# STATE OF MICHIGAN

# COURT OF APPEALS

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| MEGHAN KATHLEEN EDWARDS,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>December 6, 2012 |
| v | No. 308393<br>Oakland Circuit Court |
| BRIANT JAMES EDWARDS,<br><br>Defendant-Appellant. | LC No. 2010-771759-DM |

Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

In this domestic relations matter, defendant appeals the judgment of divorce by delayed leave granted, arguing that the trial court erred by (1) failing to determine whether there was an established custodial environment, failing to define the burden of proof, and failing to make findings under the best-interest factors; (2) awarding defendant parenting time without consideration of the best-interest factors or other statutorily required considerations; and (3) not dividing the marital assets in a roughly congruent manner. We affirm in part, reverse in part, and remand for a proper valuation and division of the two marital homes consistent with this opinion.

Plaintiff and defendant married on March 15, 2003. They have two children, a daughter, born July 14, 2005, and a son, born May 15, 2007. Plaintiff filed for divorce on May 12, 2010, requesting sole legal and physical custody of the children, subject to reasonable parenting time for defendant. Defendant filed his answer and counterclaim for divorce on June 10, 2010, requesting joint legal and physical custody of the children, with parenting time dependent on the ultimate grant of custody.

On June 24, 2011, the court entered an opinion and order ruling on many matters in the case, but not completely disposing of it. The court awarded plaintiff the parties' home in Novi and defendant the parties' home in Dearborn, permitted each party to retain his or her own retirement accounts, bank account, vehicle, and individual debts, divided the joint credit card debt equally, and allowed each party to claim one minor child on future tax returns. The court noted that defendant wanted "equalization" between the values of the marital homes, which the court found were both "underwater," but declined to rule on this issue, stating that the parties failed to present sufficient evidence regarding value. The order also stated that there were no contested issues regarding custody, stating that the parties had agreed upon joint legal custody

with physical custody to plaintiff and granting the same. The court stated that it agreed with the friend of the court (FOC) recommendation. The issue of child support was reserved for the FOC.

On August 3, 2011, the court entered a judgment of divorce. The judgment reiterated the rulings in the order of June 24, 2011, and added that, until the hearing on child support could be conducted, defendant would pay plaintiff $226 a week. The court granted defendant parenting time every other weekend, Monday through Friday after school until 4:30 p.m., alternating holidays, two weeks of summer vacation, and an additional day a week of parenting time in the summer.

## I. CHILD CUSTODY

Defendant first argues that the trial court erred by failing to consider the established custodial environment of the children, failing to define the burden of proof, and failing to make findings under the best-interest factors of MCL 722.23.

A party need not take exception to a finding of fact or ultimate decision by the trial court in order to preserve the issue on appeal. MCR 2.517(A)(7). However, "'[a] party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court.'" *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008), quoting *Czymbor's Timber, Inc v Saginaw*, 269 Mich App 551, 556; 711 NW2d 442 (2006), aff'd 478 Mich 348 (2007). After trial, defendant filed proposed findings of fact and conclusions of law stating, "The parties agree that the children will primarily reside with Plaintiff, Meghan Edwards, at the Novi residence. The parents will have joint legal custody." Plaintiff asserts that this amounted to consent to a final judgment granting joint legal custody with primary physical custody to the mother. As such, it would operate as a bar to defendant's request for relief from this grant on appeal under the doctrine of invited error. Defendant maintains that this is not the position he took throughout the course of the proceedings, insisting that he "has no idea where that came from."

It is true that defendant requested joint legal and physical custody in his answer and counterclaim for divorce and his trial brief. However, it appears that defendant's position changed during the course of the proceedings. After trial, plaintiff filed a proposed judgment of divorce which, in the section regarding child custody, stated that the parties would share joint legal custody of the children with primary physical custody to plaintiff. Defendant objected to the custody section only to the extent that he did not wish to use a web-based calendar to share information and plan the children's schedule. He did not object to plaintiff's proposed arrangement of joint legal custody with primary physical custody to plaintiff. Both these objections and defendant's proposed post-trial findings of fact and conclusions of law made clear that defendant agreed that the parties should have joint legal custody with primary physical custody to plaintiff, and both were filed after the answer and counterclaim as well as the trial brief. This change in position seriously undermines defendant's argument on appeal that he did not intend to consent to plaintiff having primary physical custody of the children. Because defendant requested the specific relief below that he now challenges, defendant waived this issue and cannot now raise it on appeal. *Holmes*, 281 Mich App at 587-588.

