

STATE OF MICHIGAN
COURT OF APPEALS

KRISTINE K. AHLES,

Plaintiff-Appellee,

v

PHILIP J. AHLES,

Defendant-Appellant.

UNPUBLISHED

February 18, 2021

No. 351545

St. Clair Circuit Court

LC No. 17-000366-DM

Before: JANSEN, P.J., and SERVITTO and RIORDAN, JJ

Servitto, J. (*concurring*)

I agree with the majority's conclusion that the trial court erroneously deducted a theoretical 7% realtor's commission on the sale of the marital home when there was no evidence that plaintiff planned on selling the home. I also agree that the majority's conclusion that the trial court's factual findings regarding the values of specific other assets awarded were inadequate. I write separately to note that even if the values assigned the specific other assets awarded were factually supported and correct, the trial court still erred in ordering defendant to pay \$3,325 to plaintiff to "equalize" the marital estate.

At a September 2017 pro confesso hearing, plaintiff testified that there was approximately \$105,000 owing on the marital home and that the home had a value of approximately \$101,000. This turned out to be an erroneous belief on plaintiff's part. When the trial court held an evidentiary hearing on remand from this Court, plaintiff testified that since the pro confesso hearing in September 2017, she had an appraisal performed on the home which showed that the value of the marital home in September 2017 was actually \$135,000.

In rendering its decision on remand, the trial court noted that was a low asset and very little debt marriage. The trial court stated that the marital home had, at the time of the divorce, a value of \$135,000 with \$105,726 owing on it, thus equaling \$29,274 in equity. I find no error in this regard. The trial court determined that defendant was awarded \$12,200 in other marital assets and plaintiff was awarded \$5,550 in other marital assets. If, the equity in the home was to be divided

between the two parties, each would be entitled to \$14,637 in equity. However, defendant never actually received any of the equity in the marital home.

This is not a situation where defendant actually received his portion of the equity in the marital home initially and a later appraisal showed that he took more than his equal part of the equity. Plaintiff was awarded and retained the marital home, including all of the equity in it until at least the time of the evidentiary hearing. She could thus have, for example, obtained a mortgage in her name that took the equity in the home into account. Defendant, having received only \$12,200 in tangible assets in the divorce did not and does not have this opportunity. Having not received any actual payment of or interest in the equity, there is nothing for him to “equalize” in the marital estate. Indeed, plaintiff received the \$29,274 in equity in addition to her \$5,500 in other assets while defendant received only the \$12,200 in tangible assets. It is perplexing how, on those facts, the trial court found that *defendant* owed *plaintiff* additional monies in order to equalize the division of marital assets.

/s/ Deborah A. Servitto