

STATE OF MICHIGAN
COURT OF APPEALS

REBECCA E. SPAGNUOLO,

Plaintiff/Counterdefendant-
Appellee/Cross-Appellant,

v

JOHN D. SPAGNUOLO,

Defendant/Counterplaintiff-
Appellant/Cross-Appellee.

UNPUBLISHED

May 21, 2009

No. 275439

Wayne Circuit Court

LC No. 05-500609-DM

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Defendant appeals by right, and plaintiff cross-appeals, following the circuit court's judgment of divorce. We affirm in part, vacate in part, and remand for further proceedings consistent with this opinion.

I. Basic Facts

At the time trial began in 2006, plaintiff and defendant had been married for 19 years. The parties have five children, four of whom were born during the marriage.¹ Throughout the marriage, defendant owned various restaurants and also owned a catering business. Plaintiff was a stay-at-home mother and the children's primary caregiver. At the time of trial, defendant's last restaurant had been closed for approximately three years. Defendant has a degree in culinary studies. Although plaintiff previously attended cosmetology school, she has not worked as a hairstylist since the mid-1980s. Plaintiff testified at trial that defendant had worked long hours during the marriage and had rarely been at home with the family. Plaintiff testified that defendant had "basically brought home the money."

Although plaintiff at times contributed to defendant's businesses by paying some of the bills and helping with some of the bookkeeping, defendant exclusively operated and managed the

¹ Two of the children had already attained the age of 18 years at the time of trial. The remaining minor children resided with plaintiff.

businesses and retained ultimate control over both the business and family finances. The evidence suggested that defendant had at times concealed the true extent of his business revenues from plaintiff and had frequently commingled business and personal funds. The evidence further suggested that defendant conducted many of his business transactions in cash and did not keep accurate and regular records concerning his business income or expenditures. Indeed, because of this absence of business records, the circuit court was required to rely on defendant's tax returns to estimate his annual income.

Following a 12-day trial, the circuit court entered a judgment of divorce, including an extensive provision concerning the marital estate and the division of marital assets. Both parties now appeal various aspects of that judgment.

II. Standards of Review

In granting a judgment of divorce, the circuit court must make findings of fact and dispositional rulings. *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). On appeal, we first review the circuit court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008). Following a divorce trial, the circuit court "must make findings of fact as provided in MCR 2.517" MCR 3.210(D). The court must "find the facts specially" and "state separately its conclusions of law" MCR 2.517(A)(1).

Findings of fact will not be reversed unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). A finding is clearly erroneous if, after a review of the entire record, we are left with the definite and firm conviction that a mistake was made. *Beason*, 435 Mich at 805. We give special deference to the circuit court's findings when based on the credibility of the witnesses, *Johnson v Johnson*, 276 Mich App 1, 11; 739 NW2d 877 (2007), and the determination of the proper time for valuation of an asset is in the circuit court's discretion, *Gates v Gates*, 256 Mich App 420, 427; 664 NW2d 231 (2003).

If the circuit court's findings of fact are upheld, we must decide whether the dispositional ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary, and will be affirmed unless we are left with the firm conviction that the division was inequitable. *Sparks*, 440 Mich at 151-152; *Berger*, 277 Mich App at 727. This Court may modify judgments to rectify mistakes, interpret ambiguities, and alleviate inequities. *Hagen v Hagen*, 202 Mich App 254, 258; 508 NW2d 196 (1993).

We review the circuit court's grant of attorney fees in a divorce action for an abuse of discretion. *Reed*, 265 Mich App at 164. The court's findings of fact are reviewed for clear error. *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007).

The circuit court's decision to admit or exclude evidence will not be disturbed on appeal absent an abuse of discretion. *Elezovic v Ford Motor Co*, 472 Mich 408, 419; 697 NW2d 851 (2005). The court abuses its discretion when it makes a decision that falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "A decision on a close evidentiary question ordinarily cannot be an abuse of discretion." *Lewis v LeGrow*, 258 Mich App 175, 200; 670 NW2d 675 (2003).

III. Defendant's Appeal

A. Defendant's Brief on Appeal

As an initial matter, we note that defendant's brief on appeal, filed *in propria persona*, is confusing and difficult to read. Defendant has made several claims of error without citation to legal authority and has also raised several cursory suggestions of error that are not supported by adequate briefing or argument. For example, defendant's statement of facts, MCR 7.212(C)(6), and prayer for relief, MCR 7.212(C)(8), contain several terse assertions and other cursory claims that are unrelated to the substance of the argument section of his brief. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority. Argument must be supported by citation to appropriate authority or policy." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (citations omitted); see also *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Moreover, legal argument must be confined to the argument section of an appellant's brief. MCR 7.212(C)(7). We have granted defendant considerable leeway in the presentation of his appeal, and address certain of his underdeveloped claims in section III(H), below. However, some of these cursory assertions are simply too unsupported by relevant argument to justify consideration.