## II. PARENTING TIME

Defendant next argues that the trial court erred by failing to conduct a best-interest analysis before making a determination regarding parenting time. We disagree.

"'Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue.'" *Shade v Wright*, 291 Mich App 17, 20-21; 805 NW2d 1 (2010), quoting *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005).

MCL 722.27a governs a trial court's determination of parenting time and states that "[p]arenting time shall be granted in accordance with the best interests of the child." MCL 722.27a(1). When making parenting-time decisions, the court need not address every best-interest factor, but must at least make findings with respect to the contested issues. *Shade*, 291 Mich App at 31-32.

The trial court combined its analyses of child custody and parenting time, stating that "there are no contested issues regarding custody" before ruling on the terms of parenting time and custody. However, the parties never explicitly agreed regarding parenting time. Plaintiff requested "reasonable visitation based upon [defendant's] limited ability to be with the children." The FOC recommended that defendant have parenting time on alternate weekends, Monday through Friday from after school until 4:30 p.m., and alternating holidays and school breaks. In his proposed post-trial findings of fact and conclusions of law, defendant stated:

> The parties accept the basic [FOC] recommendations for parenting time outlined therein plus Defendant, Briant Edwards, would request further time. He is requesting 110 overnights per year. In addition to that[] which is outlined in [t]he recommendation, certain days have not been addressed therein, such as parties' birthdays, Christmas vacations, school breaks, spring breaks, Easter breaks and other dates of that nature. There would be a request that those dates be equally split. Further, the parties have agreed in their testimony at trial that as opposed to the children going to day care every day, five days a week during the summer months, that one day a week the children could be with the Plaintiff and Plaintiff's mother and one day a week with the Defendant and Defendant's [] mother.

The parties have continued to struggle over the issue of parenting time in post-judgment proceedings, some of which were filed after this Court granted defendant's delayed application for leave to appeal. In light of the parties' disagreement over parenting time, the trial court was required to consider the best interests of the children. Defendant claims the court failed to do so. However, the trial court explicitly relied on the FOC report and adopted its recommendations. When a trial court relies on FOC reports in making a determination, the FOC findings are examined to determine whether they comport with the best-interest analysis mandate of MCL 722.23 and MCL 722.27a(1). *In re Stevens*, 86 Mich App 258, 263; 273 NW2d 490 (1978).

The FOC thoroughly examined each of the statutory best-interest factors set forth in MCL 722.23 as follows.

Factor (a) relates to the love, affection, and other emotional ties existing between the parties and the child. The FOC found under factor (a) that "[t]he parties both love their children and want what is best for them. Both parties report there is a strong bond between the children and parents." The FOC found that this factor favored both parents.

Both parties testified that they love their children and enjoy spending time with them and that the children love them back. For the trial court to adopt the FOC's finding that the parties were equal under this factor was not against the great weight of the evidence.

Factor (b) relates to the capacity and disposition of the parties to give the child love, affection, and guidance and to continue the education of the child in his or her religion or creed, if any. With regard to factor (b), the FOC found:

> Both parties have worked full time outside of the home. They have worked opposite shifts and provided care for the children during the time that the other parent was at work. Both parties have prepared meals, taken the children to the doctor and engaged in daily care giving tasks. Since Mr. Edwards has moved from the home he has exercised regular parenting time each afternoon with the children but the majority of the week is spent with Mrs. Edwards.
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> Both parties agree that Mrs. Edwards has generally been the parent to arrange for child care. There are mixed reports of which parent handled doctor's appointments and sick child care.
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> The children have been baptized in the Catholic faith and both parents are in support of continuing this foundation.

