

STATE OF MICHIGAN
COURT OF APPEALS

AMANDA SCHIAVONE,

Plaintiff-Appellant,

v

PATRICK SCHIAVONE,

Defendant-Appellee.

UNPUBLISHED

April 10, 2014

No. 314058

Oakland Circuit Court

LC No. 2011-780077-DM

Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment of divorce entered by the trial court. On appeal, she challenges the child custody plan, award of spousal support, and division of certain employment incentive and retirement benefits. We affirm in part, and remand in part for further proceedings consistent with this opinion.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

When plaintiff filed for divorce from defendant, she sought joint legal custody of their son, sole physical custody, and reasonable parenting time for defendant. Defendant sought joint legal and physical custody, with parenting time for both. While the divorce was pending, the court entered a temporary order imposing stipulated parenting time to which the parties had agreed, but not deciding the other issues. The child lived with plaintiff in Bloomfield Hills most of the time. Defendant had parenting time at his home in Benton Harbor, where he had moved to take a new job, every other weekend and alternating holidays, several weeks during the summer, and had regular telephone contact. The parties could not agree on where the child would be exchanged for defendant's visitation, and the court ordered them to exchange the child in Albion unless defendant would be in Bloomfield Hills or Ohio, where his parents lived, for the weekend.

A bench trial was held on plaintiff's complaint for divorce. The trial court heard testimony from plaintiff that defendant was verbally abusive, disinterested in family life, abused marijuana, and had affairs. She requested that the trial court follow the parenting time recommendations of the independent psychological evaluator (Carol J. Schwartz, Ph.D.) to whose evaluation the parties had stipulated, which would allow plaintiff and the child to move to plaintiff's home country, England. Plaintiff sought \$3,220 in monthly child support and \$13,200 in monthly spousal support, an equitable division of all marital property except \$48,198 from her inheritance, and attorney fees.

Plaintiff testified that the child was happier and more relaxed in England, that she was looking at homes priced between two and three hundred thousand pounds, and that the child could attend a free public school or a \$15,000 per year private school (using the terms in the American sense); she would enroll him in whichever school had a schedule conducive to defendant's parenting time schedule. Plaintiff further testified that she had a hairdressing certificate from England but it was not recognized in the United States. She said she worked two years as a hairdresser, three years as a children's entertainer and puppeteer at a theme park, and a couple years as a nanny before she met defendant. She testified that, after they moved to Michigan, she worked as a nanny for defendant's co-worker for less than a year and then worked as a technician at a veterinary hospital with on-the-job training. After the child was born, defendant's job for Ford Motor Company paid the bills, and plaintiff took care of the child and the home.

Before she filed the complaint for divorce, plaintiff withdrew \$59,000, half of the money in their joint checking account, and deposited it into her account. She wrote a \$20,000 check to her first attorney, about \$14,000 of which was refunded, and a \$20,000 check to her current attorney. She testified that she had paid her current attorney \$95,000, and each party's attorneys had just received \$5,000 from the joint checking account. Plaintiff also had a money market account with \$48,000 inherited from her mother and grandfather.

Plaintiff acknowledged that her listed expenses included \$1,200 in monthly groceries, \$1,000 monthly for dining out, \$250 per month for domestic help, and \$15,000 in non-parenting time travel expenses, which included travel to and from England and Florida. She agreed that her expenses did not include a house, car, or petrol in England. She said homes comparable to her current home were valued at \$500,000 to \$600,000, and she had looked at homes ranging from \$350,000 to \$600,000. When defendant's attorney suggested her car might cost \$60,000, she replied, "or cheaper." She had not yet looked for jobs in England. However, she had checked at the Michigan veterinarian clinic and believed they would re-hire her at \$20,000 a year for four days a week.

Schwartz testified that the child said he liked being in England and seemed to know and like his family there. She opined that the current parenting time schedule was not in the child's best interests because the travel was hard, exchanges were unpleasant, and he missed Saturday activities. She agreed that it would be a better if defendant got an apartment in Oakland County. However, she opined further that longer visits allowed for better parenting time. She said the private and public school schedules in England included five major breaks, most of which she allotted to defendant in her proposed schedule, including 30 days in the summer. She requested the school schedule because she knew there were more breaks in English schools than in the United States. She admitted defendant said this would be very difficult with his work schedule. Schwartz said the child could fly from England to Chicago, which was closer to Benton Harbor than Birmingham was. Flights were about eight hours each way. She said defendant could also visit if he was in Europe.

