

STATE OF MICHIGAN
COURT OF APPEALS

LAURIE L. DEJONGH,

Plaintiff/Counter-Defendant-
Appellee,

V

CHAD E. DEJONGH,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
July 18, 2013

No. 309835
Bay Circuit Court
LC No. 10-007399-DM

Before: SAWYER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court’s judgment of divorce following a bench trial. We affirm.

The parties executed an agreement, entitled “Mutual Contract,” upon their separation for the purpose of establishing their separate residences. Under the agreement, defendant was to remain in the marital home, while plaintiff was to move out and reside in another home owned by the parties. Each party was to be solely responsible for the mortgage of their respective residences. Defendant argues on appeal that the trial court committed an error requiring reversal by finding that the parties’ agreement was an interim agreement subject to revision by the court upon entry of the final judgment of divorce and disposition of marital property.

We review de novo the interpretation of a contract. *Klapp v United Ins Grp Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). “[C]ourts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged.” *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). Here, the trial court found that the written agreement was “not a final agreement as to property issues” because it did not dispose of all the issues with respect to the parties’ properties. The court noted that the agreement did not adequately deal with the mortgage on the martial home, which is in plaintiff’s name only. The court stated that if the agreement were a final agreement, “implicit in that contract would’ve been an obligation to release [plaintiff] from liability on the mortgage”—a release that had not occurred. The court stated that “[i]t [the release] is not expressly provided for in the agreement

and, without that provision, I find that it is not a dispositive agreement” Based on the silence of the agreement concerning this issue, the court found that the agreement was intended to be interim in nature. The court awarded the marital home to plaintiff, “subject to whatever liens are . . . in place.”

The trial court correctly determined that the parties’ intentions were not clear from the agreement. The agreement did establish the parties’ separate residences upon their separation, but it neglected to address all the issues implicit in dividing their real property. Defendant’s appellate argument is without merit.

Defendant argues that the trial court erred by failing to make specific factual findings concerning the values of the parties’ homes before allocating the properties. We review for clear error a trial court’s factual findings in a divorce action. *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003). We review questions of law de novo. *Brown v Home-Owners Ins Co*, 298 Mich App 678, 690; 828 NW2d 400 (2012).

In *Woodington v Shokoohi*, 288 Mich App 352, 364; 792 NW2d 63 (2010), this Court held that “[a] trial court must make specific findings of fact regarding the value of each disputed piece of marital property awarded to each party in the judgment.” The Court also held that “[a] trial court’s findings of fact are inadequate if they are not sufficiently specific to enable the parties to determine the approximate values of their individual awards by consulting the verdict along with the valuations to which they stipulated.” *Id.* at 364-365.

Defendant appears to be arguing, in part, that it was inequitable for the court to award the marital home to plaintiff and the other home to him because the other home was “underwater” as a result of plaintiff’s failure to uphold the parties’ agreement that she pay the mortgage on that home. Plaintiff testified that she had made the mortgage payments until about two to three months before trial, when she ceased the payments on the advice of her bankruptcy attorney.

The trial court found that both homes were “underwater,” meaning that what was owed on the homes was greater than their worth. The court stated that part of the reason it decided to award the marital home to plaintiff was because of the court’s determination that the parties were not able to refinance it and the mortgage was currently in plaintiff’s name. Moreover, the court’s findings and decision regarding the properties evidently were based on the parties’ testimony, because this was the only evidence presented regarding the values of the properties. The trial court found that defendant was not a credible witness. “We accord special deference to a trial court’s factual findings that were based on witness credibility.” *Id.* at 358.

Defendant contends that the trial court’s rulings concerning the parties’ real property were based almost entirely on “fuzzy speculation.” However, the court cannot be faulted for the parties’ failure to provide more detailed evidence about values.¹ “[E]rror requiring reversal may

¹ Defendant orally provided an appraisal value for the marital home at trial, but it was outdated, and defendant did not provide any supporting documentation. Plaintiff stated that the home value was probably “upside down.”

only be predicated on the trial court's actions and not upon alleged error to which the aggrieved party contributed by plan or negligence.” *Lewis v LeGrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003).² In light of all the circumstances, we find no basis for appellate relief.

Defendant argues that the trial court erred by failing to make specific findings of fact regarding the values of his businesses, DeJongh Construction and DeJongh Interiors. However, in raising his appellate argument, defendant does not specify the relief he would like from the court's award; defendant merely asks this Court to remand this case to the lower court for specific findings of fact. Defendant was awarded both businesses and was not required to compensate plaintiff for her interest in them, and it is simply not clear what relief defendant would like to receive on remand or whether such relief would be reasonable and permissible. Defendant cannot claim that the court's decision was erroneous without specifying the nature of the error and explaining how it adversely affected him and how it should, and could, be rectified. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (holding that a party cannot “leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments” [internal citation and quotation marks omitted]).

Defendant argues that by awarding plaintiff the marital home, which defendant characterizes as the only property of value, but assigning him the debt for the many improvements the parties made to the home, the court effectuated an inequitable division of the marital property. Defendant argues that the parties paid for the improvements with loans from DeJongh Construction and that the money is still outstanding. At trial, defendant testified that plaintiff knew the money for the renovations came from his businesses and that although the parties did not discuss whether they would repay the loans, he had assumed plaintiff agreed that they would be repaid. Plaintiff testified that she was aware that her home had been renovated, but was not aware of any loans the parties had taken out to pay for them. Rather, plaintiff testified that she believed that the renovations had been paid for by defendant from his regular salary. Defendant acknowledged at trial that plaintiff did not sign the promissory notes allegedly documenting the parties' loans.

The trial court did not specifically comment on the credibility of plaintiff's testimony on this matter, but it generally concluded that defendant's testimony with respect to the parties' debts and his finances was not credible. The court noted that defendant appeared to have been “quite free in how he used the company account,” which raised the possibility that, instead of taking out “bonafide [sic] loans” from the company, “the way [defendant] operated was to take a draw from the company when he needed cash and some people do that.” The court also posited that the cash payments from the company may have simply been gifts. In addition, the trial court found that the promissory notes offered by defendant as evidence of the loans were not reliable and that the notes were only signed by defendant. The court concluded that the money that had been advanced to the parties “was not a[n] obligation of the marriage or not necessarily the

² Defendant himself admits in his appellate brief that “[t]he trial court . . . could [not] have” made “an adequate finding of fact regarding the value on either property . . . with the record as it exists.”

responsibility of the property, . . . and . . . [plaintiff] was not a willing assumer of the liability because I do not believe that she was led to believe that that was the circumstances under which the money was provided.” The trial court’s findings were not clearly erroneous in light of the record, and defendant’s argument that the alleged error resulted in an inequitable property division is without merit. See *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995) (“[p]roperty disposition rulings will be affirmed unless we are left with the firm conviction that the distribution was inequitable”).

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Pat M. Donofrio