

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY EDWARD MARKS,

Plaintiff-Appellant,

UNPUBLISHED
May 25, 2001

v

MALINEE SUE MARKS,

Defendant-Appellee.

No. 222923
Berrien Circuit Court
LC No. 98-002412-DM

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of divorce. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint for divorce from defendant. In a pretrial order, the family court specified that the division of marital property would be addressed at trial. At trial, the parties contested the value of plaintiff's well-drilling business. The parties testified regarding their estimations of the value of the business. Plaintiff submitted tax returns showing that his income was approximately \$40,000 annually. The family court used a capitalization of earnings approach to value the business at four times plaintiff's earnings, or \$160,000, and awarded defendant fifty percent of that value.

Plaintiff moved for a new trial pursuant to MCR 2.611(A)(1)(e) and (f), arguing that the family court's valuation of the business was grossly excessive. He sought to offer an appraisal of the business prepared by a certified public accountant. The family court denied the motion, noting that it was required to assign a value to the business, and observing that plaintiff could have produced the appraisal at the time of trial.

The goal in dividing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. The division need not be mathematically equal, but a significant departure from congruence should be supported by a clear statement of the family court's reasons. *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997). To achieve an equitable division of property, the family court should consider 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, each party's fault or past misconduct, and any other relevant factors. *Sparks v Sparks*, 440 Mich 141, 158-

160; 485 NW2d 893 (1992). On appeal, we first review the family court's findings of fact. *Draggool v Draggool*, 223 Mich App 415, 429; 566 NW2d 642 (1997). We will not reverse a family court's findings of fact, including those relating to the valuation of a particular asset, unless those findings are clearly erroneous. *Id.* The family court's dispositive ruling is discretionary, and will be affirmed unless upon review thereof we are left with the firm conviction that the division was inequitable. *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999).

Plaintiff argues that the family court clearly erred in valuing his business. We disagree and affirm the judgment of divorce. When making findings of fact regarding the division of property, the family court recited the relevant factors for consideration, and made findings on those factors, as required. *Sparks, supra*. Plaintiff's assertion that the business had no value which could be ascertained is contradicted by the fact that he obtained an appraisal of the business following the conclusion of the trial and the division of the marital property. This appraisal could have been obtained prior to trial and did not constitute newly discovered evidence. MCR 2.611(A)(1)(f); *Hauser v Roma's of Michigan, Inc.*, 156 Mich App 102, 106; 401 NW2d 630 (1986). Plaintiff has not shown that the family court's valuation of the business at \$160,000, via use of the capitalization of earnings approach, was clearly erroneous. *Draggool, supra*. Furthermore, plaintiff's assertion that the award of fifty-percent of the value of the business plus child support constituted a double award to defendant is without merit, and is based on plaintiff's mistaken assumption that the business had no separate value. Based on the record before us, we cannot conclude that the family court's dispositional ruling constituted an abuse of discretion under all the circumstances. *Welling, supra*.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly