STATE OF MICHIGAN

COURT OF APPEALS

KRISTINA RESLIN FARRIS,

Plaintiff-Appellee,

v

ERIC DANIEL FARRIS,

Defendant-Appellant.

UNPUBLISHED
December 17, 2019

No. 349572
Washtenaw Circuit Court
Family Division
LC No. 17-000627-DM

Before: SWARTZLE, P.J., and MARKEY and REDFORD, JJ.

PER CURIAM.

Defendant appeals by right the judgment of divorce entered by the trial court following a bench trial and the issuance of a written opinion. The court awarded plaintiff sole legal and physical custody of the parties' two minor children, ordered defendant to pay child support, and divided the marital estate and awarded plaintiff 60-to-40 percent of the assets. With respect to custody, we affirm the trial court's ruling regarding physical custody, reverse the court's decision concerning legal custody, and reverse the court's determination that defendant is entitled to parenting time but only at plaintiff's discretion. With regard to child support, we affirm the trial court's various rulings related to support, except that we remand for consideration whether defendant should be given credit for support payments that he made directly to plaintiff in November 2018. Finally, with respect to the division of the marital property, we affirm the trial court's numerous determinations, except that we remand for an explanation by the trial court regarding its calculation of the equity in the marital home, which does not appear to be consistent with the evidence. Accordingly, we affirm in part, reverse in part, and remand.

I. FACTUAL BACKGROUND

The parties married in 2011 and have two children. Defendant described himself as a good father who unfortunately fell into drug addiction. Plaintiff testified that she first filed for divorce in 2016 but withdrew the complaint after defendant entered rehabilitation. After defendant relapsed and again began using drugs, he made a threatening remark to plaintiff. She then filed for divorce in March 2017. Plaintiff sought sole legal and physical custody of the parties' children.

While defendant initially defaulted by failing to answer the divorce complaint, the trial court declined to enter a default judgment. Instead, the court adopted plaintiff's proposed divorce judgment as a type of interim order, and it referred the matter to the Friend of the Court (FOC) for a determination of preliminary issues regarding custody, parenting time, child support, and spousal support. Defendant objected to the FOC's subsequent recommendation that plaintiff be granted sole physical and legal custody of the children. Following a hearing, the trial court found that the FOC's recommendation—which included a determination that the children had an established custodial environment with plaintiff—was very thorough, and the court adopted the recommendation as an interim order. The interim order required defendant to pay $1,611 a month in child support, which included an amount for medical care.

The trial court conducted a bench trial in January 2019. At the trial, plaintiff asked the court to award her sole physical and legal custody because, while defendant had improved, plaintiff was concerned about both his ability to be a custodial parent and the possibility that he might relapse into drug use. Both parties offered extensive evidence on issues of custody, child support, and the marital estate. The trial court issued an opinion in May 2019, in which it awarded plaintiff sole physical and legal custody of the children. The court divided the marital estate by awarding plaintiff 60% of the property and defendant 40%. Upon defendant's motion for clarification, the trial court indicated that it was continuing the current child support order, and it was awarding defendant parenting time at plaintiff's discretion.

II. CUSTODY

Defendant argues that the trial court erred by (1) entering a temporary custody order without determining the children's established custodial environment, (2) failing to interview the children and to consider the mandatory custody factor regarding the children's preferences, (3) reaching a conclusion regarding domestic violence on the basis of unadmitted evidence, and (4) failing to render required findings regarding joint legal custody. Defendant's argument concerning the children's established custodial environment lacks merit. The trial court did err by failing to assess or consider the preference of at least the oldest child, but the error does not warrant reversal. Although there is no evidence in the record to support the trial court's finding of domestic violence, we find it unnecessary to reverse the court's decision regarding physical custody because of the error. Finally, the trial court committed clear legal error by failing to make a statutorily-mandated finding regarding joint legal custody; consequently, the trial court must address this issue must on remand.

