

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHARLES L. COOK,

Plaintiff-Appellant,

v

JUDITH A. COOK,

Defendant-Appellee.

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UNPUBLISHED

April 20, 2001

No. 217462

Macomb Circuit Court

Family Division

LC No. 95-000363-DO

Before: O'Connell, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Plaintiff-husband appeals as of right from the January 28, 1999 judgment of divorce. We vacate and remand for further proceedings.

The parties separated in March 1991 after almost twenty-six years of marriage. Plaintiff filed for divorce in January 1995. In October 1995, the parties stipulated that the matter be presented to a referee of the friend of the court on the issue of property division. According to the referee report included in the lower court file, the referee hearing was concluded on December 12, 1996. After the referee's report and recommendations were filed on December 18, 1996, plaintiff filed objections to the report, seeking an evidentiary hearing.

In March 1998, after settlement negotiations between the parties were unsuccessful, the trial court issued a twenty-three page written opinion and order dividing the parties' marital property. Plaintiff moved for new trial, arguing that the trial court erred in relying on the referee's report and recommendations when dividing the marital estate. For reasons unclear from the record, the trial court granted plaintiff's request for an evidentiary hearing, limited to the issues of the valuation of the marital home and defendant's pension.

On appeal, plaintiff argues that the trial court's decision to divide the marital estate without conducting a de novo evidentiary hearing was clear legal error. We agree.

Plaintiff's challenge implicates MCL 552.507(5); MSA 25.176(7)(5), which provides in pertinent part:

The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. The request of a party shall be made within 21 days after the recommendation of the referee is made available to that party . . . .

A panel of this Court recently undertook a review of MCL 552.507(5); MSA 25.176(7)(5) in *Cochrane v Brown*, 234 Mich App 129; 592 NW2d 123 (1999). In *Cochrane*, the defendant argued that the trial court erred in adopting a referee's findings of fact and recommendations with regard to child custody without conducting an evidentiary hearing de novo. *Id.* at 131. The *Cochrane* Court agreed, and concluded:

[T]he timely filing of written objections and request that the court entertain additional evidence triggers the requirement under [MCL 552.507(5); MSA 25.176(7)(5) and MCR 3.215(E)(3)(b)] for a full hearing de novo. [*Id.* at 134.]

The *Cochrane* Court also noted that the plain language of MCL 552.507(5); MSA 25.176(7)(5), provides for "a 'hearing' de novo, not merely de novo review." *Id.* at 132 (citations omitted). Therefore, according to the *Cochrane* Court, a trial court's reliance on the record made during the referee hearing is inappropriate. *Id.* at 132, 133.

In our view, the trial court's failure to conduct a de novo evidentiary hearing was clear legal error requiring vacation of the judgment of divorce. However, the instant case presents a somewhat different factual scenario from that of *Cochrane*, *supra*, because the trial court here did conduct a limited evidentiary hearing to determine the value of the marital home and defendant's pension.

However, although hearing extensive testimony about the value of these assets, the trial court did not hear testimony from either party relating to factors relevant in the division of marital property. These include "the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, [or] any other equitable circumstance." *Byington v Byington*, 224 Mich App 103, 115; 568 NW2d 151 (1997), citing *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992).

Plaintiff also challenges the trial court's conclusions regarding the valuation of certain marital assets, arguing that (1) the trial abused its discretion in valuing these assets at the date of the parties' separation, and (2) the trial court's factual determination with regard to the value of the marital home was clearly erroneous. We disagree.

We review a trial court's decision regarding the valuation of assets for the purposes of property division in a divorce action for an abuse of discretion. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993); *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 76-77; 471 NW2d 631 (1991).

As this Court observed in *Byington*, *supra*:

For purposes of dividing property, marital assets are typically valued at the time of trial or at the time judgment is entered, though the trial court may, in its discretion, use a different date . . . Where the court determines that a particular asset is, in fact, a marital asset it must then value the asset as of either the date of trial, the date of judgment, *or a more appropriate date*. [*Id.* at 114 n 4 (citations omitted) (emphasis supplied).]

The *Byington* Court also observed that a trial court “must and does retain considerable discretion to see that equity is done,” and to prevent the parties to a divorce action from using the date of a divorce judgment for strategic purposes. *Id.* (citation omitted).

In the instant case, the trial court valued the marital home as of the date of separation because plaintiff did not contribute to the maintenance or upkeep of the home as of that date. The trial court also valued defendant’s pension as of 1991 because it was not vested when the parties separated. On this record, we find no abuse of discretion in the trial court’s choice of valuation date for these assets.

We also reject plaintiff’s argument that the trial court clearly erred in its valuation of the marital home. In *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999), this Court set forth the standard of review for a trial court’s findings of fact in a divorce action.

In a divorce case, this Court must review the trial court’s findings of fact regarding the valuations of particular marital assets under the clearly erroneous standard. A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. This Court gives special deference to a trial court’s findings when they are based on the credibility of the witnesses. [*Id.*, quoting *Dragoo v Dragoo*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997).]

After a thorough review of the record, we are not left with a definite and firm conviction that the trial court’s valuation of the marital home in 1991 was mistaken. The trial court heard expert testimony from both sides relating to the value of the marital home in 1991. Both experts used the “comparable sale” approach to discern the value of the marital home. Our review of the record leads us to conclude that the trial court’s ultimate valuation of the marital home as of 1991 rested on its determination that defendant’s expert was more credible. Because we afford “special deference” to a trial court’s findings when they are premised on the credibility of witnesses, we decline to disturb the trial court’s valuation on appeal. *Id.*

Consequently, we are of the view that the trial court’s de novo evidentiary hearing on remand need not extend to the valuation of the marital home and defendant’s pension. We reach this conclusion after reviewing the extensive record relating to the valuation of these assets. In our opinion, requiring the trial court to consider these issues on remand would result in a waste of judicial resources. Moreover, we decline to address plaintiff’s other arguments on appeal because they stem from the trial court’s failure to conduct a de novo evidentiary hearing, and will be addressed on remand.

We vacate and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Kurtis T. Wilder