Schwartz testified that her recommendation was partly based on plaintiff's and the child's anxiety and need for a place where plaintiff felt supported; however, she was also influenced by defendant's narcissistic tendencies, which made him feel entitled, her interviews with the child, and plaintiff's more cooperative attitude. Schwartz said plaintiff was adamant that the child

should still have time with his father. Schwartz opined further that parenting many days in a row better fostered a good relationship than weekends. She did not know how much control defendant had over his work schedule but noted that he arranged to spend two weeks with the child in the summer and several days over his winter and spring breaks.

Defendant testified that the proposed parenting time schedule would be very difficult; he said he told Schwartz that he wished he could have 50-50 parenting time, but his work schedule would not allow that. He testified that his bosses expected him to be on the road even more than in the past, traveling to Hong Kong, China, India, Brazil, Mexico, and Italy, and that he had a bigger workload when he returned from trips. Defendant said he was not expected to take all his four weeks' vacation; long weekends worked best. He said he tried to be home for weekends, but he might have to leave town if the child visited for longer blocks of time. He testified that picking the child up in Chicago also might be a logistics issue; however, he agreed that six trips to the Chicago airport were easier than 26 trips to Birmingham.

Defendant said he was afraid that, if the child moved to England, the child's uncle would be his de facto father and defendant would lose him forever. He agreed that his calendar already mentioned having the child two weeks in the summer and another week in August; however, he was not sure whether that was possible because he could be asked to travel if there was a problem with a project. He agreed that he already planned to have the child for long weekends during the fall and Christmas breaks and had nothing on his calendar for the rest of those breaks. He also agreed that he had no out-of-country travel in 2010 during the period when the child would have his school vacations in June, later summer, fall, and Christmas. He had the child for one week in August and from Wednesday to Sunday on Labor Day weekend. He was also in Benton Harbor during the fall and Christmas breaks, except holiday travel. In 2012, during the February and spring break dates, defendant had the child from Saturday to Wednesday and was in Benton Harbor the rest of the week. However, defendant testified that his past schedule was not representative of his schedule over the next few years, when his calendar would be packed and he might receive two weeks' or two days' notice to travel.

Defendant admitted to having affairs during the marriage, but stated that plaintiff had lost interest and their differences had become irreconcilable. Defendant testified that he never refused to care for the child or participate in his academic events and tried to participate in his extracurricular activities, although his work schedule could be difficult, especially on weekdays. Defendant testified that he played sports with the child, and sometimes gave him a bath and put him to bed. Defendant was the child's assistant soccer coach for two years. Defendant denied ever physically abusing the child. Defendant alleged that plaintiff had a problem with abusing alcohol.

Defendant testified that, at Ford, he designed the artistic elements of vehicles, and he did the same thing for Whirlpool products. He testified that his current base salary was \$320,000 and he received a \$57,000 bonus in 2012. He agreed that he made \$509,248 in 2011; however, this included the second half of a \$150,000 signing bonus. He said he provided for all of the parties' expenses during their separation, although he was concerned that the monthly credit card bill increased from \$2,500 to \$5,000 or \$6,000. He admitted he stopped paying the bill in the last couple months, and the current balance was \$20,000. He testified that he had restricted stock units that had not yet vested; he would lose them if he quit his job or was fired before the vesting

date. He said he would also owe \$150,000 if he quit, which he believed was the signing bonus. Defendant said he had paid \$55,000 in attorney fees. He testified that he could not support plaintiff's lifestyle at the numbers she provided, whether she stayed in Michigan or moved to England.

The parties stipulated that Ford stock would be redeemed and paid equally to each party's attorney; however, this was to have no effect on either party's claim for attorney fees and costs.

On August 27, 2012, the trial court issued an opinion and order finding that it was in the child's best interests to award joint legal custody, with his primary residence during the school year with plaintiff, and prohibit the parties from moving more than 224 miles from each other, the distance established before the divorce, without leave of the court. The parties were ordered to continue to exchange the child every other weekend in Albion, with alternating holidays and the summer shared equally.

