

STATE OF MICHIGAN
JUDGE OF APPEALS

ANDREW M. DUTKA,

Plaintiff-Appellant,

v

MICHELLE LYNNE HENNESSEY-DUTKA,

Defendant-Appellee.

UNPUBLISHED

September 16, 1997

No. 194613

Oakland Circuit Judge

LC No. 95-508320-DO

Before: Smolenski, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Plaintiff-husband appeals as of right the parties' judgment of divorce. We reverse and remand.

The parties were married in November, 1994. They ceased cohabiting as husband and wife in November, 1995. The judgment of divorce was entered in April, 1996.

On appeal, plaintiff takes issue with those portions of the judgment ordering (1) that the net proceeds of the sale of the marital home (a condominium) be divided equally between the parties; (2) that defendant-wife receive one-half of plaintiff's stock (25,000 shares) in AEGS, Inc., and; (3) that defendant receive one-half of plaintiff's interest in plaintiff's sole proprietorship known as AGES of the America Group. Specifically, plaintiff takes issue with the specificity and correctness of the trial judge's findings of fact and conclusions of law with respect to these assets. Plaintiff also disputes the trial judge's ultimate dispositional rulings with respect to these assets.

In actions tried without a jury, or with an advisory jury, the trial judge must find the facts specially and state separately its conclusions of law as to contested matters. *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994) (citing MCR 2.517[A][1]). The findings and conclusions as to contested matters are sufficient if brief, definite and pertinent, without over-elaboration of detail or particularization of facts. *Fletcher, supra* (citing MCR 2.517[A][2]). Findings are sufficient if it appears that the trial judge was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

A trial judge's findings of fact with respect to the distribution of property in a divorce case are reviewed for clear error. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). We will affirm the trial judge's dispositional rulings unless we are left with the firm conviction that it was inequitable. *Id.*

In this case, we are unable to review the judge's findings of fact with respect to AEGS, Inc., or AGES of the America Group because the judge's findings in this regard are insufficient. Specifically, the judge's findings are neither definite nor pertinent, and we are unable to determine whether the judge was aware of the relevant issues with respect to these two assets and correctly applied the law. In sum, appellate review can only be facilitated by requiring further explanation. Accordingly, we reverse the trial judge's dispositional ruling with respect to these two assets, and remand to a different judge for further factfinding.¹ *Sparks v Sparks*, 440 Mich 141, 144; 485 NW2d 893 (1992). On remand, the judge shall initially determine whether plaintiff's two business interests are "marital property" subject to apportionment. *Byington v Byington*, ___ Mich App ___; ___ NW2d ___ (Docket No. 181936, issued 6/10/97), slip op p 3. If found to be part of the marital estate, the judge shall engage in thorough factfinding concerning the value of these assets. The judge shall then make a dispositional ruling with respect to these assets that is equitable, giving due consideration to the relevant factors and applicable law. *McDougal*, *supra* at 89.

With respect to the condominium, we conclude that the trial judge gave insufficient weight to the short duration of the parties' marriage and plaintiff's undisputed substantial contribution to the deposit and downpayment on the condominium. See *McDougal*, *supra* at 90-91. In light of these factors, we are firmly convinced that the trial judge's dispositive ruling with respect to the distribution of the net proceeds from the sale of the condominium was inequitable. *Id.* at 91. We therefore reverse this ruling and remand to a new judge. On remand, the new judge shall find the exact amount of plaintiff's contribution to the deposit and downpayment on the condominium. The judge shall then enter a new dispositional ruling (1) awarding plaintiff the amount of his contribution out of the net proceeds of the sale of the condominium, and (2) awarding the parties an equal division of the remaining net proceeds.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Michael J. Kelly

/s/ Roman S. Gribbs

¹ If need be, the judge may reopen the record.