plaintiff merely testified that the home was currently valued at \$150,000 without presenting the SEV value or a market appraisal. Defendant was not allowed to present any evidence regarding the value of the home although he included such documents on his proposed exhibit list. The court could have supported its award of \$25,000 to plaintiff had it allowed this evidence in for a limited purpose. However, as noted above, the purpose of a property settlement is to equitably divide the marital assets. An award of \$25,000 as plaintiff's share in the home after a ten-year marriage appears to be equitable.

The other ground to invade one party's separate assets is because the other party lacks sufficient assets to support herself or the children. MCL 552.23(1); *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). Plaintiff has very few separate assets. She has a 401(k) through her employer valued at approximately \$9,000. Plaintiff maintained a separate bank account throughout the marriage. Plaintiff presented no evidence regarding the value of the account; however, we presume this asset has little to no value given plaintiff's current financial situation. Plaintiff counts vacant land in the Philippines among her premarital assets. Plaintiff testified that she purchased the property for \$6,000 but she was uncertain of the land's current value. Accordingly, plaintiff has separate assets valued at approximately \$15,000. Given her meager salary, it would be difficult for plaintiff to support her three children without a portion of the equity in defendant's house. Accordingly, we find that the division of the equity in the house would be proper under this theory as well.

Defendant challenges the court's equal division of the equity in the house because he had only a half interest in the remaining equity given that he had transferred a half-interest to his mother. However, during the marriage, plaintiff enjoyed a dower right in the home that defendant could not transfer without plaintiff's agreement. Pursuant to MCL 558.1, "[t]he widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof." The statutory right of dower in Michigan is the same as at common law. *Redman v Shaw*, 300 Mich 314, 316; 1 NW2d 555 (1942). To be "seized" of property is the "status of legally owning and possessing real estate." Black's Law Dictionary (6th ed). An "estate of inheritance" is simply "[a]n estate which may descend to heirs." Black's Law Dictionary (6th ed). Accordingly, during the parties' marriage, plaintiff enjoyed a dower interest in defendant's separate real estate that would vest upon

defendant's death. Defendant did not have the right to divest plaintiff of her dower right by transferring any portion of his interest in the property during the marriage without plaintiff's signature. *In re Stroh Estate*, 151 Mich App 513, 516; 392 NW2d 192 (1986). Plaintiff retained her dower interest in defendant's property until relinquished in exchange for a property settlement. MCL 552.101(1). Defendant never claimed that plaintiff signed off on or authorized the transfer to his mother; he merely stated that plaintiff knew about the transaction. "Notwithstanding a conveyance by a husband in which the wife did not join, the husband is considered so seized of the premises as to entitle the wife to dower." *In re Stroh Estate, supra* at 516. It has been long established that a court may set aside a property transfer used to "defraud the wife of her marital rights" in preparation for divorce proceedings. *Brown v Brown*, 335 Mich 511, 517; 56 NW2d 367 (1953). Therefore, for the purpose of determining plaintiff's interest in the property, this Court must proceed as if the transfer did not occur, i.e., as if defendant remained seized of his property in its entirety notwithstanding the conveyance.

Lastly, we note that the trial court could have been harsher on defendant. Defendant conveyed a security interest in the home without plaintiff's signature when he took out the home equity loan without plaintiff's knowledge. The court could have valued the property as if that interest had not been conveyed. Instead, the court acknowledged the encumbrance and awarded plaintiff an interest only in the remaining equity. Although defendant was held solely responsible for the loan, he was also awarded the property.

Affirmed.

/s/ Kathleen Jansen  
/s/ Pat M. Donofrio  
/s/ Alton T. Davis