

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICIA MARIE GUINAN,

Plaintiff-Appellee,

v

DONALD LUKE GUINAN,

Defendant-Appellant.

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UNPUBLISHED

May 1, 1998

No. 197585

Wayne Circuit Court

LC No. 96-601207 DO

Before: Sawyer, P.J., and Bandstra and J. B. Sullivan\*, JJ.

PER CURIAM.

Defendant appeals as of right from the parties' judgment of divorce. Specifically, defendant challenges the trial court's division of the marital property and award of alimony to plaintiff. We affirm the alimony award, and remand on the issue of property division for a correction or modification of the judgment to accurately reflect the court's intention in dividing the property, or to justify its reasoning.

The trial court divided the marital property, awarding the parties' \$180,000 home to plaintiff, and awarding plaintiff \$2,400 alimony in gross.

Defendant argues that the trial court committed error by miscalculating its intended division of the marital assets and then by refusing to correct its admitted error, rendering its property dispositional ruling inequitable, and which also resulted in an unfair alimony award to plaintiff.

In reviewing a dispositional ruling in a divorce case, this Court must first review the trial court's findings of fact for clear error, and then decide whether the dispositional ruling was fair and equitable in light of those facts. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). Property and alimony dispositional rulings will be affirmed unless this Court is left with the firm conviction that the distribution was inequitable. *Id.*; *Ianitelli v Ianitelli*, 199 Mich App 641, 642; 502 NW2d 691 (1993). The goal of distributing marital assets in a divorce proceeding is to reach a "fair and equitable" distribution in light of all the circumstances. *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). To reach an equitable division, the trial court is given broad discretion in fashioning

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

its rulings, is not held to a strict mathematical formula, and is only required to consider those factors relevant to the case before it. *Sands v Sands*, 442 Mich 30, 34-35; 497 NW2d 493 (1993).

In this case, defendant first specifically argues that the trial court miscalculated the equity in the marital residence by twice deducting the mortgages, thus awarding plaintiff a greater and unfair percentage of the marital assets than was intended. The stipulated value of the marital home was \$180,000. The evidence shows that this property had a first mortgage on it of \$41,000, and a second mortgage of \$16,500 for a total encumbrance of \$57,500. Therefore, net equity in the home was \$122,500.

In its dispositional ruling, the trial court stated:

I am going to find that equity in the house is 122,500. Mrs. Guiana [sic] will have to, not only get the house but she will assume the first mortgage, the second mortgage, and the CoAmerica [sic] bank charge balance of \$3,000 which leaves her with, I guess, what would accumulate to be a net gain \$57,900.

The court did make a mathematical miscalculation. With plaintiff receiving the home valued at \$180,000, and assuming the mortgages totaling \$57,500, and the \$3,000 Comerica balance, her net gain on these items would be \$119,500 rather than the \$57,900 that the court figured. Apparently, the court deducted the mortgages more than twice, making a \$61,600 error in calculations. A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). We hold that the court made a clear error in its factual findings where it miscalculated the equity in the marital home.

Next, the trial court's disbursement of the parties' remaining marital assets resulted in a property division as follows: an approximate total of \$131,893 for plaintiff, and \$104,000 for defendant—approximately a 56%/44% split favoring plaintiff. However, the court stated: "That really comes out to a - - if we're tallying things, \$89,000, roughly, for Mr. Guiana [sic], \$70,000 for Mrs. Guiana [sic]."

The \$70,000 total quoted by the court here for plaintiff reflects the court's \$61,600 mathematical mistake in computing the equity in the marital home, and where plaintiff was *actually* awarded property worth more than \$131,000. Defendant filed a motion for a new trial, and at the hearing on that motion the court responded to defendant's allegation of error in the property dispositional ruling as follows:

What I see here is maybe a misstatement as to the calculations; may be an error in the way that I actually ended up with the calculations getting to a certain asserted point, but the bottom line from what I see in the awards that were made was I remember the intention that the award as delivered from the Bench was correct. If there is any error, it might be somewhere in the calculations of that nature, but the net award - - the net figure as I gave it from the Bench, the final figure was what I intended.