The court found that the child's legal residence was established with each parent when the parenting time orders were issued, and MCL 722.31(3) applied because the residences were already more than 100 miles apart. However, the court held that it must make findings regarding the established custodial environment and best-interest factors under MCL 722.23, because residence outside the state was in dispute. The court held that a custodial environment meant more than which parent had longer periods of physical custody, and the child had an established custodial environment with both parents.

The trial court then used the clear and convincing evidence standard to examine the best-interest factors to determine legal and physical custody, physical residence, and parenting time. The court opined that plaintiff's desire to get away from defendant overshadowed her desire to maintain continuity and stability for the child and did not facilitate the father/son relationship. The court also found that plaintiff proposed to disrupt the child's educational and living environment. Regarding moral fitness, the court found for plaintiff; the court also noted that it took the child's statements in chambers into consideration.

The trial court ordered defendant to pay \$2,518.03 in monthly child support. The court found that defendant was projected to earn \$408,427.46, including \$88,437.46 in extrapolated bonuses, in 2012. He had earned \$308,333 plus bonus earnings of \$150,000 in 2011. As of April 2, 2012, his regular earnings for the year were \$78,333.33, his bonus earnings \$38,541.66, and his "OC bonus earnings"¹ were \$19,270.83.

The trial court determined that plaintiff's inheritance and defendant's restricted stock units, performance cash units, and stock option awards were not marital property and would not be divided. According to the court, the restricted stock options' earliest vesting date was January

¹ It is not clear from the record precisely what "OC Bonus Earnings" are. Plaintiff's Exhibit D, entitled "Preliminary Statement of Net Worth" and attached to her trial brief, places these earnings in the "Non-Retirement Benefits" category.

2013. The court opined that these employment incentives were not earned during the marriage and, even if they were classified as marital property, it was inequitable to award any to plaintiff because she strongly testified that defendant's decision to accept his current employment was unilateral and against her wishes. The court awarded defendant the Whirlpool Employee's Pension Plan and the family home.

Regarding defendant's Ford Savings and Stock Investment Plan, Whirlpool 401(k) Restoration, and Whirlpool 401(k) Retirement, the court held that the parties "shall share equally in the marital share of these retirement accounts." Regarding defendant's defined benefit retirement plans at Ford and Whirlpool, Ford General Retirement Plan Pension, Ford Benefit Equalization Plan, and Whirlpool Employees' Pension Plan for Salaried Employees, the court held that plaintiff "shall receive 50% of the marital share and be named as a beneficiary with survivor rights." The court noted that no evidence was presented regarding the value of those assets.

The trial court allocated the \$22,900 Capital One Master-Card debt to defendant and the \$2,450 British Airways Chase Visa debt to plaintiff. It ordered defendant to pay the tax liability on the liquidated account used to pay attorney fees; however, the parties were thereafter responsible for their own attorney fees.

The trial court ordered defendant to pay plaintiff \$7,500 per month in spousal support for seven years. Defendant's yearly bonus income was not factored into this calculation. The court opined that this allowed "the parties to have relative income while Wife gets back on her feet, but yet does not unnecessarily punish Husband for working hard by allowing him to keep his bonus earnings from a job that Wife did not want him to take."

The trial court declined to find plaintiff in contempt for missing parenting time and for dissipation of the marital estate. The court opined that plaintiff spent excessively, likely in retaliation for defendant's "lewd, adulterous, and bullying behaviors." The court clarified that it considered the parties' conduct when awarding debt, property, and spousal support. The parties were unable to divide personal property, and a hearing was held in November 2012. In December 2012, the trial court issued a judgment of divorce reflecting the decisions set forth in the opinion and order. This appeal followed.

II. STANDARD OF REVIEW

This Court reviews all relevant questions of law de novo. *Harvey v Harvey*, 470 Mich 186, 191; 680 NW2d 835 (2004). This Court reviews custody orders to determine whether the factual findings were against the great weight of the evidence, the court made an error of law, or the court abused its discretion. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). Parenting time orders should also be reviewed to determine whether factual findings were against the great weight of the evidence, the trial court made an error of law, or the court abused its discretion. *Shade v Wright*, 291 Mich App 17, 20-21; 805 NW2d 1 (2010).