In *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006), this Court, relying primarily on MCL 722.28, addressed the standards of review applicable in child custody disputes, observing:

> There are three different standards of review applicable to child custody cases. The trial court's factual findings on matters such as the established custodial environment and the best-interests factors are reviewed under the great weight of the evidence standard and will be affirmed unless the evidence clearly preponderates in the opposite direction. In reviewing the findings, this Court defers to the trial court's determination of credibility. A trial court's discretionary rulings, such as the court's determination on the issue of custody, are reviewed for

> an abuse of discretion. Further, . . . questions of law in custody cases are reviewed for clear legal error. [Citations and quotation marks omitted.[1]]

MCL 722.27(1)(c) provides that in a custody dispute, a trial court, for the best interests of the child at the center of the dispute, may "modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances." The court, however, is not permitted to "modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child." MCL 722.27(1)(c). "These initial steps to changing custody—finding a change of circumstance or proper cause and not changing an established custodial environment without clear and convincing evidence—are intended to erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders." *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003) (quotation marks omitted).[2]

In *Pierron v Pierron*, 486 Mich 81, 92-93; 782 NW2d 480 (2010), our Supreme Court discussed the next step of the analysis, explaining:

> If the proposed change would modify the established custodial environment of the child, then the burden is on the parent proposing the change to establish, by clear and convincing evidence that the change is in the child's best interests. Under such circumstances, the trial court must consider all the best-interest factors because a case in which the proposed change would modify the custodial environment is essentially a change-of-custody case.

The statutory best-interest factors are set forth in MCL 722.23.

First, defendant argues that the trial court erred by failing to determine the children's established custodial environment before issuing the interim custody order. The court's characterization of a change of custody as interim or temporary does not alter the standards that govern modifying custody. *Mann v Mann*, 190 Mich App 526, 531; 476 NW2d 439 (1991). "The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of

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[1] The court commits clear legal error when it makes a mistake in its choice, interpretation, or application of the law. *Shade v Wright*, 291 Mich App 17, 21; 805 NW2d 1 (2010). In the child-custody context, the trial court palpably abuses its discretion when its decision is so grossly violative of fact and logic that it evidences passion or bias rather than the exercise of reason. *Shulick v Richards*, 273 Mich App 320, 324; 729 NW2d 533 (2006).

[2] The first step in the analysis is to determine whether the moving party has established proper cause or a change of circumstances, applying a preponderance of the evidence standard. *Vodvarka*, 259 Mich App at 508-509.

life, and parental comfort." MCL 722.27(1)(c).[3] The existence of an established custodial environment does not depend on how the environment was created. *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995). In *Pierron*, 486 Mich at 86, our Supreme Court observed;

> While an important decision affecting the welfare of the child may well require adjustments in the parenting time schedules, this does not necessarily mean that the established custodial environment will have been modified. If the required parenting time adjustments will not change whom the child naturally looks to for guidance, discipline, the necessities of life, and parental comfort, then the established custodial environment will not have changed. [Citation and quotation marks omitted.]

We hold that the trial court did not err by continuing the parenting schedule the parties had arrived at on their own while at the same time referring the matter to the FOC for an evaluation. Neither did the court err by adopting the FOC's analysis in support of its interim custody order. On October 26, 2017, the trial court ordered entry of the proposed default divorce judgment "on an [i]nterim basis" because defendant had defaulted by falling to appear or file an answer to the divorce complaint. The court specifically refused to grant a default judgment concerning the custody of the children, and it adopted plaintiff's suggested parenting-time schedule. See *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004) (The "statutory provisions impose on the trial court the duty to ensure that the resolution of any custody dispute is in the best interests of the child.").