The FOC credited this factor to both parties but determined that it slightly favored plaintiff.

Plaintiff testified that she spends time doing many different activities with the children and described her relationship with them as loving and affectionate. She is raising the children Catholic but attends church only sporadically. She disciplines the children with timeouts and is very patient with them. Plaintiff described the children's relationship with defendant as loving, but more like a friendship than a parent-child relationship. Defendant also likes doing many activities with the children. He disciplines them with timeouts and privilege restrictions, but plaintiff testified that he is sometimes rough with them and restrains them physically. Defendant described himself as Catholic but does not attend church. He has pulled the parties' daughter out of school on several occasions to go play. He also has a record of being untruthful in front of the children and lying to plaintiff in their presence. The trial court's adoption of the FOC's finding that this factor slightly favored plaintiff was not against the great weight of the evidence.

Factor (c) addresses the parties' capacity and disposition to provide the child with food, clothing, medical care, or other remedial care. The FOC found under factor (c):

> Mrs. Edwards has a Masters Degree and is employed full time as the Vice President and Publicist at Identity Marketing & Public Relations. She has been with this company for 4.5 years. This position does require some overtime and out of town travel a couple of times a year.
>
> Mr. Edwards has a high school diploma. He is employed full time with Ford Motor Company for 15 years. He works Monday through Friday 5 pm to 1:30 am. There is some overtime required but it is sporadic in nature at this time. Mr. Edwards provides the medical benefits for the family through his employer.

The FOC found that this factor favored both parties equally.

Plaintiff has a master's degree in communications, works in marketing, makes a base salary of $70,000, and earned about $130,000 in 2010. She managed the finances throughout the marriage and described herself as the primary caregiver during the marriage. She now provides meals for the children and takes them to the doctor. Plaintiff also sought out counseling for the parties' daughter when she was struggling emotionally with the divorce. Defendant has a GED and works as a stock keeper at Ford and the parties agree he made about $60,000 in 2010. Plaintiff claims that defendant resisted taking their daughter to counseling and filed a motion with the court to intervene and order counseling. Defendant stated that any apparent unwillingness to get counseling for her was the result of scheduling misunderstandings. Defendant has also smoked around the children in the past, despite the fact that their son has asthma, but denies doing so at present. Although defendant has not been perfect in this regard, none of his transgressions are significantly substantiated or very serious. The trial court's adoption of the FOC's finding that this factor favored the parties equally was not against the great weight of the evidence.

Factor (d) addresses the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity. With respect to factor (d), the FOC found:

> The children have lived in the current home since April 2010. In May 2010 Mr. Edwards moved out of the home. Since his initial move from the home he has lived in several different locations. Mrs. Edwards remains with the children in the home. There is no CPS involvement with the family.

The FOC found that this factor was applicable to both parties and that it favored plaintiff.

Defendant agreed to an order stating that he would vacate the marital home by September 2010. He testified that he actually moved out in August 2010, and that he has had the children overnight about once a week and daily in the afternoons since then. The children otherwise are in the marital home with plaintiff. The trial court's adoption of the FOC's finding that this factor favored plaintiff was not against the great weight of the evidence.

Factor (e) relates to the permanence, as a family unit, of the existing or proposed custodial home or homes. The FOC found, "Mother proposes a family unit of herself and the minor children. Father states that the family unit will consist of himself and the minor children.

He did mention the possibility of getting a roommate to share in household expenses." The FOC determined that this factor favored both parties equally.

Plaintiff has been settled in the marital home since February 2010. At the time of trial, defendant lived in an apartment in Farmington Hills, but his mother and his mother's husband purchased a home free and clear that they intend to sell to defendant, and defendant was approved for a $48,000 mortgage for the home. Although defendant is moving, the fact that he is going to a permanent home supports the FOC's finding that this factor favored both parties equally. The trial court's adoption of this finding was not against the great weight of the evidence.