B. Recusal

Defendant argues that the circuit judge should have recused herself from this matter. He also contends that, in the event of any remand, this case should be remanded for further proceedings before a different judge. We disagree.

"A trial judge is presumed to be impartial, and the party asserting partiality has the heavy burden of overcoming that presumption." *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898 (2006). A proponent of judicial disqualification must make a showing of *actual* bias or prejudice. *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996); *Impullitti v Impullitti*, 163 Mich App 507, 514; 415 NW2d 261 (1987). Mere suspicions of possible bias do not constitute proof of partiality or prejudice. See *People v Upshaw*, 172 Mich App 386, 388; 431 NW2d 520 (1988). Defendant has simply not provided any evidence that the circuit judge in this case was *actually* partial toward or biased against either party. When a party fails to demonstrate actual bias, due process only requires judicial disqualification "in situations where 'experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Crampton v Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975), quoting *Withrow v Larkin*, 421 US 35, 47; 95 S Ct 1456; 43 L Ed 2d 712 (1975). Defendant has not sufficiently supported his claim in this regard, and has therefore failed to overcome the strong presumption of judicial impartiality.

C. Various Alleged Trial Errors

Defendant next argues that the circuit court committed various trial errors by disallowing witness testimony regarding plaintiff's alleged alcohol abuse, by permitting plaintiff's attorney to badger certain witnesses, and by admitting hearsay and allegedly irrelevant evidence. We cannot agree.

1. Alleged Alcohol Abuse

Defendant has asserted in his statement of the questions presented that the circuit court abused its discretion “by not allowing witnesses to testify . . . that [plaintiff’s] alcohol abuse interfered with client relationships” and by not permitting witnesses to testify that plaintiff’s alleged alcohol abuse “negatively” affected defendant’s business. However, defendant has not addressed the merits of this claim of error in the argument section of his brief on appeal, and has only cursorily asserted elsewhere in his brief that plaintiff’s “continued abuse of alcohol is documented,” that the circuit court “continue[d] minimizing the problem letting it fester,” that plaintiff “finally admit[ted] to Judge Hathaway that she has an alcohol abuse problem,” and that “our children deserve a sober Mom.” As noted previously, legal argument must be confined to the argument section of an appellant’s brief. MCR 7.212(C)(7). At any rate, defendant has not specifically identified *how* the circuit court precluded any witnesses from testifying concerning plaintiff’s alleged alcohol abuse, *which* witnesses would have testified concerning this alleged abuse, or *how* their testimony would have affected the outcome of the proceedings. Because defendant has failed to address the merits of this issue and has not offered support for his position, his claim of error with respect to plaintiff’s alleged alcohol abuse is abandoned. *Prince*, 237 Mich App at 197. Moreover, even if this issue had not been abandoned, we perceive no outcome-determinative error requiring reversal in this regard. See *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 529; 730 NW2d 481 (2007) (noting that this Court will not reverse on the basis of error that was not decisive to the outcome).

2. Badgering of Witnesses

Similarly, defendant has asserted in his statement of the questions presented that the circuit court “abuse[d] its discretion [by] allowing [plaintiff’s] counsel to badger [defendant’s] witnesses.” But defendant has merely claimed in the body of his brief that plaintiff’s attorney “badger[ed] my sister and the Judge allow[ed] it,” that plaintiff’s attorney “call[ed] me a liar and attempt[ed] to malign my character,” that plaintiff’s attorney “harass[ed] me in the courtroom,” that the conduct of plaintiff’s attorney constituted “obvious harassment of defendant’s sister,” that this alleged badgering and harassment “was never taken into consideration by Judge Hathaway,” and that plaintiff’s attorney “turned the courtroom into a coliseum to fight an unwarranted vendetta[] against me” Defendant has not identified *how* plaintiff’s attorney badgered him and his sister, and even more importantly, he has not indicated how this alleged badgering impaired his trial rights or affected the outcome of the proceedings. Not only has defendant abandoned his claim of error in this regard, *Prince*, 237 Mich App at 197, but we find no substantive error requiring reversal, see *Ypsilanti Fire Marshal*, 273 Mich App at 529 (noting that this Court will not reverse on the basis of error that was not decisive to the outcome).

3. Hearsay and Irrelevant Testimony

Defendant next contends that the circuit court erred “by allowing hearsay and irrelevant questioning by [plaintiff’s] counsel, adding to unnecessary attorney fees.” Specifically, defendant contends that the alleged badgering by plaintiff’s counsel consisted of “hearsay [that] was irrelevant and continued for five days, adding more wasted time” This is the entire extent of defendant’s argument on this issue. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims” *Peterson Novelties*, 259 Mich App at 14.

