

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

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BARBARA J. RUSH-DUNCAN,

Plaintiff/Counter Defendant-  
Appellee,

V

RONALD BOYD DUNCAN,

Defendant/Counter Plaintiff-  
Appellant.

UNPUBLISHED

April 1, 2003

No. 238218

Wayne Circuit Court

LC No. 00-016732-DO

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Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Defendant Ronald Duncan appeals as of right from the trial court's judgment of divorce with respect to the division of the parties' marital liabilities. We remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed for divorce on May 23, 2000. Among the parties' other marital difficulties, they had also failed to file tax returns for 1997, 1998, 1999, and 2000. Plaintiff filed her tax returns separately after the initiation of divorce proceedings. However, at the time of divorce, apparently due to inadequate withholdings plaintiff continued to owe various amounts in federal, state and local taxes, the sum of which included penalties and interest. When dividing the parties' assets and liabilities, the trial court found that both parties were equally at fault for the failure to file the marital tax returns and provided the following division of this liability:

Now, both of them are educated adults and knew better than to delay filing, and should have filed separately if they did not plan to file jointly. As a result of their delay, there are penalties and interest that have accrued.

The Court therefore orders that Plaintiff wife's 1997 tax liability, together with penalties and interest, is to be divided 50/50 among the parties; further orders that Plaintiff wife's tax liability for 1998 is to be divided 50/50, together with penalties and interest. As to 1999 tax liability, the Court orders that the principal amount is to be divided 50/50, and that Plaintiff wife is responsible for 100 percent of the penalties and interest for those tax years. This ruling is as to all three taxing authorities. As to the year 2000, their separate tax liability or refunds

are granted to the respective parties, and they are directed to file separately henceforth.

The court's subsequent judgment of divorce incorporated this ruling. However, the judgment also stated that defendant's responsibility to plaintiff for his portion of her tax liabilities totaled \$20,044.41. In contrast, an application of the trial court's judgment using the amounts set forth in the exhibits furnished by the parties at trial should result in defendant owing plaintiff one-half of approximately \$14,072.83, or \$7,036.42.

Defendant now claims that the trial court clearly erred in awarding plaintiff the amount of \$20,045.41 in connection with her outstanding tax liabilities. In essence, he claims that the trial court incorrectly calculated his share of plaintiff's tax liability and thus maintains that the award was inequitable in light of this error. We agree.

As noted above, the trial court's math does not match its stated intent. As such, we reverse the trial court's judgment and remand for further proceedings. 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).

While the trial court is given broad discretion in fashioning its rulings to reach an equitable division and is not held to a strict mathematical formula when doing so, *Sands v Sands*, 442 Mich 30, 34-35; 497 NW2d 493 (1993), the court in the instant case divided the parties' property contrary to its stated intent. Therefore, we agree with defendant's argument that the trial court's dispositional ruling was inequitable, not because of the mathematical error alone, but because it effectuates a result contrary to the court's stated intent. The error led to the inequitable result of a more favorable judgment for plaintiff than the court intended. We therefore remand to allow the trial court to either correct or modify the disparity in its judgment to accurately reflect its intention to divide the tax liability fifty-fifty or, if it intended a disparity in the property division, explain more specifically its intent to do so.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage