

STATE OF MICHIGAN
COURT OF APPEALS

YUKIMA B. WILLIAMS,

UNPUBLISHED

June 26, 1998

Plaintiff-Appellee,

v

No. 199508

Wayne Circuit Court

EDWARD G. WILLIAMS,

LC No. 95-522683-DM

Defendant-Appellant.

Before: Hood, P.J., and MacKenzie and Doctoroff, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce and an order denying his motion for clarification of judgment. We affirm.

Plaintiff and defendant were first married in August 1979 and divorced in October 1985. They had two daughters, Tiffany, born in 1977 and Tracy, born in 1982. Plaintiff and defendant remarried in August 1987. At that time, they lived in a home on Archdale in Detroit, which plaintiff was awarded after the first divorce. In December 1988, they moved to another home on Oak Drive. Plaintiff left the marital home in March 1995, and filed a complaint for divorce on August 7, 1995.

After a one-day bench trial, the court issued its findings of fact and conclusions of law on August 1, 1996, and entered the judgment of divorce on November 13, 1996. The judgment awarded each party his or her own personal property and one-half of the personal property acquired during the marriage. It awarded plaintiff the money in her bank account, the proceeds of the sale of her Pontiac, and her annuity. It awarded defendant his Hartford annuity, City of Detroit annuity, and Jackson Life IRA. The court awarded the Oak Drive and Archdale homes to plaintiff. It also ordered defendant to pay \$21,000 to plaintiff. The court also ordered that a Qualified Domestic Relations Order be entered providing that plaintiff shall receive one-half of defendant's pension, and defendant shall receive one-half of plaintiff's pension, accumulated during the period of "the marriage of August 26, 1987 through August 1, 1996."

Defendant subsequently filed a motion for further clarification of opinion, requesting that the court "explain and/or clarify its ruling relative to the disposition of assets and the establishment of

respective values for said assets.” The trial court conducted a hearing on defendant’s motion and entered an order denying motion for clarification of judgment on November 13, 1996.

Defendant first argues that the trial court erred in denying his motion for further clarification of its opinion. Findings of fact regarding matters contested at a bench trial are sufficient if they are brief, definite, and pertinent, and it appears that the trial court 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. MCR 2.517; *Triple E Produce v Mastronardi*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

Defendant argues that the court did not indicate how it determined that the value of the Oak Drive home was \$55,000 when the parties stipulated to the value after deduction of the outstanding mortgage, at \$67,500. We disagree. The court stated that it arrived at the \$55,000 value for the Oak Drive home by deducting the \$60,000 mortgage still owing, as well as the expenses for city certification and sales commissions, from the stipulated market value of \$127,500. Moreover, the court clearly indicated that it was awarding the Oak Drive home to plaintiff because she had custody of the parties’ minor child and the nineteen-year-old child also lived with her. Therefore, the findings regarding the award of the home were sufficient.

Defendant also contends that there is no explanation why the court awarded plaintiff the proceeds from the sale of her Pontiac and \$21,000 in cash from defendant, or why it stated that she received \$1,000 from the bank account when it was in fact \$2,000. First, plaintiff’s testimony at trial was confusing as to whether she had \$1,000 or \$2,000 in a bank account. Moreover, we believe that it is clear that the reason the court made those awards to plaintiff was to come to an equitable division of property. The total value of the two annuities and the IRA awarded to defendant was \$211,406.¹ The value of the assets awarded to plaintiff, including the Archdale home, was \$126,060.² The trial court explained that a significant portion of defendant’s earnings went into retirement benefits for himself, which required plaintiff to spend a significant portion of her income to pay for family expenses, such as the mortgage and children’s tuition. Therefore, the court appeared to believe that plaintiff was entitled to a larger share of property than defendant. Defendant also claims that the court did not explain why it awarded him his annuities in the present judgment when it stated that it would not disturb the prior judgment of divorce. However, we believe that the value of assets awarded to each party clearly explains the court’s dispositional ruling.³ Accordingly, the trial court properly denied defendant’s motion for clarification of opinion.

Defendant next argues that the trial court’s division of property was inequitable because plaintiff essentially received one hundred percent of the marital assets while he received none. In deciding a divorce action, the circuit court must make findings of fact and dispositional rulings. On appeal, the factual findings are to be upheld unless they are clearly erroneous. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). A dispositional ruling should be affirmed unless the appellate court is left with the firm conviction that it was inequitable. *Id.*

In a divorce case, the trial court is given broad discretion in fashioning its rulings and there can be no strict mathematical formulations. *Id.* at 88. However, while the division need not be equal, it

must be equitable. *Id.* Significant departures from congruence must be explained clearly by the court. *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990).

Although divisions of property are not governed by any set rules, certain principles nonetheless apply. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). Among the equitable factors to be considered are: the source of the property; the parties' contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity. *Id.* at 292-293. There may also be additional factors that are relevant to a particular case. *McDougal, supra* at 89. Just as the final division may not be equal, the factors to be considered will not always be equal. *Id.* at 88. Indeed, there will be many cases where some, or even most, of the factors will be irrelevant. *Id.* However, where any of the factors delineated are relevant to the value of the property or to the needs of the parties, the trial court shall make specific findings of fact regarding those factors. *Id.* It is hoped that this requirement will result in greater consistency and provide for more effective and meaningful appellate review. *Id.*

Contrary to his assertions, defendant's annuities and IRA, which were valued at \$210,899, were marital property. MCL 552.18; MSA 25.98. Because he received the entire value of his annuities and IRA, we reject defendant's assertion that he did not receive any portion of the marital property. Defendant argues that the court should not have considered the value of his annuities and IRA because the court indicated that it would not revisit the division of assets in the prior divorce. However, defendant's reasoning is not logical. The trial court specifically stated:

The prior marriage divided the assets of that marital period and this court will not revisit that relationship. The Archdale property was awarded to the plaintiff in the prior divorce and that property was never reassigned to both parties. Therefore, the Archdale property [worth \$35,600] is the plaintiff's sole and separate property.

The trial court stated that it would not disturb the property award in the prior divorce, but it did not state that it would not consider the value of assets awarded to each party if those assets had been previously awarded. In other words, although the Archdale home and defendant's annuities and IRA were previously awarded in the first divorce, there is no apparent reason why the court should not consider their value when making a dispositional ruling in the present case.

Defendant claims that the trial court should have calculated the value of his annuities from the time he and plaintiff remarried, in August 1987, until the time that plaintiff left the marital home in March 1995. He asserts that the award, as it stands, erroneously includes the value of the annuities and IRA that predated the marriage and continues until the time of trial. We disagree. Assets earned by a spouse before the entry of a judgment of divorce is marital property and properly considered part of the marital estate. *Byington, supra* at 110. For purposes of dividing property, marital assets are typically valued at the time of trial or at the time judgment is entered, though the court may, in its discretion, use a different date. *Id.* at 114 n 4, citing *Thompson v Thompson*, 189 Mich App 197, 199-200; 472 NW2d 51 (1991) and *Kilbride v Kilbride*, 172 Mich App 421, 436; 432 NW2d 324 (1988). Therefore, the trial court properly determined that the ending date for the marriage was the date of trial.

In addition, we find that the trial court did not err in determining that the entire value of defendant's annuities and IRA was marital property, which it awarded him to the exclusion of any other property. If the court determined that it was just and reasonable, after considering the circumstances, it could include the premarital value of the annuities and IRA in the marital assets for purposes of reaching an equitable distribution. See *McMichael v McMichael*, 217 Mich App 723, 730-731; 552 NW2d 688 (1996). Therefore, the trial court properly considered the entire value of defendant's annuities and IRA in making its division of property.

We also believe that the distribution of the marital estate was equitable. Plaintiff paid the mortgage on the Oak Drive home and paid the majority of the children's private school tuition, which allowed defendant to contribute a significant amount of his earning into annuities and an IRA. Plaintiff has custody of the minor child and the teenage child lives with her. Defendant earns more money than plaintiff does and has substantially more income saved for retirement. Plaintiff and defendant were married twice, the second time lasting for approximately nine years. The result of the trial court's distribution is that defendant retained the entire \$210,899 of his deferred income, while plaintiff received \$8,610 in deferred income. The remaining assets awarded to plaintiff are worth \$117,450. Plaintiff will receive half of defendant's pension, the value of which is unknown, but also must share half of her \$38,303 pension with defendant. Although plaintiff received two homes, the only apparent cash in the estate, and an additional \$21,000 from defendant, the value of her share of marital assets is less than the value of defendant's share. Therefore, we are not left with a firm conviction that the distribution of property was inequitable.

Given our disposition of these issues, we need not address defendant's final argument that the trial court improperly demonstrated partiality toward plaintiff and should be disqualified on remand. However, we note that, after reviewing the record, we do not believe the judge was biased toward plaintiff in this matter.

Affirmed.

/s/ Harold Hood

/s/ Barbara B. MacKenzie

/s/ Martin M. Doctoroff

¹ The City of Detroit annuity was valued at \$82,147, the Hartford annuity was valued at \$102,360, and the Jackson Life IRA was valued at \$26,899.

² Plaintiff's annuity was worth \$8,610, the Oak home was valued at \$55,000, the Archdale home was valued at \$35,600, proceeds from sale of car were \$4,850, plaintiff had \$1,000 in her bank account, and she received \$21,000 cash from defendant.

³ Defendant also argues that the court should have determined that the marital period ended in March 1995, when plaintiff left the marital home. The court explicitly stated that it determined the current marital period lasted for nine years and ended on the date of trial. There was nothing unclear about the court's finding on this issue.