D. Defendant's Tax Returns

Defendant argues that the circuit court erred by relying on his income tax returns to estimate his annual income for child support purposes. He argues that his actual income was less than the amounts indicated on the tax returns. Plaintiff responds by arguing that the circuit court actually undervalued defendant's income by relying on the income tax returns. Plaintiff contends that defendant earned much more than he reported as income during the years in question. We find no error.

There was a great deal of conflicting testimony concerning defendant's actual income during the marriage. As noted, defendant argues that he actually earned less during the marriage than his personal and corporate income tax returns suggested. In contrast, plaintiff argues that because defendant did not report much of his business income, which was largely taken in as cash, his actual income was much higher than suggested by the income tax returns. It was clear from the evidence presented in this case that defendant's annual income varied considerably from year to year due to the nature of defendant's restaurant and catering businesses. In the end, the circuit court relied on defendant's personal and corporate tax returns, as well as the testimony presented, to establish defendant's average income for child support purposes.

We perceive no error in the circuit court's use of defendant's tax returns to estimate his average annual income for child support purposes. Under the Michigan Child Support Formula Manual, "[t]he first step in figuring each parent's support obligation is to determine both parent's individual incomes." 2008 Michigan Child Support Formula Manual, § 2, p 5. This Court has previously held that the circuit court "should examine a party's tax returns in order to determine net income" for child support purposes. *Borowsky v Borowsky*, 273 Mich App 666, 676; 733 NW2d 71 (2007). Moreover, the Child Support Formula Manual specifically provides that "[w]here income varies considerably year-to-year due to the nature of the parent's work, use three years' information to determine that parent's income." 2008 Michigan Child Support Formula Manual, § 2.02(B), p 8. In light of this section, which specifically directs the court to average a parent's annual income over a three-year period in cases such as this, we find that the circuit court acted within its discretion by averaging the income amounts reported on defendant's 2002, 2003, and 2004 income tax returns.

Furthermore, we perceive no reason why the general rules concerning valuation of assets should not apply with equal force to the valuation of one parent's annual income. The circuit court's valuation of an asset is a finding of fact that we will reverse only if it is clearly erroneous. *Pelton*, 167 Mich App at 25. When valuing an asset, the circuit court "may, but is not required to" accept either party's valuation evidence, and "has great latitude in arriving at a final figure." *Id.* at 25-26. In general, no clear error is present when the court's final valuation falls within the range established by the proofs. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Here, the circuit court averaged defendant's 2002, 2003, and 2004 income tax returns to arrive at a final average income of \$77,461 for child support purposes. This average figure fell squarely within the range established by the proofs, and was therefore not clearly erroneous. *Id.*

E. Debt

Defendant also argues that the circuit court erred by holding him solely responsible for the debt incurred in his business and by dividing certain credit card debt between the parties. We agree in part.

It is typically presumed that debts accumulated during the marriage are marital in nature. See 2 Michigan Family Law, Property Division, § 15.33, p 15-36; see also *Socha v Socha*, 5 Mich App 404, 412; 146 NW2d 839 (1966). However, a circuit court may properly require one party to pay a debt incurred during the course of the marriage if the court determines that the debt, or a majority of it, was incurred solely by that party. *Lesko v Lesko*, 184 Mich App 395, 401; 457 NW2d 695 (1990), overruled on other grounds *Booth v Booth*, 194 Mich App 284, 291; 486 NW2d 116 (1992). The circuit court is in the best position to determine whether a particular debt is marital in nature or whether it is separate debt properly allocated to one individual. *Id.*

1. Business Debt

Defendant contends that the circuit court erred by allocating solely to him all debt incurred in his business, Yadig Detroit, Inc.² He asserts that the business debt was marital in nature and should have been divided between the parties. In response, plaintiff argues that the debt incurred in the business was defendant's separate debt, was correctly excluded from the marital estate, and was properly allocated to defendant alone. After a thorough review of the record, we agree with plaintiff.

The evidence in this case tended to show that although plaintiff made nominal contributions to the business by paying certain bills and helping with some of the bookkeeping, the business was primarily owned, operated, and managed by defendant alone. Indeed, defendant at all times retained control over the business and its expenditures. In addition, defendant overwhelmingly controlled the income of the business; he invested it, spent it, or otherwise disposed of it as he saw fit, without consulting plaintiff in most instances. This evidence demonstrated that the business was owned and operated by defendant individually. *Dougherty v Dougherty*, 48 Mich App 154, 161; 210 NW2d 151 (1973). Because the business debt was created and incurred largely—if not exclusively—by defendant, *Lesko*, 184 Mich App at 401, we conclude that it was neither unjust nor inequitable for the circuit court to allocate all of the business debt to him, *Dougherty*, 48 Mich App at 161.³

² We note that the parties stipulated before trial that Yadig Detroit, Inc. had no value. Therefore, it was not clearly erroneous for the circuit court to determine that the shares of Yadig Detroit, Inc. had no value, either. *Beason*, 435 Mich at 805.