Factor (f) addresses the moral fitness of the parties. The FOC found that "Mrs. Edwards has no involvement with the criminal justice system. Mr. Edwards has accused her of infidelity during their marriage. Mr. Edwards has a history of substance abuse and charges from possessing drugs and driving under the influence." The FOC found that this factor did not favor either party.

The FOC's finding on this factor was against the great weight of the evidence. The record shows that plaintiff, other than asking defendant for his prescription medicine on occasion for migraines or for her mother's use, has largely been a model citizen. There is no mention of any infidelity on her part anywhere in the record besides the above notation in the recommendation report. Infidelity is generally not a valid consideration under this factor anyway, particularly if there is no indication the children were aware of it, due to its highly prejudicial nature and limited probative value. *Fletcher v Fletcher*, 447 Mich 871, 885-888; 526 NW2d 889 (1994). Considerations under this factor must relate to fitness *as a parent*, not to general moral superiority. *Id.* at 886-878. By contrast, defendant has struggled with heroin in the past and entered rehabilitation facilities three times, but never stayed longer than two days. Defendant has harassed plaintiff throughout these proceedings, yelled at her in front of the children, sent her malicious text messages, hassled her family members, and sent a disparaging e-mail about plaintiff to her boss. He admits this sets a bad example for the children. His history of lying also bears on his moral fitness, as does his refusal to follow the parties' agreement to each claim one child on their 2010 tax return, resulting in plaintiff's return being rejected twice. In light of this evidence, for the trial court to adopt the FOC's finding that the parties were equal under this factor was against the great weight of the evidence. The evidence shows that this factor favored plaintiff.

Factor (g) relates to the mental and physical health of the parties. With respect to factor (g), the FOC determined:

> Mrs. Edwards reports anxiety issues brought on by the divorce proceedings. She indicates she is currently prescribed Wellbutrin and Xanax for this issue. She further reports she suffers from migraine headaches and is prescribed Mytecol as a preventative and Hydrocodone for pain as needed. There is no reported substance abuse history. She reports participating in counseling for the past 2 years for issues related to the marital relationship.

> Mr. Edwards has been in remission from Hodgkin's Lymphoma for several years. He is prescribed Suboxone daily for treatment of the lymphoma and to maintain his remission status. Mr. Edwards reports a history of substance abuse problems. His primary drug of choice was heroin but he has had difficulty with marijuana use as well. Currently Mr. Edwards is working with an addiction specialist to maintain his sobriety. He also indicates some anxiety issues for which he is prescribed Xanax.

The FOC found that factor (g) favored both parties equally.

The FOC's findings with regard to factor (g) were not supported by the record. There was no mention at trial of plaintiff's anxiety, counseling, or prescription drug use. Defendant and plaintiff also agree that defendant's Suboxone prescription is used for opiate addiction assistance rather than management of his remission from Hodgkin's Lymphoma. Although defendant has been clean since 2007, his history of illegal drug use, noted previously, is relevant under this factor. For the trial court to adopt the FOC's finding that this factor favored the parties equally was against the great weight of the evidence. The evidence shows that this factor favored plaintiff.

Factor (h) addresses the home, school, and community record of the child. Under factor (h), the FOC determined:

> [The parties' daughter] is a 5 year old girl. She is currently attending full day kindergarten in the Novi School District. She is described as a healthy child but she is struggling to adjust to the divorce. [She] has been participating in play therapy to address these concerns and to gain better coping skills.
>
> [The parties' son] is a 3 year old boy. He attends a partial day preschool program several days a week. He is meeting his developmental milestones within the acceptable ranges. [He] has been diagnosed with asthma and uses a nebulizer on occasion.

The FOC found that factor (h) favored plaintiff.

The FOC did not state any particular reason why this factor should favor plaintiff, and we can find none in the record. Defendant's current apartment and his anticipated new home are both in Farmington Hills, close enough to Novi that the children can attend the same school from either location. It is true the parties' daughter has had trouble adjusting to the divorce, but there is no evidence that this is defendant's fault rather than a natural consequence of the parties' separation. For the trial court to have adopted the FOC's finding that this factor favored plaintiff was against the great weight of the evidence. The record indicates that factor (h) favored the parties equally.