This Court reviews an award of spousal support for an abuse of discretion and underlying factual findings for clear error. *Ewald v Ewald*, 292 Mich App 706, 722-723; 810 NW2d 396 (2011). With regard to property division, this Court reviews the trial court's factual findings for

clear error and its dispositional ruling to determine whether it was fair and equitable. *Skelly v Skelly*, 286 Mich App 578, 581-582; 780 NW2d 368 (2009), quoting *Reed*, 265 Mich App at 150. Whether an asset is marital or separate property is a finding of fact reviewed for clear error. *Woodington v Shokoohi*, 288 Mich App 352, 357; 792 NW2d 63 (2010).

III. CHILD CUSTODY

Plaintiff proposed moving to England with the child and providing defendant with five extended parenting periods during the child's school breaks, rather than the existing plan of alternate weekends. Any custody decision that affects parenting time requires a determination whether an established custodial environment would be changed and, if it would be changed, whether the change is in the child's best interests. The decision must be based on clear and convincing evidence under the best-interest factors set forth in MCL 722.23. MCL 722.27(1)(c); *Kessler v Kessler*, 295 Mich App 54, 61-63; 811 NW2d 39 (2011); *Shade*, 291 Mich App at 32.

"The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c). The child's age, the physical environment, and the permanency of the relationship are also considered. MCL 722.27(1)(c). The existence of a temporary court order regarding custody and parenting time does not automatically determine the established custodial environment. See *Jack v Jack*, 239 Mich App 668, 670; 610 NW2d 231 (2000). A custodial environment can exist in more than one home. *Rains v Rains*, 301 Mich App 313, 327; 836 NW2d 709 (2013).

In this case, the trial court found that the child had an established custodial environment with both parents, and this would have changed if plaintiff moved to England with the child. Although it is relevant whether the number of days of parenting time with a parent changes significantly, *Shade*, 291 Mich App at 27-28 & n 3, the ultimate question is whether the parenting time adjustments will "change whom the child naturally looks to for guidance, discipline, the necessities of life, and parental comfort." *Pierron v Pierron*, 486 Mich 81, 87; 782 NW2d 480 (2010). The trial court did not err when it determined that the move to England would likely change the degree to which the child looked to defendant for "guidance, discipline, the necessities of life, and parental comfort," because of the long periods between visits and the likelihood that defendant would not be able to take advantage of all the offered parenting time because of his work schedule.

Therefore, the court did not err when it analyzed all the best-interest factors, MCL 722.23, under the clear and convincing evidence standard. The testimony established that defendant's work schedule prevents him from taking advantage of all the offered periods, and that although plaintiff had always been the child's primary caregiver, he also had a relationship with defendant, who bonded with and guided his son during their visits. We conclude that the court did not abuse its discretion when it found that the move and proposed parenting time schedule were not in the child's best interests and ordered that the parents not move farther apart and continue an alternating weekends and holidays parenting time schedule for defendant. *Berger*, 277 Mich App at 705.

IV. SPOUSAL SUPPORT

Plaintiff also challenges the trial court's decision to exclude defendant's annual bonus from his income when determining spousal support. Spousal support is intended to balance the income and needs of each party in a way that does not result in the impoverishment of either party. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). Income is defined to include "[c]ommissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his or her employer[.]" MCL 552.602(m)(i); *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). However, the trial court may also consider other factors, including the length of the marriage, each party's contribution to the estate, the ages and health of the parties, the parties' necessities and circumstances, each party's earning ability, past conduct of the parties, fault, and general equity principles. MCL 552.23(1); *Myland v Myland*, 290 Mich App 691, 695; 804 NW2d 124 (2010).

There is no formula that the court must follow, *Myland*, 290 Mich App at 699-700; rather, it should be analyzed on a case-by-case basis, *Loutts v Loutts*, 298 Mich App 21, 29-30; 826 NW2d 152 (2012). The amount should be what is just and reasonable under the circumstances. *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003). The trial court explained that it excluded the bonus because of plaintiff's opposition to defendant accepting the employment in Benton Harbor that provided the bonus.