³ Defendant contends that certain debts owed to Eric Adams and John Gerych were not business related. However, the evidence showed that these debts were incurred for the purchase of business stock or inventory and the rental of business equipment. The circuit court did not clearly err by determining that these debts were incurred in the restaurant or catering business or by including them in the overall business debt allocable to defendant. *Beason*, 435 Mich at 805.

2. Credit Card Debt

Defendant next argues that the circuit court erred by equally dividing the Discover Card debt and the Chase Card debt between the parties. He asserts that because the Discover Card “was used solely by Plaintiff,” and because the Chase Card was “used without Defendant’s knowledge or permission,” the debt on both cards should have been allocated entirely to plaintiff. We disagree with defendant concerning the Discover Card debt, but must remand for clarification and reconsideration of the Chase Card debt.

The evidence established that much of the outstanding debt on the Discover Card had been incurred by the parties during the marriage and was simply carried over from that time. Plaintiff points out that the Discover Card “was used solely by Plaintiff” after she filed for divorce. But although plaintiff incurred additional debt on the card after she filed for divorce, the proofs demonstrated that this additional debt was incurred primarily for basic items such as groceries and other necessities for the parties’ children. We find no error in the circuit court’s determination that the Discover Card debt was joint marital debt. *Beason*, 435 Mich at 805. The court’s decision to divide the Discover Card debt equally between the parties does not firmly strike us as inequitable. *Sparks*, 440 Mich at 151-152.

With respect to the Chase Card, the evidence established that defendant had used the card to purchase electronics or related items, which he kept for himself after the divorce. However, the evidence also established that plaintiff used the card for certain items. There existed some confusion surrounding the Chase Card, which was largely attributable to the circuit court’s mistaken belief that there were actually two different cards. The circuit court believed that there was one “Chase Card” and another “Circuit City Card,” holding defendant solely responsible for the “Chase Card” debt, but dividing the “Circuit City Card” debt “50/50.” The court’s finding that there were two different credit cards in this respect was clearly erroneous. *Beason*, 435 Mich at 805.

As both parties have made clear through their briefs on appeal, the “Chase Card” and “Circuit City Card” were one and the same. The card was first used by defendant to purchase electronics, but was thereafter used by plaintiff to purchase various other items. It is not clear to us what amount of the debt was attributable to defendant’s electronics and what amount was attributable to plaintiff’s later purchases. Further, it is not clear whether plaintiff’s later purchases on the Chase Card were marital or separate in nature. Plaintiff argues that her purchases on the Chase Card were for basic family items such as groceries and necessities for the children. But defendant appears to argue that plaintiff’s later purchases on the Chase Card were personal in nature and that the accompanying debt should be borne solely by her. In light of the confusion about the Chase Card and the uncertainty concerning the Chase Card debt, we must vacate the circuit court’s decision as it relates to the “Chase Card” and “Circuit City Card” and remand. On remand, the circuit court shall clarify that there was only one Chase Card, and shall further determine which portion of the Chase Card debt is properly allocable to each party.

F. Child Support Formula

Defendant also argues that the circuit court should have deviated from the applicable guidelines in reaching a fair and equitable decision concerning his child support payment

amount. Specifically, he asserts that the business debt allocated to him was jointly accumulated and that it should have been used to offset his child support obligations. We disagree.

In determining the contributions to child support payable by divorced parents, the circuit court must generally follow the child support formula developed by the Friend of the Court. MCL 552.605(2); *Berger*, 277 Mich App at 722-723. The assessment of support and the support formula are based on the children's needs and circumstances and each parent's ability to pay. *Shinkle v Shinkle (On Rehearing)*, 255 Mich App 221, 225; 663 NW2d 481 (2003). A court may deviate from the support formula only if application of the formula would be unjust or inappropriate. MCL 552.605(2); *Gehrke v Gehrke*, 266 Mich App 391, 396; 702 NW2d 617 (2005). The court must specify in writing or on the record the reasons the formula would be unjust or inappropriate. MCL 552.605(2); *Gehrke*, 266 Mich App at 396.

As defendant correctly notes, the Child Support Formula Manual recognizes that “[s]trict application of the formula may produce an unjust or inappropriate result in a case when . . . [a] parent has a reduction in the income available to support a child due to extraordinary levels of *jointly accumulated debt*.” 2008 Child Support Formula Manual, § 1.04(E)(5), p 2 (emphasis added). But as noted above, defendant largely incurred the business debt himself, without any material participation by plaintiff. Thus, it was not “jointly accumulated debt” that should have been considered under § 1.04(E)(5).