While defendant may have been the children's primary caregiver early in their lives, this was not the case at the time of the trial court's temporary orders. At the May 2017 motion hearing, defendant stated that he spent only one hour a week with the children. After plaintiff filed for divorce, the parties went on a family trip to Florida. Plaintiff then took the children to her parents' home and denied defendant access to them. Plaintiff claimed that this was necessary because defendant was acting aggressively and inappropriately in the children's presence. Regardless of how it occurred, the children were solely in plaintiff's care in early 2017, and defendant had only one hour a week of parenting time. The trial court's May 2017 decision to refer the matter to the FOC regarding custody and parenting time continued the status quo and did not change the children's established custodial environment.

As indicated earlier, the trial court referred matters to the FOC for an initial determination of custody, parenting time, spousal support, and child support. The FOC evaluator concluded that the children had an established custodial environment with plaintiff and that plaintiff was the party most capable of meeting their needs. She found that defendant's drug use had negatively affected his relationship with the children. The trial court adopted the FOC's recommendation as an interim order. Accordingly, the trial court did in fact determine the children's established custodial environment before it entered the interim custody order. Defendant has not demonstrated that the court committed an error in its ruling.

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[3] "The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered." MCL 722.27(1)(c).

Next, we address defendant's argument regarding the best-interest factor that addresses the reasonable preferences of the children. The trial court must make its custody determination on the basis of a child's best interests. MCL 722.25(1). To determine what is in a child's best interests, the trial court must consider the statutory best-interest factors found in MCL 722.23. The trial court here determined that factors (a) through (e), (g), (h), and (j) favored plaintiff. The court made no findings on factor (f) (moral fitness of the parties) and (*i*) (reasonable preference of the child). With respect to factor (*i*), the court stated that it "did not interview the child and is therefore not making a finding under this factor." We note that in regard to factor (*i*), the FOC recommendation provided that "[d]ue to the young ages of the children and by preference of the parties, [the children] were not interviewed." At the bench trial, the parties did not ask the court to interview the children or to assess their preferences.

MCL 722.23(*i*) directs the court to identify "[t]he reasonable preference of the child, if the court considers the child to be of sufficient age to express preference." Even if the parties do not want the trial court to interview their child, the court must determine the child's preference if the child is old enough to express a preference. *Kubicki v Sharpe*, 306 Mich App 525, 544-545; 858 NW2d 57 (2014).[4] "A child over the age of six is presumed to be capable of forming a reasonable preference." *Maier v Maier*, 311 Mich App 218, 224; 874 NW2d 725 (2015). Here, the parties' oldest child was 8 years old at the time of the bench trial and was presumptively old enough to express a preference. The trial court erred by failing to consider, at a minimum, the oldest child's preference before rendering its custody ruling. Generally, when a trial court fails to consider a child's preference under MCL 722.23(*i*), this Court "must vacate the circuit court's order and remand for a new custody hearing." *Kubicki*, 306 Mich App at 545; see also *Bowers v Bowers*, 190 Mich App 51, 56; 475 NW2d 394 (1991); *Stringer v Vincent*, 161 Mich App 429, 434; 411 NW2d 474 (1987). But in *Sinicropi*, 273 Mich App at 182-183, this Court held:

> Mazurek also takes issue with the fact that the trial court did not consider the child's preference under factor i (child's preference). The trial court stated that it could not consider the child's preference because none of the parties presented him for an interview. We note that the parties stood mute when the trial court made this statement, and there is no indication in the record that Mazurek wished or requested that the trial court speak to the child regarding his preference. . . . Assuming that the child, who was six years old when the custody hearing was conducted, was of sufficient age to express a preference, and assuming that the trial court erred in not interviewing the child when neither party apparently wished to have the child appear, reversal is not warranted because had the child expressed a preference, it would not have changed the trial court's ruling, given the court's overall statements and strong feelings regarding what was best for the

[4] We do note, however, that defendant's argument that the trial court erred by not interviewing the child is technically incorrect. As long as someone determines the child's preference—whether the court, an interviewer using an evidence-based protocol, or a mental health professional—the method of determining the child's preference is not determinative. *Maier*, 311 Mich App at 225. It is not necessary for the trial court to interview the child. *Id*.

child, nor would it lead us to conclude that the court erred in awarding sole physical custody to Powers.

