# STATE OF MICHIGAN

# COURT OF APPEALS

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MARK ALAN SMITH, Personal Representative of the Estate of RANDALL KEVIN SMITH, Deceased,

Plaintiff-Appellee,

v

ALICIA ELAINE ALARCON, f/k/a ALICIA ELAINE SMITH,

Defendant-Appellant.

UNPUBLISHED
December 27, 1996

No. 178194
LC No. 92-001417

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Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant appeals by leave granted an April 18, 1994 post-divorce order interpreting the property settlement agreed to by defendant and plaintiff Randall Smith, now deceased, and entered on June 18, 1993. We reverse in part.

Defendant argues that the trial court's disposition of the July 25, 1993 shares of L. Perrigo Company stock was inequitable. We agree. In this case, the parties reached the terms of the divorce judgment through negotiation. Although courts are generally bound to uphold property settlements reached through negotiation and agreement, *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990), a court may, through its equitable powers, modify the judgment of divorce in order to reach an equitable result, *Hagen v Hagen*, 202 Mich App 254, 258; 508 NW2d 196 (1993). In addition, this Court reviews the lower court's dispositional ruling to determine whether it is fair and equitable under the circumstances. *Sparks v Sparks*, 440 Mich 141, 148-152; 485 NW2d 893 (1992); *Hagen, supra*. In reviewing de novo equity cases, this Court may modify otherwise final judgments to rectify mistakes, clarify and interpret ambiguities, and alleviate inequities. *Hagen, supra*.

In interpreting the terms of the judgment of divorce, the trial court held that it was the parties' intent that defendant receive one-half of the shares purchased by plaintiff on March 12, 1992, and because those shares were now doubled as a result of a two-for-one stock split, defendant was entitled to 3,500 shares from the March 12, 1992 option. However, the trial court then held that because there

was no possible way for the shares purchased by plaintiff on July 25, 1993 to have been transferred to defendant before the July 29, 1993 stock split, defendant was not entitled to benefit from the stock split and was to receive only 1,750 shares.

We conclude that the trial court was correct in giving defendant the benefit of the stock split with regard to the March 12, 1992 option, but erred in not giving defendant the benefit of the stock split with regard to the July 25, 1993 option. The judgment of divorce stated that plaintiff would transfer 1,750 shares, valued as of July 25, 1993, to defendant from the July 25, 1993 option. On July 29, 1993, the Perrigo stock split two-for-one. There was testimony that after such a split, a number of shares transferred have half the value of that same number of shares prior to the split. Therefore, in order for defendant to have 1,750 shares valued as of July 25, 1993, defendant must receive 3,500 post-split shares. By only receiving 1,750 shares after the split, defendant did not actually receive 1,750 shares valued as of July 25, 1993. The fact that the transfer of the stock could not have been completed prior to the date of the split is irrelevant.

Furthermore, plaintiff testified that, prior to the July 25, 1993 option, he possessed 3,000 shares of stock and that he purchased 500 shares with the July 25, 1993 option so that he would have enough to satisfy his obligation under the divorce judgment to transfer 3,500 shares to defendant. Based on plaintiff's own testimony, he must have intended to transfer all of his shares to defendant in satisfaction of his obligation to defendant under the judgment of divorce. After the stock split, plaintiff then had 7,000 shares. Clearly, plaintiff will receive a windfall of 1,750 shares if he is now only required to transfer 5,250 shares (3,500 from the March 1992 option plus 1,750 from the July 1993 option). If the stock split had not occurred, plaintiff would have had no shares because he would have transferred all of his shares to defendant to satisfy the judgment of divorce. However, based on the trial court's ruling regarding the July 25, 1993 option, defendant now has 1,750 shares. This is inequitable.

Because the judgment of divorce stated that defendant was to receive 1,750 shares valued as of July 25, 1993 and the 1,750 shares received after the stock split are only one-half of that value, and because plaintiff will receive a windfall of 1,750 shares if the ruling of the trial court is allowed to stand, we conclude that the dispositional ruling of the trial court regarding the July 25, 1993 option was inequitable. We reverse the trial court's order with regard to the July 25, 1993 option and modify the judgment of divorce to award defendant, in light of the stock split, 3,500 shares from the July 25, 1993 option less the amount of shares necessary to cover, pursuant to the divorce judgment, plaintiff's expenses. Defendant may tax costs. MCR 7.219.

/s/ Martin M. Doctoroff
/s/ Harold Hood
/s/ Richard A. Bandstra