

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH STOCKMAN,

Plaintiff-Appellant,

v

DAVID STOCKMAN,

Defendant-Appellee.

UNPUBLISHED

July 22, 1997

No. 190291

Lapeer Circuit Court

LC No. 93-019548-DM

Before: Hood, P.J., and McDonald and Young, JJ.

PER CURIAM.

Plaintiff Deborah Stockman appeals by leave granted from the property settlement and child support provisions of her judgment of divorce. We affirm the property settlement, but reverse and remand for an increase of defendant's child support obligations in accordance with this opinion.

The parties were married in November 1987 and remained married for approximately seven years. Three male children (born: 6/20/88, 4/3/90, and 12/26/91) were born during the marriage. After the parties were married, plaintiff moved into defendant's house, which defendant built on land deeded to him by his parents. Plaintiff then sold her house, which had been awarded to her in a previous divorce settlement. According to plaintiff, she also received an inheritance of approximately \$8,000 in 1991, and the majority of the money was spent on landscaping and home improvements on the marital home. This marital home was the principal marital asset in the marital estate. At the time of the divorce, the marital home was valued at \$98,000, but subject to a \$32,000 mortgage indebtedness, leaving the parties a \$66,000 equity. Plaintiff testified that the monthly mortgage payment on the home was \$200 per month, with additional payments required for insurance, taxes, and utilities.

Plaintiff testified that she terminated her employment shortly after she married defendant because she was pregnant with their first child. She also claimed that defendant did not want her to secure employment or attend school during the marriage so that she could care for their children. At the time of the divorce proceedings in 1995, plaintiff was working at the "LACADA," a local non-profit women's shelter, and was attending the University of Michigan to obtain a degree in elementary education.

Plaintiff estimated her income to be approximately \$125 per week and estimated that she would obtain her bachelor's degree in 1-1/2 years.

Throughout the marriage, defendant was self-employed as a carpenter and subcontractor. Plaintiff estimated that her husband made approximately \$750 per week. Plaintiff testified that her husband did not report the income from "side-jobs" on his income tax returns. Defendant, however, testified that his adjusted gross income for 1993 was approximately \$1,000 per month. Defendant verified the fact that his 1991 income tax return indicated an income of \$12,200, and his 1992 return indicated an income of \$9,800. When asked whether the profits from several construction contracts were claimed on his taxes, defendant stated that he did not know because plaintiff prepared the tax returns.

The trial court's divorce judgment allowed plaintiff to retain exclusive physical possession of the marital home until defendant paid her \$30,000 for her share of the equity in the home as determined by the court (45%), plus \$5,000 in rehabilitative spousal support in gross. The judgment also gave plaintiff 30 days to find a new home after receiving the total \$35,000 payment from defendant. Regarding defendant's child support obligation, the divorce judgment required defendant to pay \$30 per week per child while there remain three children eligible for support, \$37.50 per week when there are only two children still eligible for support, and \$60.00 per week when only one child remains eligible for child support.

After the divorce judgment was entered, plaintiff retained new counsel and filed a motion for reconsideration, challenging the trial court's determinations regarding child support and the parties' respective shares of the equity in the marital home, as well as the trial court's refusal to allow plaintiff to retain permanent exclusive possession of the marital home. The court denied the motion. With regard to the issue of child support, the trial court concluded that "the evidence of income of [defendant] was virtually nonexistent and the Court awarded far more than recommended by the Friend of the Court." Regarding the determination of the parties' respective shares of the equity in the marital home, the court stated:

"With respect to the marital home, the evidence indicated that the land, the cost of repair and expansion were costs of Mr. Stockman. In addition, the petitioner Mrs. Stockman received a \$5,000 alimony in gross amount to be paid out of the home equity."

Plaintiff first argues that the trial court's decision to award the marital home to defendant as well as a 55% equity interest in the home was clearly erroneous and inequitable. We disagree. This Court must first review the trial court's findings of fact under a clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is clearly erroneous when although there is evidence to support it, the reviewing court on review of all the evidence is left with the definite and firm conviction that a mistake has been committed. *Fletcher v Fletcher*, 447 Mich 871, 899; 526 NW2d 889 (1994). If the court's findings of fact are upheld, this Court must then determine if the ruling was fair and equitable given the circumstances. Because the division of property in a divorce action is an

exercise of discretion, the court's ruling should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sparks, supra* at 152.

