

STATE OF MICHIGAN
COURT OF APPEALS

TAMMELA K. REURINK,

Plaintiff–Appellant,

v

DAVID J. REURINK,

Defendant–Appellee.

UNPUBLISHED

April 1, 1997

No. 177333

Allegan Circuit Court

LC No. 92-15393-DM

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. Specifically, she argues that the property distribution and alimony award were inequitable. We affirm in part and reverse and remand in part.

I

Plaintiff contends that the distribution made of an annuity worth approximately \$100,000 was inequitable. The parties stipulated that the annuity was purchased from funds defendant received during the marriage as part of settlement of a workers' compensation claim. The judge awarded \$50,000 to defendant, \$10,000 to plaintiff, and \$10,000 to each of their four children.

The annuity was properly determined to be part of the marital estate. However, the trial judge's approach to its division was erroneous. The judge determined that an equal division of the marital estate was appropriate and divided the other assets equally. He then neglected to do so with respect to the annuity.

Defendant was awarded \$50,000 and plaintiff only one-fifth that amount. The remaining \$40,000 was split among the children, but awarded to defendant for his support of them, giving him a total of \$90,000. In dividing the annuity, the judge recognized the importance of defendant's support of

* Circuit judge, sitting on the Court of Appeals by assignment.

the children. However, he decided to emphasize defendant's needs above anyone else's, making defendant's award of \$50,000 "without claim from anyone else."

We have previously held that this type of asset should be divided as any other in the marital estate: equitably. See *Hagen v Hagen*, 202 Mich App 254, 255-259; 508 NW2d 196 (1993); *Lee v Lee*, 191 Mich App 73, 78-79; 477 NW2d 429 (1991); *Evans v Evans*, 98 Mich App 328, 330; 296 NW2d 248 (1980). The Workers' Disability Compensation Act is to assist both the worker and the worker's dependents. *Evans, supra*. An equitable division is appropriate even where children are present. *Smith v Smith*, 113 Mich App 148, 151-152; 317 NW2d 324 (1982).

We find the distribution of the proceeds from the annuity inequitable, especially given defendant's current income, which greatly exceeds plaintiff's. We reverse and remand to the trial judge to redistribute the asset. After the judge determines the appropriate amount of the annuity needed to support the children, the remaining amount should be divided equally between the parties. *Vance v Vance*, 159 Mich App 381, 385-386; 406 NW2d 497 (1987).

II

In addition, on remand, the trial judge must address distribution of three other annuities made payable to defendant, but which the parties testified were for the children's college education. Distribution of these annuities properly lies within the sound discretion of the trial judge. Any award made to support the children, for these three annuities or the \$100,000 annuity, should be made specifically on their behalf, to alleviate plaintiff's concern that defendant may use these assets for his own individual benefit.

III

The last issue concerns alimony. We review the award of alimony de novo. We will accept the factual findings of the trial judge unless they are clearly erroneous. *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991). The burden is on the appellant to persuade us that a mistake was made. *Id.*

After reviewing the record, we find that the judge's findings were not clearly erroneous. Moreover, the award of \$100 per week to plaintiff is fair and equitable. However, we agree with plaintiff that the award should have been for a longer duration than two years. The parties were married for nearly fifteen years. Plaintiff was sixteen years old when they married and relied on defendant's support that entire time. She was diagnosed with multiple personality disorder. Due in addition to her limited educational background, her prospects for employment are not good. Therefore, under the circumstances of this case, we hold that it is just and reasonable to award plaintiff \$100 a week in alimony for four years.

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

/s/ Marilyn Kelly
/s/ Janet T. Neff
/s/ Jeanne Stempien