We acknowledge that the Child Support Formula Manual also provides that “[i]n exercising its discretion to deviate, the court may consider any factor that it determines relevant,” 2008 Child Support Formula Manual, § 1.04(D), p 2, and that a court may deviate from its provisions on the basis of “[a]ny other factor the court deems relevant to the best interests of a child,” 2008 Child Support Formula Manual, § 1.04(E)(18), p 3. However, apart from § 1.04(E)(5), defendant has identified no other factor that he believes the circuit court should have considered in deciding whether to deviate from the formula. Notably, defendant does not argue that he did not owe child support or that it was unfair or unjust to require him to pay child support in this case. We cannot conclude that the circuit court's application of the child support formula was unjust or otherwise inappropriate under the circumstances of this case. MCL 552.605(2); *Gehrke*, 266 Mich App at 396.

G. Attorney Fees

Defendant argues that the circuit court effectively held him responsible for the compensation of plaintiff's lawyer by awarding plaintiff a parcel of marital real estate to use in defraying her attorney fees. Defendant asserts that this was unfair, especially in light of the fact that he received a less valuable piece of realty to defray his own attorney fees. We find no abuse of discretion.

Attorney fees in divorce actions are not recoverable as of right. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). However, “[n]ecessary and reasonable attorney fees may be awarded to enable a party to carry on or defend a divorce action.” *Stallworth*, 275 Mich App at 288. “A party to a divorce action may be ordered to pay the other party's reasonable attorney fees if the record supports a finding that such financial assistance is necessary to enable the other party to defend or prosecute the action.” *Stackhouse*, 193 Mich App at 445; see also MCL 552.13(1) and MCR 3.206(C).

In the present case, both parties were awarded parcels of marital real estate to defray their respective attorney fees. It is beyond dispute that plaintiff received a more valuable parcel than did defendant. However, as discussed previously, plaintiff earns far less than defendant, and was therefore less able to pay her attorney fees than was defendant. See *Stallworth*, 275 Mich App at 288-289. Moreover, it is well settled that a party should not be required to invade her assets to satisfy attorney fees when she is relying on those same assets for her support. *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993). The circuit court's award of a more valuable piece of real property to plaintiff than to defendant for the purpose of defraying her attorney fees was well supported by the evidence, and we perceive no abuse of discretion in this regard. *Stallworth*, 275 Mich App at 288-289; *Kurz v Kurz*, 178 Mich App 284, 298; 443 NW2d 782 (1989); *Ozdoglar v Ozdoglar*, 126 Mich App 468, 472-473; 337 NW2d 361 (1983).

H. Defendant's Remaining Claims

Defendant makes several cursory assertions, none of which is included in his statement of the questions presented. Claims not raised in an appellant's statement of the questions presented are considered abandoned on appeal. MCR 7.212(C)(5); *Ypsilanti Fire Marshal*, 273 Mich App at 543. Nonetheless, we will briefly address these assertions.

1. Spousal Support

We find no error in the circuit court's award of spousal support to plaintiff in the amount of \$1,300 per month, "to continue for a period of eight years, or until Plaintiff's death, remarriage or residing with an unrelated adult male, whichever occurs first." The objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. Spousal support must be based on what is just and reasonable under the circumstances of the case. *Berger*, 277 Mich App at 726. It was clear from the evidence presented at trial that defendant had a much higher salary than plaintiff, that defendant thus had a greater ability to pay, that plaintiff would need additional income in order to maintain her standard of living, that defendant had concealed from plaintiff a portion of his cash income during the course of the marriage, and that general principles of equity supported an award of alimony for plaintiff. See *id.* at 726-727. We are not left with a firm conviction that the award of spousal support for plaintiff was inequitable under the circumstances of this case. *Id.* at 727.

2. Blue Cross/Blue Shield Debt

Certain debts were owed to defendant's father, who had apparently paid some of the parties' Blue Cross/Blue Shield health care premiums during the course of the marriage. The circuit court noted that it would calculate the Blue Cross/Blue Shield debt due to defendant's father and would divide the debt equally between the two parties. The court observed that it would hold the parties "equally responsible for this debt after reducing the amount owed (\$26,754) by the amounts already paid . . . as payment for health care premiums." Specifically, the court stated that it would exclude from the total amount due "any checks that [defendant] paid to his dad during that time period that have been identified as for . . . rent." Defendant agrees that the Blue Cross/Blue Shield debt should have been divided equally between the parties, but complains that the court excluded rent payments that he had paid to his father when calculating the total amount due as Blue Cross/Blue Shield debt. He asserts that this undervalued

the amount due to his father and that the court should therefore recalculate the amount actually due for Blue Cross/Blue Shield debt.

