STATE OF MICHIGAN

COURT OF APPEALS

LINDA KATHLEEN LINDQUIST,

Plaintiff-Appellant,

v

PETER JOSEPH LINDQUIST,

Defendant-Appellee.

UNPUBLISHED
March 15, 2002

No. 228098
Alger Circuit Court
LC No. 99-003327-DO

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from a property settlement contained in a judgment of divorce. We affirm in part and reverse and remand in part.

Plaintiff first argues that the trial court erred in its valuation and distribution of the value of the defendant's charter diving business. Plaintiff's argument is difficult to follow, but she apparently argues that the trial court should have awarded her a greater portion of the business because she greatly contributed to its growth.

This Court reviews for clear error the findings of fact in a property distribution. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Dispositional rulings are affirmed unless this Court is left with "the firm conviction that the division was inequitable." *Sparks, supra* at 152.

First, we conclude that plaintiff has failed to properly present this issue for appeal because she fails to set forth with clarity the relief she seeks on appeal and fails to cite authority in support of her position. See generally *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1998). In any event, we discern no error with regard to the court's treatment of the business. The court valued the business in the amount testified to by plaintiff's expert and assigned the appreciation that occurred during the marriage to be equitably distributed.[1] This

[1] As noted *infra*, the court eventually determined that the marital property, including the appreciation of the business, should be divided in a sixty/forty proportion in defendant's favor, because of plaintiff's fault in causing the breakdown of the marriage. As noted, we discern no error with this conclusion.

was not erroneous. See generally *Bone v Bone*, 148 Mich App 834, 837-838; 385 NW2d 706 (1986).

Next, plaintiff argues that the trial court improperly included as marital property the entire value (i.e., not just the appreciation in value) of plaintiff's house, even though plaintiff acquired the house before the marriage. In its memorandum of decision, the court, citing *Reeves v Reeves*, 226 Mich App 490; 575 NW2d 1 (1997), found that "the equitable division should be confined to just the years of the marriage." However, the court failed to fashion the property settlement based on this express decision because it credited the entire net value of the house to the marital estate, instead of crediting solely its appreciation during the marriage.

We are convinced that the trial court erred in including the full value of the house in the marital estate, for two reasons. First, the court made a specific finding that "the equitable division should be confined to just the years of the marriage," and by including the full value of the house in the marital estate, it failed to comport with its own finding. Moreover, even though evidence existed that defendant contributed to the house's value before the marriage, evidence also existed that plaintiff contributed to the value of defendant's business before the marriage. Yet the court included only the post-marriage appreciation of the business in the marital estate. As stated in *Stokes v Millen Roofing Co*, 245 Mich App 44, 51; 627 NW2d 16 (2001), lv granted 465 Mich 909 (2001), "he who seeks equity must be prepared to do equity." Under the circumstances, equity requires that the premarital value of the home be considered plaintiff's separate property, not subject to distribution. A remand on this issue is therefore appropriate.

Next, plaintiff argues that the trial court erred in its treatment of her new, separate business. The court determined that because plaintiff opened a competing diving business using defendant's surname and solicited former customers of defendant's business using a captain's license that defendant assisted plaintiff in obtaining, plaintiff's share in the marital property should be diminished by $8,000, essentially for a devaluation of the appreciation value of defendant's business. We initially note that plaintiff failed to cite any law or analogous cases in support of her position, thereby waiving the issue for appeal. See *Leonard, supra* at 588. Nevertheless, we discern no basis for appellate relief. Indeed, the court considered some money plaintiff took from a joint account, considered plaintiff's captain's license that defendant, at least in a small fashion, helped her to obtain, and considered that the new, competing business would essentially decrease the appreciation value of defendant's business. Under the circumstances, we find no clear error. *Sparks, supra* at 151.

Next, plaintiff argues that the trial court incorrectly valued defendant's boat at $5,000. Regarding the value of the boat, defendant testified that he had an operating agreement with Pictured Rocks Cruises that gave him exclusive use of the vessel but held him responsible for the upkeep, maintenance, and day-to-day operations. In exchange, Pictured Rocks Cruises received twelve percent of defendant's total ticket sales, and once a total of $100,000 had been paid, title to the vessel would be transferred to defendant's business. Plaintiff contends that because $58,000 had already been paid on the boat, the court should have assigned the $58,000 as an asset of defendant. The court stated as follows with regard to the boat:

> The [d]efendant has under-valued the [boat] on the basis of not having clear title. Plaintiff's Exhibit 12 shows what amounts to a 1997 bare boat charter with option to buy. The language there would compel conveyance of title after

> payment of the $100,00.00 in ticket sales. The business un-valued portion of such an option would be worth at least $5,000.00. This chose in action is assigned to Defendant at that value.

We first note that once again, plaintiff has cited no law or analogous cases in support of her argument, thereby waiving this issue for appeal. *Leonard*, *supra* at 588. Nevertheless, we discern no error. Indeed, by stating that "[t]he business un-valued portion of such an option would be worth at least $5,000," the court essentially indicated that it included the additional value of the boat in valuing defendant's business. (As noted earlier, the court adopted plaintiff's expert's valuation of the business, and presumably the expert knew of the arrangement surrounding the boat.) Moreover, we cannot accept plaintiff's assertion on appeal that the boat was worth $58,000 to defendant. As noted in *Twp of Oshtemo v Kalamazoo,* 77 Mich App 33, 37; 257 NW2d 260 (1997), failure to comply strictly with the terms of a purchasing option contract results in the loss of rights under the option. It therefore could not be said with certainty that plaintiff would be able to retain the $58,000 he had paid.

Finally, plaintiff argues that the trial court erred in assigning fault to her for breaking up the marriage because she did not commence a relationship with another man until after the parties' separation. Plaintiff, citing *Zecchin v Zecchin,* 149 Mich App 723; 386 NW2d 652 (1986), argues that the trial court improperly assigned fault to her simply because she asked defendant to leave. In *Zecchin*, this Court stated:

> The trial court's conclusion that defendant was at fault was apparently based on its finding that defendant had ordered plaintiff to leave the marital home. We cannot agree that that this finding can support a finding of fault. The focus must be on the conduct of the parties leading to the separation rather than on who left whom. It is clear from the record that the breakdown had already occurred prior to the time that defendant told plaintiff to leave. [*Id*. at 728.]

The instant case is distinguishable from *Zecchin*. Indeed, plaintiff admitted to the court that one of the concerns she had when asking defendant to leave was "emotional confusion about [another man]." Accordingly, we conclude that the trial court did not clearly err in assigning fault to plaintiff. Nor did the court clearly err in using fault to fashion a sixty percent/forty percent split and to construe some value ambiguities against plaintiff. Indeed, this case differs from those in which the court imposed extreme financial penalties because of fault. See *McDougal v McDougal*, 451 Mich 80, 88; 545 NW2d 357 (1996), and *Sparks*, *supra* at 145.[2]

[2] We note that on the last page of her appellate brief, plaintiff raises an additional issue regarding a mortgage on a gift shop. Plaintiff does not identify the relief she requests with regard to this issue, and in any event, she waived the issue by failing to raise it in the statement of questions presented. See *Phinney v Perlmutter,* 222 Mich App 513, 564; 564 NW2d 532 (1997).

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Jane E. Markey
/s/ Patrick M. Meter