The court thus conceded its mathematical error. However, the court's mentioning of the "net figure"—"the final figure" that was intended apparently refers to the tallied amounts for the property division as stated by the court at trial of \$70,000 for plaintiff and \$89,000 for defendant—a 44%/55% split favoring defendant—rather than the actual \$131,893 for plaintiff and \$104,000 for defendant—a 56%/44% split favoring plaintiff. The division of marital property in a divorce case is within the trial court's discretion as long as it was equitable in light of the facts, and a fair and equitable division need not be done with mathematical precision making it exactly equal between the parties. *Ackerman, supra*, 807; *Impullitti v Impullitti*, 163 Mich App 507, 513; 415 NW2d 261 (1987). In this case, the court's actual division of property was different from what it stated was its intended dispositional ruling.

Therefore, the trial court's property disposition ruling was inequitable, not because of the mathematical error alone, which would not necessarily be fatal, or the disparity in the amounts, but because it effectuates a result contrary to the court's stated intent. The inequity lies in the court's clear factual error in its mathematics which effectuated a disposition favoring plaintiff when its intent was to divide the property so as to favor defendant. Where the court's stated intent was at odds with what it actually did, remand is necessary. Accordingly, we remand on the question of whether the actual property disposition favoring plaintiff was inequitable given the court's apparent stated intent to favor defendant.

Defendant also argues that the court erroneously added a \$4,000 attorney fee award to plaintiff's property distribution. The award of attorney fees in a divorce action is within the trial court's discretion. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). In this case, the court awarded \$2,000 in attorney fees to plaintiff and the extra \$2,000 was so plaintiff could "straighten out the affairs of the home." Therefore, the attorney fees awarded did not total \$4,000. Also, defendant fails to state why plaintiff is not entitled to attorney fees—he merely makes a bald assertion that the court erred in awarding attorney fees for the same reasons it erred in awarding alimony. A trial court has great discretion in dividing marital property, *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993), and defendant does not cite in his brief on appeal any authority to support his position that the attorney fee award should not have been added to the property distribution; therefore, this issue is not properly before this Court, *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Defendant next argues that the court abused its discretion in its alimony award to plaintiff. An award of alimony is within the trial court's discretion, *Pelton, supra*, 27, and the factors that should be considered in determining alimony are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the ability of the parties to work; (4) the source of and amount of property awarded to the parties; (5) the age of the parties; (6) the ability of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the health of the parties; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity, *Ianitelli, supra*, 644.

In the instant case, plaintiff reserved the right to receive alimony, but the court awarded \$2,400 alimony in gross to plaintiff anyway. The record reflects that the court fairly addressed those factors it considered relevant to its award of alimony, which is all that is required, *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992), and the court's factual findings, with the exception of the error in calculating the equity in the marital home, were supported by the record. Also, plaintiff earns an annual salary of about \$23,000, whereas defendant earns approximately \$43,000 plus a \$225 per month car allowance, nearly twice as much as plaintiff. Plaintiff has health problems causing her concern whether she will be able to continue working. The court also awarded a substantial amount of the parties' property holdings to defendant, and, as discussed above, apparently intended an overall property division favoring defendant.

"The main objective of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party," *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992), and alimony should be just and reasonable under the circumstances, *Maake, supra*, 187. We conclude that given the facts of this case, the trial court's award of alimony was not inequitable.

The record shows that the trial court's intention was to award more of the marital property to defendant but that it actually awarded more to plaintiff, and that the final judgment, in contravention to the court's stated intent, was the result of a clear mathematical error which in turn renders the judgment inequitable. We thus vacate that portion of the judgment of divorce which divides the marital property, and remand to the trial court for either a correction or modification of the judgment to accurately reflect the court's actual intent in dividing the property, or if the court did intend a distribution as was actually awarded as provided for by the judgment on its face, the court must more accurately articulate its reasoning.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ David H. Sawyer  
/s/ Richard A. Bandstra  
/s/ Joseph B. Sullivan