

STATE OF MICHIGAN
COURT OF APPEALS

GAIL RENEE MOCNY,

Plaintiff-Appellee,

v

EDWARD ALLEN MOCNY,

Defendant-Appellant.

UNPUBLISHED
October 29, 1999

No. 210914
Saginaw Circuit Court
LC No. 96-016052 DM

Before: Neff, P.J., and Murphy and J. B. Sullivan*, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm in part, and remand for an award of interest on defendant's equity in the marital home.

Gail and Edward Mocny were married in 1982 and had three children during their marriage, all of whom were still minors when the divorce judgment was entered. It is undisputed that before the marriage, defendant contributed \$25,000 in personal savings toward the purchase of the couple's first home. This first house was later sold and the proceeds used toward the purchase of the marital home. The trial judge found this \$25,000 to be a non-marital asset. The judge ruled that plaintiff and the children would be allowed to remain in the home for ten years, but ordered plaintiff to assume responsibility for the mortgage, taxes, and repairs. According to the judge, plaintiff's assumption of all liability and responsibility would balance the defendant's payment of \$25,000 from premarital savings. The judge ordered the then current value of the home equity (\$77,196) be equally divided, with each party taking \$38,600 when the house is sold. The judgment does not provide for defendant to receive any interest on his equity or to receive more than \$38,600 if the house appreciates in value before its sale.

On appeal, defendant argues the trial court erroneously failed to award defendant interest on his equity in the marital home, failed to order that the home's value be determined when defendant's share of the equity is paid, and failed to award defendant his \$25,000 premarital contribution.

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

This Court reviews the trial court's findings of fact regarding the valuations and distribution of particular marital assets under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction a mistake has been made. If the trial court's findings of fact are upheld, this Court must decide whether the dispositional ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction the division was inequitable. *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997). Here, we conclude that the trial court's award is not inequitable. However, the failure to award interest on the award was an abuse of discretion.

The goal when apportioning a marital estate is to reach an equitable division in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The parties need not receive mathematically equal shares, but significant departures from congruence must be explained clearly by the court. *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990). In molding its relief, a court of equity may impose an equitable lien. *Lawrence v Lawrence*, 150 Mich App 29, 33; 388 NW2d 291 (1986); *Schaeffer v Schaeffer*, 106 Mich App 452, 457; 308 NW2d 226 (1981). When a court provides a lien on marital property, it impliedly grants money to one of the parties because a lien is a security interest in money owed by one party to the other. *Lawrence, supra* at 33. Further, MCL 600.611; MSA 27A.611 provides the circuit court with the power to make any order necessary to fully effectuate its judgments. *Walworth v Wimmer*, 200 Mich App 562, 564; 504 NW2d 708 (1993).

While defendant argues the trial court erred in setting the value of the house and his share of the equity at the time of the trial, such a division has been ruled equitable. In *Wilcox v Wilcox (On Remand)*, 108 Mich App 488, 493; 310 NW2d 434 (1981), the parties' judgment of divorce settled both the defendant's share of the equity and the value of the property. This Court had no objection to an award fixing the defendant's share, while allowing the plaintiff's interest to rise or fall depending on the property's appreciation or depreciation. *Id.*

Next, defendant argues the trial court erred in ruling that he would recover the value of his \$25,000 in premarital savings by being relieved of any obligations to pay for or maintain the marital home. We disagree. Despite the fact that the ultimate dollar value of the division of property was not precisely equal, under these circumstances, in which plaintiff is to be solely liable for all obligations relating to the home, we find that the trial court's apportionment of the marital estate was equitable. *Byington, supra*.

The trial court did, however, abuse its discretion in failing to award interest on defendant's share of the equity in the marital home. A marital division that provides neither an immediate division of assets nor interest may be inequitable. See *McDermott v McDermott*, 84 Mich App 39, 41; 269 NW2d 299 (1978). Under the judgment of divorce, plaintiff may retain full value of defendant's share of the equity in the marital home for as many as ten years. While an award of interest in a divorce matter is within the discretion of the court, *Duby v Duby*, 163 Mich App 396, 398; 413 NW2d 807 (1987), the

failure to compensate defendant for forbearing receipt of his share of the equity for that length of time is inequitable.

Under the judgment of divorce, defendant must forbear his right to his equitable share. Interest is a charge for the loan or forbearance of money. *Balch v Detroit Trust Co*, 312 Mich 146, 152; 20 NW2d 138 (1945). It is appropriate that defendant receive interest on his forbearance. On remand the trial court should order plaintiff to pay interest on defendant's share of the equity pursuant to MCL 438.31; MSA 19.15(1). See *Thomas v Thomas*, 176 Mich App 90, 93; 439 NW2d 270 (1989).

Affirmed in part, and remanded for the award of interest on defendant's equity. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ William B. Murphy

/s/ Joseph B. Sullivan