In the instant case, the established custodial environment was with plaintiff, and defendant thus had to prove by clear and convincing evidence that a change in custody was warranted upon analysis of the best-interest factors. But all of the factors for which the trial court made an actual finding were found to favor plaintiff. And even if both children were of sufficient age to express a preference and indicated a preference for defendant, the factors would still weigh heavily in favor of plaintiff. By no means would the factors support a conclusion that defendant proved by clear and convincing evidence that custody should be modified. As was the situation in *Sinicropi*, the trial court's ruling would not have differed if factor (*i*) had been evaluated.

Except as otherwise provided in subchapter MCR 3.200 *et seq.*, "practice and procedure in domestic relations actions is governed by other applicable provisions of the Michigan Court Rules." MCR 3.201(C). And MCR 2.613(A) provides:

> An error in the admission or the exclusion of evidence, an error in a ruling or order, *or an error or defect in anything done or omitted by the court* or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice. [Emphasis added.]

Under the particular facts of this case, substantial justice does not require us to vacate the physical custody ruling and remand for a new custody hearing because the trial court erred by not obtaining information regarding the reasonable preferences of the children. Indeed, a substantial injustice would occur were we to vacate the trial court's ruling and order a retrial.

Additionally, with respect to defendant's argument that the court's domestic-violence finding under MCL 722.23(k) was not supported by evidence in the record, we agree. But considering that the balance of the best-interest factors favored plaintiff or were essentially equal and that none favored defendant, we must conclude the error was harmless. Defendant had to prove by clear and convincing evidence that the best-interest factors favored him in order to change custody. Reversal is simply unwarranted.

Defendant next contends that the trial court erred by failing to make required findings in support of its award of sole legal custody to plaintiff. We agree. MCL 722.26a(1) provides:

> In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court

shall[5] determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in [MCL 722.23].

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

Joint legal custody is appropriate when, "[w]hile there was certainly evidence presented that the parties harbored some personal animosity and had some difficulty communicating in the past, both parties testified that their communications had recently improved." *Shulick v Richards*, 273 Mich App 320, 326-327; 729 NW2d 533 (2006).

In this case, defendant requested joint legal custody. He testified that he believed that he and plaintiff would be able to co-parent effectively. Plaintiff testified that defendant visited with the children in plaintiff's home for one or two nights a week while plaintiff was at work, which suggests that the parties would be able to cooperate and agree about the children's care. The trial court, however, made no finding regarding MCL 722.26a(1)(b). Accordingly, the court committed a clear legal error on a major issue, so the ruling awarding plaintiff sole legal custody must be reversed. We remand the matter for evaluation of MCL 722.26a(1)(b) and reassessment of legal custody consistent with the dictates of the statute.

III. PARENTING TIME

Defendant next argues that the trial court erred when it failed to order specific parenting time after defendant asked for a parenting-time schedule. "A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health." MCL 722.27a(3). MCL 722.27a(8) provides that "[p]arenting time shall be granted in specific terms if requested by either party at any time."

In this case, defendant requested specific parenting time. The trial court did not grant specific parenting time but instead ordered parenting time "in plaintiff's discretion." Because MCL 722.27a(8) requires the trial court to order parenting time in "specific terms" if a party requests it, the court committed clear legal error on a major issue by awarding defendant parenting time at plaintiff's discretion.[6] Consequently, we also reverse the parenting time order and remand for compliance with MCL 722.27a.

IV. CHILD SUPPORT

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[5] The word "shall" indicates a provision is mandatory. See *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008).

[6] We note that the trial court did not rule that there was clear and convincing evidence that parenting time with defendant would endanger the children.