We find that the spousal award was just and reasonable. While defendant's bonus was part of his income, *Moore*, 242 Mich App 652, 654(m)(i), and affected his ability to pay, the trial court was not required to apply a formula using his total income to determine the proper spousal support, and could consider other factors, including plaintiff's opposition to defendant accepting the position and its accompanying bonus. See *Myland*, 290 Mich App at 695, 699-700. The trial court did not abuse its discretion in excluding defendant's bonus from his income when determining the amount of spousal support defendant would pay plaintiff.

V. WHIRLPOOL RESTRICTED STOCK UNITS, PERFORMANCE CASH UNITS, AND STOCK OPTIONS

Plaintiff argues further that the trial court erred when it held that stock options, restricted stock, and performance cash units conditional upon defendant's continued employment with his new employer were not marital property subject to division. Assets earned during the marriage are generally considered marital property and are subject to division. *Skelly*, 286 Mich App at 582. They need not be divided with mathematical equality but they must be equitably divided in light of all circumstances, and any divergence from congruence must be clearly explained. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992).

Here, the trial court stated:

With respect to incentives offered as a condition of employment with Whirlpool, and parenthetically, a decision Wife testified was made unilaterally by Husband without her consent and against her wishes, the court finds that Husband has an unearned, unvested interest in Restricted Stock Units, Performance Cash Units, and Stock Option Awards. The court finds that these assets are not marital

property subject to division by the Court, because although they were awarded during the marriage, they have not been earned during the marriage. *Skelly v Skelly*, 286 Mich App 578, 780 NW2d 368 (2009). Furthermore, even if these employment incentives were classified as marital property, the court finds it inequitable to award any portion of Husband's employment incentives from Whirlpool to wife when she so strongly testified that Husband's decision was unilateral and against her wishes.

Thus, the trial court held that these employment incentives were not earned during the marriage and, even if they were classified as marital property, it was inequitable to award any to plaintiff because she strongly testified that defendant's decision to accept the employment was unilateral and against her wishes.

We find plaintiff's reliance on *Vollmer v Vollmer*, 187 Mich App 688, 689-690; 468 NW2d 236 (1990), misplaced. In *Vollmer*, this Court approved the trial court's determination that unvested shares of stock, earned by the defendant as a bonus during the marriage, were marital property. *Id.* at 689-690. This Court based this holding on MCL 552.18, which provides:

Any rights or contingent rights in and to unvested pension, annuity, or retirement benefits payable to or accrued by the party during marriage *may be considered part of the marital estate subject to award by the court under this chapter where just and equitable.* [Emphasis added.]

A portion of the stock vested annually; this Court opined that "the annual vesting of the stock would seem to put it within the 'annuity' class in the statute." *Id.*

Assuming that the unvested benefits in the instant case could be considered an "annuity,"² MCL 552.18 merely permits the inclusion of the right to such property in the marital estate "where just and equitable"; it does not require it. See *Mill Creek Coalition v South Branch of Mill Creek Intercounty Drain Dist*, 210 Mich App 559, 565; 534 NW2d 168 (1995) (noting that the word "may" in a statute is treated as permissive, not mandatory, unless context indicates otherwise). Here, the trial court specifically held that it would be inequitable to award any portion of the benefits at issue to plaintiff because of her vocal opposition to defendant's acceptance of the job with Whirlpool. We therefore find no clear error in the trial court's determination that the restricted stock units were not marital property.³

² Defendant stated, for example, that the restricted stock units had various vesting dates in January and February of 2013 through 2016.

³ We similarly find plaintiff's reliance on *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997) and *Everett v Everett*, 195 Mich App 50, 51-52; 489 NW2d 111 (1995) to be misplaced. In *Byington*, the defendant met all contingencies and became eligible for a bonus before the entry of the divorce judgment. *Byington*, 224 Mich App at 109-110. In *Everett*, the

Further, all of the employment incentives at issue were contingent upon events that would occur after the marriage ended, supporting the conclusion that they were not marital property. *Skelly*, 286 Mich App at 583. This fact further distinguishes this case from *Vollmer*, as nothing in *Vollmer* reflects that the incentives would be lost if the party quit or was fired. With regard to stock options, for example, the transcript here indicates that defendant was awarded these options during the marriage; however they had not matured, defendant had not yet exercised them, and they would be lost if he did not continue his employment after the dissolution of the marriage. Similarly, it appears from the record that the incentives are in the nature of a retention bonus, in that defendant would have to pay them back, if he had received them at all, if he left the company before a certain date. Thus, because these incentives were contingent upon future performance by defendant, the trial court did not err in declining to consider them marital property. *Skelly*, 286 Mich App at 583-584 (“[t]hese bonuses were not earned during the marriage and are based solely on the potential occurrence of future events unrelated to the marriage”), see also MCL 552.18.