We are in agreement that the Blue Cross/Blue Shield debt should have been equally divided between the parties as a joint marital obligation. However, because the circuit court failed to make adequate findings of fact on this issue, we cannot determine whether the court properly excluded from the total amount only those amounts already paid to defendant's father for Blue Cross/Blue Shield premiums, or whether it also excluded certain other amounts that had been paid for rent or other purposes. We must vacate the circuit court's calculation of Blue Cross/Blue Shield debt and remand for recalculation of the correct amount. On remand, the court shall exclude from the total amount due only those amounts already paid to defendant's father for Blue Cross/Blue Shield premiums. The remaining amount shall then be equally divided between the parties.

3. Miscellaneous Items

Defendant suggests in passing that there were several "assets and obligations which were not addressed" by the circuit court, including (1) "[t]he van that was impounded and lost due to Plaintiff's drunk driving incident," (2) "[t]he debt to James Hrydziuszko in the amount of \$3,250," (3) "[t]he parties['] debt to Jim Pongracz in the amount of \$10,000," and (4) "[t]he Standard Federal Bank loan for \$9,000." Defendant contends that "[p]laintiff should be responsible for paying to Defendant one half the value of the impounded and lost van" and that "the other debts should be equally divided, or Defendant should be given some consideration [for them]."

Defendant is incorrect in asserting that the circuit court did not address the debt to James Hrydziuszko, the debt to Jim Pongracz, and the Standard Federal Bank loan. Indeed, the circuit court specifically ordered defendant to pay all three debts in their entirety. We acknowledge that the circuit court made no specific findings of fact regarding these three debts. But defendant has not identified *why* it was erroneous for the court to hold him responsible for the debts or *how* the debts constituted marital obligations. Similarly, although the court did not address the van that was allegedly "impounded and lost," defendant has not described the circumstances of the incident and has cited no authority for the proposition that "[p]laintiff should be responsible for paying to Defendant one half the value of the impounded and lost van." As stated earlier, "an appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims" *Peterson Novelties*, 259 Mich App at 14. "Argument must be supported by citation to appropriate authority or policy." *Id.* Defendant has simply provided too little briefing, and we are accordingly unable to discern the substance of his argument with respect to these issues. We deem these matters abandoned on appeal.

IV. Plaintiff's Cross-Appeal

A. Calculation of Defendant's Income

Plaintiff first argues that the circuit court significantly undervalued defendant's annual income for child support and spousal support purposes. Plaintiff insists that defendant regularly took in cash income that was not reported on his annual tax returns. Rather than averaging defendant's personal and corporate tax returns and arriving at an average annual income of

\$77,461, plaintiff contends that the circuit court should have valued defendant's true income as \$156,297 in 2003, \$132,106 in 2004, and \$108,610 in 2005, for an average annual income of \$132,338.

The problem with plaintiff's argument in this regard is that she has not specified how she arrived at these figures. Indeed, it appears that plaintiff has merely speculated that defendant's true average income was \$132,338. Speculation and conjecture are insufficient means by which to prove the value of an asset. See *Wiand v Wiand*, 178 Mich App 137, 149; 443 NW2d 464 (1989). It is likely true that the circuit court's figure of \$77,461 does not represent defendant's actual or precise average income for these years. However, as we concluded above, this \$77,461 figure nonetheless fell within the range of possible incomes established by the proofs in this case. *Jansen*, 205 Mich App at 171. When valuing an asset, the circuit court "may, but is not required to" accept either party's valuation evidence, and "has great latitude in arriving at a final figure." *Pelton*, 167 Mich App at 25-26. We simply cannot say that the circuit court clearly erred by valuing defendant's average annual income at \$77,461. *Id.*; see also *Jansen*, 205 Mich App at 171.

B. Disputed Assets

Plaintiff argues that the circuit court erred by excluding certain assets from the marital estate and by disproportionately awarding certain assets to defendant. We agree in part.

1. 20-Acre Parcel

We find no error with respect to the circuit court's determination that the parties held only a one-half ownership interest in the 20-acre parcel in Deckerville, Michigan. Plaintiff unequivocally testified that although the 20-acre parcel was originally purchased with marital funds, she and defendant had subsequently signed a deed conveying a one-half interest in the parcel to defendant's brother. Defendant confirmed plaintiff's testimony in this regard. The circuit court did not clearly err by finding that plaintiff and defendant held only a one-half interest in the 20-acre parcel. *Beason*, 435 Mich at 805.

2. Gartmore Funds Account

But we conclude that it was clearly inequitable for the circuit court to award the monies withdrawn from the Gartmore Funds account solely to defendant. The evidence showed that the parties opened the Gartmore Funds account during the marriage and had approximately \$30,000 in the account immediately preceding the point at which plaintiff filed for divorce. However, the evidence also established that defendant subsequently unilaterally withdrew these funds and deposited them into his own personal account at Standard Federal Bank. We do not mean to imply that the circuit court clearly erred in its findings of fact regarding the Gartmore Funds account. Indeed, the court stated on the record that it was "satisfied this was a marital fund." Nevertheless, the court stated that it was "not going to order the return of this fund" because "no one has gone through this process with clean hands." The court ultimately awarded all monies withdrawn from the Gartmore Funds account to defendant, "free and clear from any claim of Plaintiff."