Defendant argues that the trial court erred by failing to refer the matter of child support to the FOC regarding his motion to modify support and for application of defendant's home equity award to his future support obligations. Defendant further contends that the trial court erred by using erroneous information in connection with child support and by requiring defendant to pay for health insurance when plaintiff did not pay a monthly premium. These arguments lack merit. But defendant's additional argument that the trial court erred by failing to consider whether to give him credit toward his child support obligation for payments he made in November 2018 has merit.

This Court reviews de novo the interpretation and application of the Michigan Child Support Formula (MCSF). *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007). We review for clear error the trial court's findings of fact in determining the amount of child support owed. *Id.* The trial court clearly errs if after reviewing its decision, this Court is definitely and firmly convinced that the court made a mistake. *Carlson v Carlson*, 293 Mich App 203, 205; 809 NW2d 612 (2011). This Court reviews for an abuse of discretion a trial court's discretionary ruling regarding child support. *Id.* We also review for an abuse of discretion the trial court's decision whether to modify a child support order. *Clarke v Clarke*, 297 Mich App 172, 178-179; 823 NW2d 318 (2012). The trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Carlson*, 293 Mich App at 205.

"It is well settled that children have the right to receive financial support from their parents and that trial courts may enforce that right by ordering parents to pay child support." *Borowsky*, 273 Mich App at 672-673. A trial court must strictly comply with the requirements of the MCSF in calculating child support unless the court determines from the facts of the case that application of the MCSF would be unjust or inappropriate." *Id.* at 673, citing MCL 552.605(2).

First, defendant has abandoned his assertion that the trial court erred by failing to refer to the FOC his motion to modify child support and to apply his property award to satisfy his child support obligations.[7] A party abandons a claimed error when the party fails to provide any authority to support his or her position. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). Accordingly, these arguments are rejected.

Next, defendant asserts that the trial court's child support decision was based on "erroneous information," where the order entered after an earlier FOC hearing inaccurately stated that defendant had no objections. We conclude that any error was harmless because the trial court was clearly informed of defendant's objections at the time of the motion for a more definite statement, which was before the court continued the support order. MCR 2.613(A).

Next, defendant argues that the trial court erroneously required him to pay for health insurance as part of his child support obligation because plaintiff conceded that she no longer had to pay a monthly health insurance premium. Defendant's argument mischaracterizes the

[7] We note that the trial court did grant defendant's request that his child support arrearage be deducted from his share of the equity in the marital home, which home was awarded to plaintiff.

record. Plaintiff testified that she had switched from paying a monthly premium to paying into a health savings account each payday, which she used to pay for the children's medical care. Accordingly, while plaintiff no longer paid a monthly premium, she did pay for the children's healthcare on a monthly basis. The trial court did not make a mistake when it required defendant to contribute to the children's healthcare expenses.

Finally, defendant argues that the trial court erred by failing to credit him for direct child support payments he made to plaintiff from November 2018 to January 2019. While any error regarding payments made in December 2018 and January 2019 is harmless, the trial court abused its discretion by failing to consider whether defendant should be credited for his November 2018 direct support payments. Failing to exercise discretion when called upon to do so constitutes an abuse of discretion. *Loutts v Loutts*, 298 Mich App 21, 24; 826 NW2d 152 (2012). Plaintiff testified that defendant had paid her $2,500 to $3,000 in direct support, and defendant presented signed receipts for $2,400 in direct support that he paid to plaintiff in November 2018.[8] The trial court's opinion did not address defendant's direct payments or modify defendant's arrearages. Because we conclude that the trial court abused its discretion by failing to consider defendant's November 2018 payments and whether he should receive credit for them, we remand the matter to the trial court for further consideration.

