

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PAUL D. MACIVER,

Plaintiff–Appellant,

v

PAMELA J. MACIVER,

Defendant–Appellee.

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UNPUBLISHED  
November 4, 1996

No. 181393  
LC No. 94-000158-DM

Before: McDonald, P.J., and White and P. J. Conlin\*, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals the trial court’s grant to defendant of \$50,000 based on her expectancy interest in the appreciation of the marital residence and the grant of a lien on that property. We reverse and remand to the trial court for further factual findings.

Plaintiff claims the trial court erred in granting defendant a \$50,000 award based on her expectancy interest in certain real property originally owned by plaintiff and his parents and subsequently deeded to plaintiff’s parents, because the property was not owned by either plaintiff or defendant and, therefore, is not marital property. Because the property was owned by plaintiff’s parents, defendant would only be entitled to an interest in the property if the trial court found that plaintiff and his parents conspired to defraud defendant out of her interest in the property. *Smela v Smela*, 141 Mich App 602; 367 NW2d 426 (1985). Although the trial court found that defendant relied on the expertise of plaintiff and his family in signing the quit claim deed and that “advantage was taken of her as result of that,” it did not specifically find that plaintiff and his family had conspired to defraud defendant. On remand, the trial court should make specific findings regarding whether defendant was defrauded.

Plaintiff also claims the trial court improperly computed defendant’s expectancy interest of \$50,000. The trial court based its findings that defendant was entitled to \$50,000 on calculations of value not introduced at trial, but in defendant’s closing arguments. A trial court cannot fashion a settlement without regard to the proofs. *Jones v Jones*, 132 Mich App 497; 347 NW2d 756 (1984). The trial court’s use of the information was clearly erroneous. If on remand

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\* Circuit judge, sitting on the Court of Appeals by assignment.

the trial court finds that defendant was defrauded, the parties should be allowed to present evidence as to the valuation of defendant's expectancy interest.

The trial court further erred in imposing an equitable lien on the property in support of the award to defendant. The property was owned not by plaintiff, but by plaintiff's parents who were not parties to the action. In a divorce action, the circuit court may not adjudicate the rights of a third party unless they are brought in as a defendant based on allegations that the third party and a spouse defrauded the other spouse. *Yedinak v Yedinak*, 383 Mich 409; 175 NW2d 706 (1970). In this case plaintiff's parents were not joined as parties to the action, yet the trial court granted an equitable lien on their property. This was contrary to law and the imposition of the equitable lien was in error and should be discharged.

We are not granting a new trial. The trial court should determine whether defendant was defrauded based upon the evidence presented at trial. In the event the court finds defendant was defrauded then the parties will be allowed to present proofs on the value of defendant's interest, if any, in the property.

Reversed and remanded for further findings consistent with this opinion. Jurisdiction not retained. Costs to plaintiff.

/s/ Gary R. McDonald

/s/ Patrick J. Conlin