

STATE OF MICHIGAN
COURT OF APPEALS

MARK H. SOWERS,

Plaintiff-Appellee,

v

CHRISTINE A. SOWERS,

Defendant-Appellant.

UNPUBLISHED
October 28, 1997

No. 199147
Marquette Circuit Court
LC No. 96-031964-DO

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

On May 24, 1996, the trial court granted the parties a divorce. An amended judgment of divorce was entered on November 1, 1996. With the exception of plaintiff's pension, the property of the parties was divided in an almost equal fashion. Defendant was granted one-third of plaintiff's pension in the amended judgment as opposed to the one-half she requested and she appeals as of right. We affirm.

Plaintiff filed for divorce after more than 25 years of marriage. Defendant counter-sued. Fault was not an issue at the subsequent trial. Rather, the parties focused on the available assets and the potential distribution of those assets. The trial court made specific findings of fact as to the value of the assets and divided them. The original judgment of divorce allowed the parties to keep their own pensions. Defendant was awarded approximately \$80,000 more than plaintiff from the remaining assets.

At the hearing, neither party presented evidence as to the present value of their respective pensions. Thereafter, defendant filed a motion for new trial claiming that the present value of plaintiff's pension was \$624,871 and the present value of her pension was only \$32,209. Thus, she argued that the court's original judgment of divorce was inequitable. The trial court issued an order granting defendant's motion in part:

At the trial of this cause, no evidence was submitted as to present value of the parties' two pension plans. The Court considered the pension plan of the defendant, the work history and potential of the parties, the Social Security eligibility issue as to the

plaintiff, and their relative economic circumstances, and concluded that the defendant was entitled to about one-third of plaintiff's pension and that plaintiff should receive no interest in defendant's pension plan. The Court decided it was best to accomplish this division by an award of nonpension assets to the defendant, which would be approximately equal to one-third of plaintiff's pension amount, and did so by awarding approximately \$80,000 more in nonpension assets to defendant.

Based upon the submission by the defendant in its motion for new trial, the Court can see that it may have been mistaken as to the present value of one-third of plaintiff's pension. Assuming, arguendo, that the present value analysis of plaintiff's pension attached to defendant's motion is correct, the court's estimate of the present value was far too low. This, the Court concludes, is a mistake of fact by the Court. Defendant is entitled to the relief herein granted in order to avoid an unjust result.

A hearing to value plaintiff's pension never occurred, however, because the parties subsequently agreed to an amended judgment of divorce, which incorporated the trial court's ruling that defendant should receive one-third of the present value of the pension. Under the amended judgment, defendant receives \$1,033.32 per month, which is one-third of plaintiff's \$3,099.97 monthly pension payment. The other assets from the marital estate were re-distributed in an equal fashion in the amended judgment. Defendant argues that the trial court's failure to award her one-half of plaintiff's pension resulted in an inequitable disparity of approximately \$200,000 in the distribution of assets. We disagree that the distribution was inequitable.

Defendant moved the trial court to issue more specific findings of fact after the motion for new trial had been decided. The trial court denied the motion.

We review the trial court's findings of fact in a divorce case under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). If the findings of fact are upheld, we review the dispositional ruling to determine if it was fair and equitable in light of the facts. *Id.* at 151-152. The ruling should be affirmed unless we are "left with the firm conviction that the division was inequitable." *Id.* at 152. A division of property need not be equal to be equitable. *Id.* at 159. In fact one goal in distributing assets in a divorce is to reach a fair distribution of property "depending on the needs and resources of each party." *King v King*, 149 Mich App 495,500; 386 NW2d 562 (1986).

The following factors may be considered in resolving a property dispute:

(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. [*Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).]

In ruling on the motion for new trial, the trial court informed the parties that it had awarded one-third of the pension because defendant had her own pension and because of the work history of the parties, the issue of plaintiff's eligibility for social security and the parties relative economic circumstances. These findings were adequate. The relevant facts were not contested or challenged by the parties on the record.

The record indicates that defendant, then forty-six years old, was employed in a job that paid \$36,184 per year with a pension. Defendant had been performing her job for more than seven years and her pension was going to partially vest at ten years. At age sixty, she will be able to obtain benefits from that pension. The testimony revealed that defendant would also be eligible for social security benefits. Additionally, the record indicates that plaintiff, also forty-six years old, was retired from his career as a police officer and had a job at a bank, which he did not consider to be a permanent job¹. Plaintiff also testified that because of the nature of his pension plan he would not be eligible to collect social security². At the time of the hearing, he was collecting \$3,099.97 per month from his pension.

Because plaintiff does not contest the present value of his pension as \$624,871, we therefore assume that amount is its value. Defendant's award of one-third of the pension appears to leave approximately \$200,000 more on plaintiff's side of the balance sheet when all of the assets are distributed. However, under the circumstances, we find no gross disparity in the distribution of the property and we are not left with the firm conviction that the division of property was inequitable. Under the amended judgment, plaintiff receives \$2,066.65 per month from his pension. Defendant receives \$1,033.32 from plaintiff's pension. Defendant also earns approximately \$3,000 per month in pre-tax income. Upon her retirement, she will continue to receive one-third of plaintiff's pension plus after she reaches the age sixty, she will receive benefits from her own pension. She also will collect social security benefits. Based on the needs and resources of the parties, the distribution appears equitable.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Richard A. Bandstra

¹ Plaintiff was apparently employed as a security guard at a bank, but because of a personal protection order that defendant had against him, he felt that his employment situation was difficult and that he had been ostracized by police departments and others in his field. At the time of the filing of his brief on appeal, he was no longer working at the bank. Defendant contends that his job at the bank paid approximately \$1700 per month.

² At the motion for new trial, defendant speculated that plaintiff could collect social security either through her or could collect if he worked for ten years in another job after his retirement. On appeal, she again contends that plaintiff may be able to collect social security under one of those methods. Plaintiff argues that he will not be able to collect social security through defendant because the amount

would be offset by his pension and due to the size of his pension, there would be no money left after an offset. Whether plaintiff will work ten more years after retirement, which occurred in 1995, is speculative.