This firmly strikes us as inequitable. *Sparks*, 440 Mich at 151-152. The Gartmore Funds account was, as the circuit court recognized, a marital asset. Furthermore, it appears to us that by withdrawing the funds and depositing them into his own personal account at the time plaintiff filed for divorce, defendant was attempting conceal the funds from plaintiff. Unlike the circuit court, we perceive no evidence that both parties acted with unclean hands. Instead, we believe that it was defendant, alone, who acted deceptively with respect to the Gartmore Funds account.

We vacate that portion of the judgment that awarded the Gartmore Funds account—or more accurately the approximately \$30,000 withdrawn from the account—to defendant. We remand to the circuit court for a determination of whether defendant attempted to conceal the funds by withdrawing them from the Gartmore Funds account and placing them in his own personal account. If the court determines that defendant did not attempt to conceal the funds, then the approximately \$30,000 in funds shall be equitably divided between the parties. However, if the court determines from the strong evidence already provided that defendant did, in fact, withdraw the funds in an attempt to conceal them from plaintiff, then the court shall consider awarding a greater proportion of the funds to plaintiff than to defendant in accordance with our Supreme Court’s decision in *Sands v Sands*, 442 Mich 30, 36; 497 NW2d 493 (1993).⁴

3. David Street Property

We similarly vacate and remand with respect to the circuit court’s determination that the David Street property was not a marital asset. Other than stating that “there is no legal interest in this property by either party,” the court made no particular findings of fact concerning the David Street parcel. Defendant maintained that his sister owned the David Street property outright and that he had never paid any marital funds toward the purchase of the parcel. Plaintiff disputed this, testifying that although defendant’s sister had actually purchased the parcel, it was bought with marital funds and was owned by plaintiff and defendant as a marital asset. Plaintiff testified that the previous owner of the property had “disliked [defendant] so much that he refused to sell it to [him],” and that defendant had therefore asked his sister to purchase it on the parties’ behalf.

The circuit court made no specific findings with respect to the David Street property and did not explain why it favored defendant’s testimony over that of plaintiff. Nor did the circuit court address the contention that defendant had designed his sister’s purchase of the David Street property either as a way of concealing the fact that he had used marital funds to purchase it or as a way of keeping it separate and segregated from the marital estate. As noted previously, the circuit court must make specific findings of fact in a divorce case. MCR 3.210(D); MCR 2.517(A)(1); *Reed*, 265 Mich App at 150. Here, the court did not do so. We are therefore unable to meaningfully review the propriety of the circuit court’s decision regarding the David Street property. We vacate that portion of the judgment of divorce that excluded the David Street property from the marital estate and remand. On remand, the circuit court shall make specific findings of fact with respect to the David Street property, shall determine whose testimony

⁴ The fact that the monies from the Gartmore Funds account may have already been spent is of no consequence to our holding in this regard. Defendant was not authorized to unilaterally withdraw the funds or to spend them.

concerning the parcel was more credible, and shall consider, pursuant to our Supreme Court's decision in *Sands*, whether defendant designed his sister's purchase of the David Street property as a way to conceal his use of marital funds or to keep the property separate from the marital estate. If the court determines on remand that the David Street property was a marital asset, the court shall equitably award plaintiff a share of the asset. See *Sparks*, 440 Mich at 151-152. And if the court determines that defendant attempted to conceal the true ownership of the parcel from plaintiff or to conceal the use of marital funds to purchase the property, the court shall consider awarding a greater proportion of the property to plaintiff than to defendant. *Sands*, 442 Mich at 36.

4. Ford Mustang

We also vacate and remand with respect to the circuit court's award of the Ford Mustang solely to defendant. In awarding the Ford Mustang to defendant, the circuit court also allocated all indebtedness existing on the vehicle to defendant. The court believed that it was equitable to award the vehicle solely to defendant because he would also be required to pay the debt existing on the vehicle.

Had there been no payments on the Ford Mustang from the marital estate, we would have no trouble affirming the circuit court's disposition of the vehicle in this manner. However, although the down payment on the vehicle was actually paid with a check from defendant's father's account, it appears that a substantial portion of the amount paid actually came from the marital estate. Specifically, the evidence showed that defendant deposited marital funds into his father's account shortly before the Ford Mustang was purchased with his father's check. The court did not take this into consideration, merely awarding the vehicle to defendant as if there had been no marital funds used in the purchase of the vehicle.