V. PROPERTY DIVISION

Defendant raises a plethora of arguments related to the trial court's division of the marital property. With respect to appellate review regarding the division of marital assets, this Court in *Richards v Richards*, 310 Mich App 683, 693-694; 874 NW2d 704 (2015), stated:

> We consider the trial court's findings of fact under the clearly erroneous standard. If the findings of fact are upheld, we must decide whether the dispositive ruling was fair and equitable in light of those facts. The trial court's dispositional ruling will be upheld, unless this Court is left with the firm conviction that the division was inequitable. [Quotation marks, citations, and alteration omitted.]

This Court generally defers to the trial court's credibility findings. *Woodington v Shokoohi*, 288 Mich App 352, 358; 792 NW2d 63 (2010).

With some exceptions, property that is acquired or earned during the marriage is generally considered marital property. *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010), citing MCL 552.19. Conversely, assets that are obtained or earned before the marriage are typically considered separate assets. *Cunningham*, 289 Mich App at 201. Property acquired during the marriage as a gift may be considered separate property. See *Dart v*

[8] Defendant was credited for his December 2018 and January 2019 support payments in an April 2019 support enforcement order, which was entered before the judgment of divorce was issued. Accordingly, any failure to address these payments was harmless.

Dart, 460 Mich 573, 585; 597 NW2d 82 (1999); *Postema v Postema*, 189 Mich App 89, 108; 471 NW2d 912 (1991); *People v Wallace*, 173 Mich App 420, 428; 434 NW2d 422 (1988).

Once a trial court determines which assets are to be considered marital property, it may "apportion the marital estate between the parties in a manner that is equitable in light of all the circumstances." *Cunningham*, 289 Mich App at 201, citing *Byington v Byington*, 224 Mich App 103, 110, 112-113; 568 NW2d 141 (1997). Usually, marital assets are subject to division between the parties. *McNamara v Horner (On Remand)*, 255 Mich App 667, 670; 662 NW2d 436 (2003). An unequal distribution of the marital estate is not inherently inequitable, so long as an adequate explanation for the distribution is provided. *Washington v Washington*, 283 Mich App 667, 673; 770 NW2d 908 (2009). The trial court does not clearly err when its "valuation of a marital asset is within the range established by the proofs." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

In *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992), our Supreme Court recited the various property-division factors, stating:

> We hold that the following factors are to be considered wherever they are relevant to the circumstances of the particular case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. There may even be additional factors that are relevant to a particular case. [Citation omitted.]

First, defendant argues that the trial court's finding that the marital home's equity was $99,735 was clearly erroneous. Defendant maintains that this value was not within the range established by the evidence. Plaintiff testified that the property had been appraised for $230,000, and both plaintiff's testimony and a trial exhibit established that the mortgage balance was about $100,328 on January 1, 2019. No other evidence contradicted these numbers. Mathematically, the equity in the marital home appeared to be $129,672. In view of this discrepancy, we remand to the trial court for an explanation and/or any requisite changes in its calculation of the equity in the marital home.

Next, defendant argues that the trial court clearly erred by finding that plaintiff alone contributed the $14,000 down payment on the home. We reject this argument. Plaintiff testified that the down payment for the home was $14,000. She stated that $7,500 of this amount was a direct gift from her father and that the additional monies came from plaintiff's savings account, which had also been given to her by her father. In contrast, defendant testified that $7,500 came from wedding gifts and that defendant had paid plaintiff's father back $200 a week in regard to the additional monies. We decline to reverse the trial court's finding that the $14,000 down payment on the marital home was a gift to plaintiff because this finding rested on its determination of the parties' credibility.