Factor (i) relates to the reasonable preference of the child. The FOC found under factor (i) that the children were under six years old and, therefore, too young to express a reasonable preference. We perceive no error in this regard. While there is no particular age at which a child is deemed old enough to express a reasonable preference, this Court has held that children as young as six may have their preference given some weight. *Bowers v Bowers*, 190 Mich App 51,

55-56; 475 NW2d 394 (1991). However, the older child was only five years old at the time of trial, and the younger was only three. It was not erroneous for the FOC to determine that the children were too young to express a reasonable preference.

Factor (j) addresses the willingness and ability of each party to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. With regard to factor (j), the FOC determined:

> At this time the parties are unable to communicate effectively. Both parties acknowledge the need for the children to have a healthy relationship with each parent. There are concerns relative to the frequency of the arguments in front of the children. This may be an issue that needs monitoring and possible future intervention to gain more appropriate communication skills.

The FOC determined that this factor did not favor either party.

The parties have not been on their best behavior throughout the course of these proceedings. Defendant has called plaintiff names in front of the children. He also said over the phone to plaintiff, in their daughter's presence, that plaintiff did not love her family. The parties have both been late to pick up the children from parenting time and have both accused the other of doing so intentionally to interfere with their schedules. Defendant accused plaintiff of staging photographs showing him with drug paraphernalia within reach of the children. All these actions show intent to interfere with the children's relationship with the other parent. However, both parties have engaged in such behavior and, therefore, the trial court's adoption of the FOC's finding that this factor did not favor either party was not against the great weight of the evidence.

Factor (k) is concerned with domestic violence, regardless of whether the violence was directed against or witnessed by the child. The FOC found that "[t]here is a significant history of domestic violence between the parties. Mrs. Edwards provided police records to indicate runs were made to the home in the past year. Mrs. Edwards further indicates there were 2 incidents where she was pushed by her husband in front of the children." The FOC accordingly found that this factor favored plaintiff.

Plaintiff testified that defendant was verbally and mentally abusive. She said he pushed her twice, once in June 2010, and once in December 2010. Both incidents resulted in police reports, though no further investigation was made. There was also one incident in June or July of 2010 when plaintiff locked defendant out of the bedroom and defendant kicked the door in. No police report was filed on that occasion, and defendant testified that plaintiff had been drinking and that the police ordered her to leave the bedroom and sleep on the couch downstairs. Defendant denied ever being physically abusive to plaintiff and claimed that plaintiff lied about these events to bolster her case for a personal protection order early in the proceedings. However, weighing the evidence and making credibility determinations remains the province of the trial court. *Shann v Shann*, 293 Mich App 302, 307; 809 NW2d 435 (2011). It was not against the great weight of the evidence for the trial court to adopt the FOC's finding that factor (k) favored plaintiff.

Factor (*l*) addresses any other factor that may be relevant to a particular child custody dispute. The FOC found that there was no further information applicable under this factor. We agree that all information relevant to the best interests of the children was examined under the other factors.

In reviewing the factors, it appears that the trial court's ruling went against the great weight of the evidence only in adopting the FOC's recommendations under factors (f), (g), and (h). As we have stated, two of these factors actually favored plaintiff. The remaining factor favored the parties equally instead of favoring plaintiff. Therefore, four factors favored both parties equally, one favored neither party, two were inapplicable, five favored plaintiff, and none favored defendant. In light of the evidence in this regard, the trial court's ultimate decision to grant parenting time to defendant every other weekend, every day from after school until 4:30 p.m., and on alternating holidays, was not an abuse of discretion.

In fact, although defendant is the one challenging this decision, the amount of parenting time he was granted seems to be close to the maximum amount of parenting time permitted by his work schedule. Because he generally works the afternoon shift, defendant is unable to keep the children overnight on work nights. Defendant does not even state the remedy he seeks with respect to parenting time; nor does he identify any additional times when he could have the children. He merely requests that this Court overturn the lower court and "grant him such other relief as is consistent with equity and good conscience." Therefore, not only is relief unwarranted here, it does not even seem possible.

