

STATE OF MICHIGAN
COURT OF APPEALS

TATJANA TINA MELDRUM,

Plaintiff-Appellant,

v

JOHN J. MELDRUM,

Defendant-Appellee.

UNPUBLISHED
December 9, 2003

No. 243458
Lapeer Circuit Court
LC No. 01-030367-DM

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

PER CURIAM.

Plaintiff Tatjana Tina Meldrum appeals by right from the trial court's judgment of divorce. Plaintiff asserts that the trial court correctly determined that a particular piece of real estate was defendant's separate property but incorrectly included the loss on that property when calculating the marital estate. She also claims that the trial court's denial of her request for attorney's fees was error. We affirm in part and reverse in part.

In reviewing a trial court's distribution of a marital estate, this Court first determines whether the trial court's findings of fact, including valuations, were clearly erroneous. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997); *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous if this Court is "left with the definite and firm conviction that a mistake has been made." *Draggoo, supra* at 429.

Here, the trial court clearly determined that the Harsens Island cottage was separate property, and that finding is not disputed here. The claim of error concerns the trial court's inclusion of the Harsens Island cottage's value in the marital estate. The trial court determined that plaintiff should share in half the appreciated value of the marital estate, from which it excluded certain parcels of real estate defendant brought into the marriage. Nonetheless, when the trial court calculated the 1999 value of the estate (the parties married in 1999), it included the \$155,000 net value of the Harsens Island cottage that it ruled was defendant's separate property. During the marriage, defendant sold the cottage, used some of the proceeds to pay down the mortgage on the marital home, and used the rest for various bills and personal property. Thus, when the trial court calculated the 2002 value of the marital estate (the parties divorced in 2002), it assigned a zero dollar value to the cottage.

The trial court's end result did not comport with its initial finding that the property was defendant's separate property. Although the court certainly had discretion to determine whether separate property had been commingled so that it took on the character of marital property, *Reeves v Reeves*, 226 Mich App 490, 493-495; 575 NW2d 1 (1997), it did not do so here. Instead, it simply accounted for the *separate* property's net worth in the value of the shared estate, resulting in plaintiff receiving substantially less from the property settlement than she would have otherwise (because the valuation of the cottage as zero dollars in 2002 resulted in an apparent depreciation of the marital estate by \$155,000). Because the trial court's judgment was incongruous with its unambiguous findings, we find a clear error that must be rectified.

Plaintiff also claims that the trial court erred by denying her request for certain attorney fees. "The matter of attorney fees rests generally in the sound discretion of the trial judge." *Schaeffer v Schaeffer*, 106 Mich App 452, 459; 308 NW2d 226 (1981).

While plaintiff does not specify the exact amount of fees at issue, we discern from the record that the fees were somewhere between \$60,000 and \$71,000. However, plaintiff did not sufficiently comply with MCR 3.206(C)(2), which states:

A party who requests attorney fees and expenses must allege facts sufficient to show that (a) the party is unable to bear the expense of the action, and that the other party is able to pay, or (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

Moreover, plaintiff provided no argument below regarding whether her fees were "necessary to enable the adverse party to carry on or defend the action, during its pendency." MCL 552.13.

Despite plaintiff's inadequate showing, the trial court evidently awarded plaintiff \$5,000 as attorney fees. The trial court was in an ideal position to observe the legal maneuverings in this case and to make its determination that plaintiff's legal fees were excessive and that plaintiff should not receive an award beyond the initial award of \$5,000. Because the trial court has wide latitude in awarding attorney fees, *Stackhouse v Stackhouse*, 193 Mich App 437, 445-446; 484 NW2d 723 (1992), and because plaintiff failed to develop a sufficient record demonstrating her need for additional fees, we conclude that the trial court did not abuse its discretion by ordering defendant to pay only \$5,000 of plaintiff's attorney fees.

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

/s/ Henry William Saad

/s/ Jane E. Markey

/s/ Patrick M. Meter