

STATE OF MICHIGAN  
COURT OF APPEALS

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LINDA GUERRA,

Plaintiff/Appellant-Cross-Appellee,

v

VICTOR GUERRA, JR.,

Defendant/Appellee-Cross-  
Appellant.

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UNPUBLISHED

April 29, 2010

No. 288523

Saginaw Circuit Court

LC No. 06-060381-DO

Before: OWENS, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

The parties cross-appeal as of right from the October 7, 2008, judgment of divorce entered in this matter. More specifically, they challenge the trial court's division of defendant's General Motors pension. We affirm.

The parties married in 1964 and lived near Saginaw. Defendant worked at General Motors for 42 years, until a shoulder injury placed him on disability. In 1994, plaintiff took a job in Detroit and found accommodations in the Detroit area, returning to Saginaw on the weekends. According to defendant, the parties stopped "living as man and wife" at this time, and her move amounted to a de facto separation. Plaintiff contends that the parties separated when she filed for divorce in 2006.

The trial court determined that plaintiff abandoned the marriage in 1994 when she moved from the home, requiring defendant to support their family on his own after this point. Accordingly, the court awarded each party half of defendant's General Motors pension accrued from 1964 to 1994, but it permitted defendant to retain the entire value of his pension accrued since 1994.

On appeal, plaintiff first argues that the trial court abused its discretion in choosing December 31, 1994, as the date for valuation of defendant's pension. We disagree. "The actual date to be used for valuation of an asset is within the discretion of the trial court." *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 76; 471 NW2d 631 (1991). However, we review a trial court's findings of fact in a divorce action for clear error. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996), quoting *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). "A finding is clearly erroneous if the reviewing court is left with a definite and firm

conviction that a mistake was made after reviewing all the evidence.” *Johnson v Johnson*, 276 Mich App 1, 10-11; 739 NW2d 877 (2007).

Although “marital assets are typically valued at the time of trial or at the time judgment is entered,” the trial court has the discretion to select a different date. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). A trial court “must and does retain considerable discretion to see that equity is done,” in part to prevent the parties from attempting to delay or accelerate the date of the divorce judgment for strategic purposes. *Id.* The parties’ manifestation of the intent to lead separate lives, as evidenced by, for example, filing a complaint for divorce or maintaining separate residences, can be considered when determining a valuation date. See *id.* at 112.

Here, the record supports the trial court’s conclusion that the parties manifested their intent to live separate lives in 1994, when plaintiff moved to Detroit. Although plaintiff visited the marital home on weekends, the parties were not intimate after 1994. There was also evidence that plaintiff had an extramarital affair while she lived in Detroit, and the parties’ son testified that plaintiff lived a double life after 1994. Further, aside from a family vacation with their eldest son and his family in 2005 and a shopping trip in 2004, it appears that the parties spent little time together after 1994. The trial court did not abuse its discretion in establishing a valuation date of December 31, 1994, for purposes of dividing defendant’s pension, because the parties separated for purposes of property accumulation at that time.<sup>1</sup> See *id.* at 115-116.

Next, plaintiff argues that the trial court’s decision to award defendant the entire value of his pension accruing after December 31, 1994, was unjust and inequitable. In particular, plaintiff claims that the trial court improperly placed disproportionate weight on the fact that plaintiff was at fault for the breakdown of the marriage when it failed to award her any part of defendant’s pension after December 31, 1994. Further, plaintiff asserts that the trial court’s decision improperly punished her for her alleged extramarital affairs. Again, we disagree.

In a divorce action, dispositional rulings are reviewed de novo, while findings of fact are reviewed for clear error. *Keen v Keen (After Second Remand)*, 194 Mich App 72, 75; 486 NW2d 105 (1992). “If the trial court’s findings of fact are upheld, we then must decide whether the dispositive ruling was fair and equitable in light of those facts. A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable.” *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002) (internal citations omitted).

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<sup>1</sup> Plaintiff refers this Court to its decision in *Luhrs v Wertheim*, unpublished opinion per curiam of the Court of Appeals, issued May 17, 2007 (Docket No. 271672), to support the proposition that the trial court erred in establishing a valuation date before the filing of the complaint for divorce. However, *Luhrs* is an unpublished decision and not binding on us. MCR 7.215(C)(1). Further, because *Luhrs* is factually distinguishable from the instant action, it offers little guidance.

“The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances.” *Berger v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008). The *Berger* Court noted,

Trial courts may consider the following factors in dividing the marital estate: (1) the duration of the marriage, (2) the contributions of the parties to the marital estate, (3) the age of the parties, (4) the health of the parties, (5) the life situation of the parties, (6) the necessities and circumstances of the parties, (7) the parties’ earning abilities, (8) the parties’ past relations and conduct, and (9) general principles of equity. [*Id.* at 717.]

However, there is no rigid framework for applying these factors: “Because of the wide array of factual circumstances involved in a divorce proceeding, the determination of relevant factors varies depending on the case.” *McNamara*, 249 Mich App at 185-186. No single factor should be given undue weight. *Berger*, 277 Mich App at 717. Further, the trial court’s duty is “to achieve equity, not to ‘punish’ one of the parties.” *Sands v Sands*, 442 Mich 30, 36-37; 487 NW2d 493 (1993).

Although divisions of marital property do not need to be mathematically equal, an equitable distribution of marital assets means that these divisions should be roughly congruent. *Byington*, 224 Mich App at 114. Further, “significant departures from congruence must be explained clearly by the court.” *Id.* at 114-115. However, “[w]hatever presumption of congruence exists with respect to the distribution of marital assets becomes attenuated after the parties have publicly manifested their intent to lead separate lives.” *Id.* at 115 (internal citation omitted). Accordingly, in some circumstances, a spouse might be entitled to a lesser share, or even no share, of the property earned or acquired by the other spouse after that manifestation. *Id.* at 115-116. As a result, one of the aforementioned factors, the contribution of each party to the marital estate, “will generally take on increasing significance with regard to property acquired after such manifestation.” *Id.* at 115.

Here, the trial court did not solely consider plaintiff’s fault for the breakdown of the marriage in rendering its decision. Instead, the trial court properly considered the factors enumerated in *Berger* when determining a proper division of the parties’ property, including defendant’s pension. In particular, the court considered the length of the parties’ marriage, plaintiff’s lack of financial contribution to the marriage after 1994, and the parties’ manifested intent to live separate lives after 1994 when it determined that plaintiff was only entitled to half the value of the pension that accrued between 1964 and 1994. The trial court did not err in permitting defendant to retain the entire value of his pension accrued after that date.

Plaintiff also claims that it was unfair and inequitable for the trial court to divide defendant’s pension without first determining its value. More specifically, plaintiff asserts that because the value of defendant’s pension accrued during the early years of their marriage could have significantly less value than the value accrued during the later years, the division should have been based on an overall percentage of the entire value of the pension, not on a certain number of years. However, plaintiff fails to cite any authority to support her argument. “When a party merely announces a position and provides no authority to support it, we consider the issue waived.” *Nat’l Waterworks, Inc v Int’l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Affirmed.

/s/ Donald S. Owens

/s/ David H. Sawyer

/s/ Peter D. O'Connell