Defendant also argues that the court should have examined the parenting-time factors in MCL 722.27a(6) before making a determination with respect to parenting time. However, that statute states only that "[t]he court *may* consider the following factors when determining the frequency, duration, and type of parenting time to be granted." MCL 722.27a(6) (emphasis added). Because the trial court had separately considered each of the best-interest factors of MCL 722.23, and had already made clear on the record that it was concerned with the minor children's best interests in determining parenting time, it was unnecessary for the court to additionally make findings under the parenting-time factors of MCL 722.27a(6). See *Shade*, 291 Mich App at 32.

## III. DIVISION OF MARITAL ASSETS

Defendant lastly argues that the trial court failed to divide the marital assets in a roughly congruent manner, specifically challenging the court's division of the parties' retirement accounts and homes.

"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, 717-718; 747 NW2d 336 (2008). The trial court's factual findings in a divorce case are reviewed for clear error. *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). This Court will not reverse factual findings unless it is definitely and firmly convinced a mistake has been made. *Id.* "If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts." *Sparks v Sparks*, 440 Mich 141, 151-152;

485 NW2d 893 (1992). This Court must affirm the trial court's dispositional ruling unless "firmly convinced that it was inequitable." *Berger*, 277 Mich App at 727.

A judgment of divorce must include a determination of the parties' property rights. MCR 3.211(B)(3). The property and liabilities of the parties need not be equally divided; they need only be equitably divided. *Washington v Washington*, 283 Mich App 667, 673; 770 NW2d 908 (2009). However, any significant departure from congruence must be clearly explained. *Berger*, 277 Mich App at 717. When making its determination regarding division of the marital property, the trial court should consider:

> (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.*]

Pension benefits earned during the marriage must be considered part of the marital estate. MCL 552.18(1). Depending on the equities of the case, such benefits may be awarded through property division or alimony. *Pickering*, 268 Mich App at 8. Parties should be required to disclose all assets early on in divorce proceedings. *Sands v Sands*, 192 Mich App 698, 704; 482 NW2d 203 (1992), abrogated in part on other grounds 442 Mich 30 (1993).

The trial court made the following findings with respect to the pertinent factors:

1. The parties were married on March 15, 2003.

2. Contributions of the parties to the marital estate appear to be balanced evenly.

3. Both parties are 33 years old.

4. Neither party addressed the factor of health vis-à-vis their future prospects.

5. Life status of the parties is that both parties are currently employed full-time. It appears that Defendant earns significantly less income than Plaintiff.

6. Necessities and circumstances of the parties were addressed in Plaintiff's list of monthly expenses and in Plaintiff's testimony that she paid all marital expenses and provided an allowance to Defendant[.]

7. Earning abilities of the parties are addressed above[.]

8. Regarding past relations and conduct of the parties, although Plaintiff testified and maintains that the breakdown occurred because of Defendant's continued drug use, verbal and physical abuse of Plaintiff, Defendant maintains that the parties have grown apart and there is no real fault on either one of them for what occurred. The Court cannot find that either party is solely at fault.

The trial court then awarded the property as follows:

> 1. Plaintiff to retain the home in Novi; Defendant to retain the home in Dearborn[.]
>
> 2. Both parties to retain their own retirement benefits[.]
>
> 3. Each party to retain his/her own bank accounts[.]
>
> 4. Each party to retain his/her own vehicle[.]
>
> 5. Each party to retain the debts in his/her own name with the parties to divide equally the joint credit card debt[.]
>
> 6. Each party to receive one minor child as a tax deduction[.]
>
> 7. Each party to retain the personal property in his/her possession. The Court is aware that Defendant requests additional items that remain in the marital home. The remaining items in the marital home shall be divided by the parties' consent. In the absence of consent, the parties shall divide disputed property by sequential selection until all items are distributed equitably.

