

STATE OF MICHIGAN  
COURT OF APPEALS

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KAREN HELEN REID EVANS,

Plaintiff-Appellee,

v

FREDERICK GARDNER BLITON EVANS,

Defendant-Appellant.

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UNPUBLISHED

November 14, 1997

No. 195963

Calhoun Circuit Court

LC No. 95-000752 DM

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, challenging the division of marital assets. We remand for further proceedings.

In reviewing a property dispositional ruling in a divorce case, we must first review the trial court's findings of fact for clear error, and then decide whether the ruling was fair and equitable in light of those facts. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). In this case, we find no clear error in the trial court's factual findings with regard to property valuations. Defendant argues, however, that the trial court's division was not fair and equitable under the circumstances. He contends that the trial court improperly awarded plaintiff the marital home, which he claims was the only liquid asset in the marital estate. We disagree.

In its bench opinion, the trial court awarded defendant personal property valued at \$18,928, and his pension valued at \$39,000. Plaintiff was awarded personal property valued at \$5,862, and her pension valued at \$15,800. At this point the division was \$57,928 for defendant, and \$21,662 for plaintiff. The court then awarded plaintiff the marital home, valued at \$35,000. Thus, the property was split \$57,928 for defendant and \$56,662 for plaintiff, leaving a \$1,266 discrepancy favoring defendant. In order to remedy this \$1,266 gap, the court ordered that defendant pay plaintiff \$2,686. The court arrived at \$2,686 by giving plaintiff a \$1,420 credit for one-half of marital debts in the amount of \$2,840, which plaintiff had already paid, and by adding the \$1,266 discrepancy to that.

Defendant argues that the trial court's dispositional ruling with regard to the parties' pensions was erroneous because pensions have only a future value and no tangible present value. We find this

argument unmeritorious. Pensions are assets to be considered part of the marital estate subject to distribution in the discretion of the trial court. *Boonstra v Boonstra*, 209 Mich App 558, 563; 531 NW2d 777 (1995). Also, although a pension may not be payable until one terminates his employment or retires, “this does not bar consideration of its *present* cash value in dividing the marital estate.” *Tigner v Tigner*, 90 Mich App 787, 790-791; 282 NW2d 481 (1979) (emphasis in original). We do not believe that the trial court’s property division was inequitable.

Despite our conclusion that the trial court’s award was equitable, we perceive two problems with the trial court’s “discrepancy” award. First, the court did not address whether plaintiff paid the \$2,840 in marital debts out of marital assets. If the debts were paid out of marital assets (which they presumably were, since the parties were still married) then plaintiff was not entitled to a credit for paying such debts. Second, it appears that the trial court erred in making defendant pay \$1,266 to make up the discrepancy in the other property awarded. Rather than correcting the discrepancy, the court effectively created the same discrepancy in favor of plaintiff. In other words, a payment of \$1,266 would have brought defendant’s award down to \$56,662 and brought plaintiff’s award up to \$57,928. It appears that the trial court should have ordered defendant to pay plaintiff half of that amount, or \$633.

The trial court specifically stated from the bench that it must “divide up the marital estate as close as possible to 50/50. In other words, an equitable and even division of property.” The court made its calculations in an effort to give plaintiff “an equal share of the marital property ... to bring her up to \$57,928 ....” However, as noted, the court’s calculations actually created a discrepancy in favor of plaintiff. A trial court’s division of marital property in a divorce case need only be fair and equitable, and it need not be mathematically equal, *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987); *Impullitti v Impullitti*, 163 Mich App 507, 513; 415 NW2d 261 (1987). Thus, the apparent errors noted above do not necessarily render the court’s property award inequitable. However, these apparent errors *are* contrary to the court’s stated intent to divide the property exactly evenly between the parties. Thus, we remand for clarification of these issues.

On remand, the trial court may either correct or modify the judgment to accurately reflect its intention to divide the property evenly, or, if it intended to create an uneven distribution as reflected in the judgment, it shall articulate its reasoning.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin  
/s/ Myron H. Wahls  
/s/ Roman S. Gribbs