Under the circumstances of this case, we conclude that the trial court's factual findings, specifically that plaintiff would be unable to afford the mortgage payments and maintenance of the house, were not clearly erroneous. In determining that defendant should have possession of the marital home, the trial court recognized that both parties had a legal interest in the residence and that both parties had contributed money and labor toward home improvements. The court also found that each party had differing needs concerning finances and convenience. For example, the court noted that plaintiff would be most inconvenienced by moving out of the house since she has custody of the three young children. The court, however, determined that plaintiff would have difficulty with expenses associated with the house (heat, taxes, mortgage payments, etc.) given her income. The trial court recognized that plaintiff's income might increase if she obtained a college degree and secured employment, but noted that "she's not there yet." Plaintiff's employment at the time of the divorce judgment paid about \$100 to \$125 per week. Given the circumstances that existed at the time the trial court formed its decision, we find no clear error in the court's determination that plaintiff could not afford to maintain the residence.

We also conclude that the trial court's decision to award the marital home to defendant was not inequitable. The goal of the trial court in dividing marital assets in a divorce proceeding is to reach a fair and equitable distribution of property. *King v King*, 149 Mich App 495, 500; 386 NW2d 562 (1986); *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990) (defining equitable distribution as "roughly congruence"). The court is not obligated to divide the property equally, however, but may take the circumstances of the parties into account. *Smith v Smith*, 113 Mich App 148, 150; 317 NW2d 324 (1982).

Although defendant was awarded the marital home, plaintiff was awarded slightly less than one-half the value of the home as well as an additional \$5,000 alimony in gross to be paid out of the home equity. It is well established in Michigan that where a division of property is not exactly equal, a trial court may award alimony that compensates for or takes into account its property division. *Boyd v Boyd*, 116 Mich App 774, 786-787; 323 NW2d 553 (1982). This is apparently what happened here. The court divided the value of the house between the parties in a "roughly congruent" manner but awarded legal title of the property to defendant. *Knowles, supra* at 501. Because we conclude that the division of property is equitable, we affirm the lower court's determinations regarding the parties' marital residence.

Plaintiff also argues that the trial court erred in granting child support for the parties' three minor children in an amount less than that recommended by the Friend of the Court guidelines. We agree. A trial court's calculation of the amount of support recommended by the child support formula is reviewed under an abuse of discretion standard. *Calley v Calley*, 197 Mich App 380, 382; 496 NW2d 305 (1992).

The trial court estimated that defendant's income was at least twice the amount reported on his tax returns, or about \$378 per week. Using these figures, the court awarded plaintiff child support in

the amount of \$90 per week for three children, \$75 per week for two children, and \$60 per week when only one child remained eligible. The court's failure to apply its income determinations to the tables contained in the Child Support Formula Manual resulted in an award that deviated substantially from the guidelines in a manner disadvantageous to plaintiff. The current support schedule for three children, included in Appendix C of the Manual, indicates that a custodial parent with a weekly income of \$100 to \$125 should be awarded \$183 per week where the noncustodial parent's income is between \$375 and \$380 per week. The manual recommends an award of \$143 for two children with parents in this income bracket and \$93 if only one child is eligible.

Although the award of child support is within the discretion of the trial court, Michigan law requires the court to calculate child support obligations in accordance with the Michigan Child Support Formula Manual. *Id.* at 382. MCL 552.16(2); MSA 25.96(2) provides:

(2) Except as otherwise provided in this section, the court shall order support in an amount to be determined by application of the child support formula developed by the state friend of the court bureau. The court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:

- (a) The support amount determined by application of the child support formula.
- (b) How the support order deviates from the child support formula.
- (c) The value of property or other support awarded in lieu of the payment of child support, if applicable.
- (d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

Here, the trial court not only deviated substantially from the formula in calculating defendant's child support obligations, but also failed to indicate on the record why the deviation was appropriate. The court neglected to do so despite plaintiff's repeated challenges to the amount of the award. In fact, given the court's statement in its June 1, 1995 order denying reconsideration, it appears that the court believed that it awarded "far more than recommended by the Friend of the Court." Accordingly, we remand this case so that the trial court can adjust the support order in accordance with MCL 552.16(2)(a)-(d); MSA 25.96(2)(a)-(d).

Affirmed in part, reversed in part, and remanded for an increase of defendant's child support obligations in accordance with this opinion. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Gary .R.McDonald
/s/ Robert P. Young, Jr.