Finally, relevant to this appeal, the trial court specifically noted:

> 8. Regarding additional matters, Defendant seeks "equalization" between the values of the marital homes, with an additional $7,000.00 that he claims he used for home improvement on the Novi home. On the other hand, Plaintiff claims that the $4,000.00 (not $7,000.00) borrowed by Defendant was not used for home improvement but was used to refinance the Dearborn home. . . . The parties failed to present sufficient evidence regarding all of these additional matters. Accordingly, the Court declines to rule on the additional matters.

On appeal, defendant contests the valuation and distribution of the marital homes and the division of the retirement accounts.

It is unclear when the Dearborn house was purchased, but the parties lived there together for eight years. The parties still owe $120,000 on that mortgage. No testimony was offered regarding the purchase price of that house, and the only testimony offered with respect to its current value were statements by defendant and his mother, a real estate agent, that they thought it was worth about $50,000. The parties wanted to move into a larger home but plaintiff testified they could not get a second mortgage as a couple. Plaintiff removed her name from the Dearborn home's mortgage and purchased a home in Novi in February 2010 in her name only. She withdrew the deposit from her retirement account, but no testimony was offered regarding the amount of the deposit. The mortgage indebtedness on the Novi home is currently $211,000. Defendant took out a $7,000 loan to put new floors in the Novi house. No testimony was given regarding the purchase price or current value of that house except defendant's statement that, based on the improvements the parties made to it and online comparisons, he thought that the house had appreciated in value about $20,000, though again the original purchase price is

unknown. Defendant also testified that he took $4,000 out of his 401k to refinance the Dearborn house in 2010.

With respect to the retirement accounts, plaintiff submitted documents from her two IRAs showing a combined balance of $45,380.67 as of March 31, 2011. Defendant testified that he has $4,000 in his 401k. He also testified that he has a pension, but stated that he has "no idea" what it is worth.

This Court cannot review the factual findings of the trial court with respect to the value of the marital homes because the trial court declined to make any, and there is insufficient record evidence to support a determination. The trial court never determined the value of either house, stating only that "[t]here is no equity in either home as both homes are underwater." It was error for the trial court to decline to make such findings. MCR 3.211(B)(3) requires that "[a] judgment of divorce . . . include . . . a determination of the property rights of the parties[.]" A trial court is obligated to put a valuation on the property being awarded, and it is clear error for the court to fail to place a value on a disputed portion of marital property. *Olson v Olson*, 256 Mich App 619, 627-628; 671 NW2d 64 (2003). Defendant actually presented evidence regarding the value of both homes. Admittedly, this testimony came only from defendant and defendant's mother, and it is within the trial court's discretion to evaluate the credibility of the witnesses and weigh the evidence. *Shann*, 293 Mich App at 307. However, even if the trial court disregarded the testimony from defendant and his mother about the value of the homes, that did not absolve it of its obligation to make a factual finding with respect to this issue. In light of the lack of clarity regarding the value of the homes and the amount of equity each party contributed to them, remand is necessary to properly determine the value of the two marital homes and to distribute them equitably.

We have no similar concerns with regard to the parties' retirement accounts and defendant's pension. The trial court allowed each party to keep his or her own retirement accounts, and permitted defendant to retain his own pension. It is true that defendant offered no evidence concerning the specific present-day value of his pension. However, the trial court's distribution of the retirement assets does not strike us as inequitable. While it is true that plaintiff's two retirements accounts contain a higher balance than defendant's 401k, defendant will additionally have his pension—an asset that plaintiff never sought to invade—to offset this imbalance. Even though the exact value of defendant's pension was never offered in evidence, we cannot say that the trial court erred by determining that the award of plaintiff's two retirement accounts to plaintiff would be roughly congruent to the award of defendant's 401k plus his pension to defendant. See *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). If defendant was truly concerned about the value of his pension, he should have offered evidence concerning its value before the trial court. The fact that he failed to do so does not somehow entitle him to appellate relief on this issue. We affirm the trial court's distribution of the parties' retirement accounts and defendant's pension.

Affirmed in part, reversed in part, and remanded for a proper valuation and division of the two marital homes consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Jane M. Beckering