Further, the trial court also stated that, even if the abovementioned employment incentives were marital property, it would have awarded them to defendant because “the court finds it inequitable to award any portion of Husband’s employment incentives to wife when she so strongly testified that Husband’s decision was unilateral and against her wishes.” Division of marital property must be equitable under the circumstances. See *Sparks*, 440 Mich at 159. The trial court heard testimony from plaintiff that defendant made the decision to accept Whirlpool’s offer without her consent and against her wishes. Further, the trial court took into account defendant’s fault in the failure of the marriage as well as his greater income in distributing the marital property, and assigned a larger portion of the marital debt to defendant. Thus, even if the employment incentives were to be considered marital property, the trial court did not abuse its discretion in awarding these incentives to defendant.

VI. DEFENDANT’S RETIREMENT ACCOUNTS AND WHIRLPOOL EMPLOYEE’S PENSION PLAN

The trial court divided equally the “the marital share” of defendant’s retirement accounts. The parties agree that remand is necessary for clarification of what was meant by “the marital share.” Any rights “to unvested pension, annuity, or retirement benefits payable to or accrued by the party during marriage may be considered part of the marital estate . . . where just and equitable.” MCL 552.18(2). Benefits that accrued before the marriage are not treated as part of the marital estate unless it is “just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.” *Booth v Booth*, 194 Mich App 284, 291; 486 NW2d 116 (1992), citing MCL 552.23(1). It is necessary for the circuit court to clarify whether it intended to include benefits that accrued before the parties’ marriage and, if so, to determine that premarital value.

parties agreed that the stock options at issue were marital property; the issue on appeal concerned only valuation, and there was no indication of whether the options had matured or were in any way conditioned on future employment. *Everett*, 195 Mich App at 51-52.

On remand, the trial court must also clarify why it awarded to defendant the entire Whirlpool Employee's Pension Plan, rather than dividing it as marital property under MCL 552.18(2). Defendant does not dispute that it was marital property but argues that the court's decision was equitable because of plaintiff's conduct. When the circuit court does not equally divide marital property, it must clearly explain its decision. *Sparks*, 440 Mich at 159. The decision may have been equitable; however, the court failed to acknowledge that the pension plan was marital property or explain why it did not divide the value. Therefore, remand on this issue is required as well.⁴

VII. ATTORNEY FEES

Finally, plaintiff argues that the circuit court should have granted her the attorney fees she requested. Attorney fees are not recoverable as of right in a divorce; however, they may be awarded when necessary to allow a party to carry on or defend the action, and the party need not invade assets that he or she is to rely on for support to pay his or her attorney fees. MCL 552.13(1); *Gates v Gates*, 256 Mich App 420, 438; 664 NW2d 231 (2003). Plaintiff used half of the funds from the parties' joint checking to assist in paying attorney fees. Defendant was also made responsible for the tax consequences of the liquidated stocks that were used to pay both parties' fees. Plaintiff did not establish that she needed additional assistance in paying her attorney fees.

Affirmed in part, and remanded in part for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens

/s/ Henry William Saad

/s/ Mark T. Boonstra

⁴ Plaintiff also notes on appeal that defendant received the marital home and accompanying debt, which was assumed to be worth less than the mortgage but allegedly generated almost \$100,000 in additional value. This Court need not decide an issue not included in the questions presented. MCR 7.212(C)(5); *Grand Rapids Employees Independent Union v Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999). Further, plaintiff did not assert in the trial court that the house had value, and the trial court appears to have adopted both parties' assumption that the house was more of a financial burden than a benefit. We find this decision equitable under the circumstances of this case. *Reed*, 265 Mich App at 150.