We vacate that portion of the judgment of divorce that awarded the Ford Mustang solely to defendant and remand. On remand, the circuit court shall determine what amount of marital funds, if any, were used in the purchase of the Ford Mustang. If the court determines that marital funds were used, the court shall equitably award plaintiff a share of those marital funds. See *Sparks*, 440 Mich at 151-152. In addition, if the court determines that marital funds were used to purchase the vehicle, it shall make findings concerning whether defendant structured the purchase of the Ford Mustang so as to avoid inclusion of the vehicle in the marital estate or to conceal the use of marital funds from plaintiff. If the circuit court finds that defendant designed the purchase of the vehicle for either of these reasons, it shall consider awarding a greater proportion of the marital funds used to purchase the vehicle to plaintiff than to defendant. *Sands*, 442 Mich at 36.

C. Disputed Debt

In addition to the Discover Card debt and Chase Card debt, which is addressed above in section III(E)(2), plaintiff argues that the circuit court erred by allocating to her certain other marital debt. We agree in part.

1. Sears Card

The circuit court concluded that the Sears Card debt would be allocated solely to plaintiff, but made no specific findings of fact to support this conclusion. The circuit court must make specific findings of fact in a divorce case. MCR 3.210(D); MCR 2.517(A)(1); *Reed*, 265 Mich App at 150. Here, there were none,⁵ and we cannot determine why the court allocated this debt solely to plaintiff. Indeed, it appears that much of the Sears Card debt was incurred for groceries, tuition payments, and other necessities for the children. We vacate that portion of the judgment of divorce that allocated the Sears Card debt solely to plaintiff and remand. On remand, the circuit court shall make findings of fact concerning the items purchased with the Sears Card. If it appears to the court that the Sears Card debt was incurred primarily for family expenses and the support of the parties' children, the court shall equitable divide the Sears Card debt between plaintiff and defendant. See *Sparks*, 440 Mich at 151-152.

2. Miscellaneous Debts

We perceive no error with respect to the circuit court's decision concerning the property taxes on the Lochmoor parcel or the alleged debt owed to plaintiff's mother. The property taxes at issue became payable during the marriage and the circuit court did not reach an inequitable result by holding both parties responsible for them. *Id.* The testimony did not establish that the amount paid to plaintiff and the children by plaintiff's mother was subject to repayment by the parties. Although plaintiff's mother did agree with counsel's suggestion that she would "like to be paid back for the money [she gave] to Becky and the children," there was simply no indication that the money was a loan to the parties or that repayment of the money to plaintiff's mother was a marital obligation. To the extent that any of the money from plaintiff's mother might have been subject to repayment, the circuit court did not err by determining that this should be plaintiff's responsibility alone.

D. Property Awarded for Plaintiff's Attorney Fees

Plaintiff lastly argues that the circuit court reached an inequitable result by awarding her insufficient property to cover her substantial attorney fees. Specifically, she asserts that her attorney fees in this case were significant and that the parcel of realty awarded to her was insufficient to cover the high cost of her lawyer. We cannot agree. The parcel of real estate awarded to plaintiff to cover her attorney fees had a greater value than the parcel of real estate awarded to cover defendant's attorney fees. Indeed, plaintiff acknowledges on appeal that the parcel she received was worth "\$89,000 more than [the] piece of property awarded to [defendant]." Nonetheless, plaintiff argues that this was "not sufficient." We recognize that the legal fees incurred by plaintiff in this matter were higher than those incurred by defendant, but we simply cannot conclude that the circuit court abused its discretion by awarding plaintiff property that was worth "\$89,000 more" than the property it awarded to defendant. *Reed*, 265

⁵ The court did remark from the bench that the Sears Card was "used solely by [plaintiff]," but did not consider the nature of the expenses incurred on the card, most of which appear to have been paid to support the children.

Mich App at 164. Moreover, the amount of attorney fees incurred by plaintiff was largely within her own control. We perceive no error or unfairness in the circuit court's specific award of property to defray the parties' respective attorney fees.

V. Conclusion

We affirm the circuit court's valuation of defendant's income, the circuit court's assignment of the business debt to defendant, the circuit court's application of the Child Support Formula Manual, and the circuit court's award of spousal support to plaintiff. We also affirm the circuit court's specific award of real property to plaintiff and defendant to cover their attorney fees, the circuit court's decision to divide the Discover Card debt equally between the parties, and the circuit court's determination concerning the 20-acre parcel in Deckerville. Lastly, we affirm the circuit court's decisions concerning the van that was allegedly impounded, the debt to James Hrydziuszko, the debt to Jim Pongracz, the Standard Federal Bank loan, the property taxes on the Lochmoor parcel, and the alleged debt to plaintiff's mother.

We vacate and remand for further proceedings with respect to the Chase Card debt, the Blue Cross/Blue Shield debt, the Sears Card debt, the Gartmore Funds account, the David Street Property, and the Ford Mustang.

In light of our conclusions above, we decline to address the remaining arguments raised by the parties on appeal.

Affirmed in part, vacated in part, and 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/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Patrick M. Meter