Defendant also contends that the trial court erred by not crediting him for property that plaintiff dissipated and that it clearly erred when it found that defendant received the benefit of a boat. We disagree. "[W]hen a party has dissipated marital assets without the fault of the other

spouse, the value of the dissipated assets may be included in the marital estate." *Woodington*, 288 Mich App at 368. In this case, the interim order required defendant to vacate the marital home and to take or pay to store his property, including recreational vehicles, boats, and other personal items. Plaintiff testified that defendant moved out in October 2017, but he left behind a snowmobile in the yard and a non-functioning boat. Defendant stated that a friend would pick up the boat, but no one did, so plaintiff sold it for $500. Defendant testified that the value of the combined property that plaintiff sold was $8,300. Defendant claimed that his friend did not pick up the boat and that he now owed the friend $1,000. The trial court found that defendant received the benefit of one boat, that plaintiff sold a second boat for $500, but that plaintiff had not dissipated other personal property.

While the trial court appears to mistakenly have believed that there were two boats at issue, we conclude that any error was harmless. In this case, defendant had been required to vacate the home and remove or pay to store his property, including the boat and his personal items. Plaintiff waited "for months" before selling the property, and there is no indication in the record that defendant paid money for storage. Accordingly, plaintiff did not wastefully or foolishly dispose of defendant's property, regardless of whether defendant's friend eventually picked up the boat or plaintiff sold it.

Defendant next contends that the trial court erred by failing to award him specific personal property. A party may not appeal an error that the party created. *Clohset v No Name Corp (On Remand)*, 302 Mich App 550, 555; 840 NW2d 375 (2013). A court may require the parties to submit lists of items from the marital residence that each claims as his or her own personal property. See *Perrin v Perrin*, 169 Mich App 18, 23-24; 425 NW2d 494 (1988). A party who does not address the issue at the time of the property division may not later seek relief in the form of a modification of the judgment. *Id*. at 24. In this case, the trial court told the parties to send it specific requests for personal property and stated that it would divide the items. Nothing in the record indicates that defendant in fact submitted such a list. Accordingly, defendant is not entitled to relief.

Finally, defendant argues that the trial court erred when it awarded defendant only 40% of the marital estate because the court based its decision solely on the parties' fault in causing the divorce. We disagree. The trial court's division of marital property need not be mathematically equal, but it must be equitable. *Sparks*, 440 Mich at 158-159. The trial court should clearly explain any significant departure from a congruent division of the marital estate. *Byington*, 224 Mich App at 114-115. Additionally, the trial court may not disproportionately consider fault for the breakdown of the marriage when dividing the marital estate. *McDougal v McDougal*, 451 Mich 80, 88; 545 NW2d 357 (1996).

The record does not support defendant's argument that the court awarded him 40% of the marital estate solely on the basis of fault. The trial court stated that it was basing its decision on both defendant's fault and the *Sparks* factors. The court considered that the marriage was short and that plaintiff was the primary contributor to the marital estate. It found that the parties were young. Considering the parties' health, the court observed that plaintiff was "remarkably resilient and healthy" and that defendant had "fixed" his issue regarding addiction. The court found that both parties had earning abilities and that plaintiff worked two jobs, but defendant was not gainfully employed. The court also considered defendant's use of vile language in text

messages, which were not admitted into evidence. While the trial court should not have considered the text messages, the record does not support defendant's assertion that the court based its marital property division solely on fault. Instead, the court found that the balance of appropriate factors favored awarding plaintiff a larger proportion of the marital estate.

VI. CONCLUSION

With respect to custody, we affirm the trial court's ruling regarding physical custody, reverse the court's decision concerning legal custody, and reverse the court's determination that defendant is entitled to parenting time but only at plaintiff's discretion. With regard to child support, we affirm the trial court's various rulings related to support, except that we remand for consideration whether defendant should be given credit for support payments that he made directly to plaintiff in November 2018. Finally, with respect to the division of the marital property, we affirm the trial court's determinations, except that we remand for an explanation by the trial court regarding its calculation of the equity in the marital home because it does not appear to be consistent with the evidence.

We affirm in part, reverse in part, and remand. We do not retain jurisdiction. Neither party having fully prevailed, we decline to award taxable costs under MCR 7.219.

/s/ Brock A. Swartzle
/s/ Jane E. Markey
/s/ James Robert Redford