

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

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DEBRA A. MANTEY,

Plaintiff-Appellant,

v

DONALD E. MANTEY,

Defendant-Appellee.

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UNPUBLISHED

January 15, 2013

No. 309042

Saginaw Circuit Court

LC No. 08-003051-DO

Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Plaintiff Debra Mantey appeals as of right the trial court's divorce judgment denying her request for spousal support from defendant Donald Mantey, and distributing the parties' property. Because the trial court's factual findings are insufficient for this Court to conduct a meaningful review of the judgment, we affirm in part, reverse in part, and remand.

**I. FACTS**

**A. BACKGROUND FACTS**

Debra Mantey and Donald Mantey married in 1976. At that time, Debra Mantey was 19 years old, and Donald Mantey was 24 years old.

When the parties were married, Debra Mantey had a high school diploma and Donald Mantey had a bachelor's degree in mechanical engineering. During the course of the marriage, Debra Mantey worked part-time in schools and churches. Debra Mantey testified that she never earned more than \$12,000 a year during the marriage, and at the time of trial, she was working part-time at a church and earning \$12.50 an hour. Her wages for the 2010 tax year were \$13,357.

Donald Mantey operated two farming businesses during the course of the marriage: (1) Mantey Brothers, and (2) Ed Mantey & Sons. Mantey Brothers was a partnership between Donald Mantey and his brother. Ed Mantey & Sons was a corporation in which the parties owned 50 percent of the shares, and Donald Mantey's brother and sister-in-law owned 50 percent of the shares. Ed Mantey and Sons provided health insurance for its shareholders, and the parties had a health savings account as part of their insurance plan. Donald Mantey reported that he had a base salary of \$60,000 in 2009, and a taxable income of \$203,437.

Debra Mantey filed for divorce in 2008. At the time of trial, Debra Mantey was 54 years old and Donald Mantey was 59 years old. The parties agreed that the marriage suffered from a lack of communication and intimacy after the parties' children left the home, but disputed who was more at fault for the breakdown of the marriage.

#### B. ADVANCES AND PRETRIAL SPOUSAL SUPPORT

Donald Mantey obtained a \$20,000 loan for Debra Mantey's divorce expenses, which the parties agreed that Debra Mantey would pay out of her divorce settlement. In March 2010, the trial court ordered Donald Mantey to pay Debra Mantey's accounting expert fees, which it would deduct from Debra Mantey's eventual property settlement.

The trial court initially ordered Donald Mantey to pay Debra Mantey \$3,300 a month in temporary spousal support. In January 2011, the trial court increased spousal support to \$5,659 a month. At that time, Donald Mantey began deducting \$918 a month from his spousal support payment for Debra Mantey's medical expenses. At trial, Debra Mantey argued that this improper deduction placed Donald Mantey in arrears on his spousal support.

Donald Mantey testified that when Debra Mantey filed for divorce, he and his brother determined that Ed Mantey & Sons should not provide Debra Mantey's health insurance. He testified that he reimbursed his brother for the insurance, and that an allowance for health insurance was already included in Debra Mantey's spousal support award.

#### C. DISPUTED PROPERTY AT TRIAL

The parties stipulated that the value of the marital home was \$243,000, and that it had a mortgage of \$127,948. The parties also owned a significant amount of land (the farm parcels) that they leased to Ed Mantey & Sons. They stipulated that the farm parcels' total value was \$564,700, but disputed whether some of the parcels were Donald Mantey's separate property. Donald Mantey argued that the farm parcels' total value was \$399,000 when his separate parcels were removed from the calculation.

Debra Mantey argued that Ed Mantey & Sons's value was \$652,706. Donald Mantey argued that Ed Mantey & Sons's value was either \$468,000 or \$442,306. The parties also disputed whether Debra Mantey was entitled to any of the value of a partnership called Mantey Hills.

In 1989, Donald Mantey's parents gifted 240 acres jointly, with full rights of survivorship, to Donald Mantey, his brother, his sister, and Edgar Mantey's trust. The property was appraised at \$535,000, and included a cabin, significant acreage, timber, and gas wells. In 1996, the four individuals formed the Mantey Hills partnership, and deeded their properties to the partnership. The partnership agreement valued the partnership at \$160,000. The parties disputed whether Debra Mantey had any interest in the Mantey Hills partnership, or the partnership's property.

Debra Mantey requested half of the value of the royalties from a wind energy lease. Donald Mantey testified at trial that there was no indication that the wind leases would be utilized or generate royalties.

Debra Mantey requested half of the value of the parties' personal property. At the time of trial, the appraisal listed \$1,695 of the personal property as in Debra Mantey's possession, and \$13,370 of the personal property as in Donald Mantey's possession; the personal property in Donald Mantey's possession included \$2,400 worth of guns that Donald Mantey claimed were his separate property.

#### D. THE TRIAL COURT'S ORDER AND JUDGMENT

The trial court found the parties' property was marital property because it was treated as marital property during the marriage. The trial court's order awarded Donald Mantey the home, subject to all indebtedness, "with a value of \$127,948"; all of the farm real estate, "valued at \$399,000"; Mantey Brothers, valued at \$102,751; Ed Mantey & Sons, valued at \$442,306; and Mantey Hills. The trial court did not find a value of Mantey Hills, but found that Debra Mantey had "a remote contingency interest" in Mantey Hills with a "minimal" value. The trial court awarded Debra Mantey \$536,490 as her share of the marital property, and deducted \$24,000 from her award for "prepayment of the \$20,000 and \$4,000 CPA fees." The trial court declined to award spousal support.

Debra Mantey filed a motion for clarification, arguing that the trial court's order contained several errors and did not address some of the issues raised by the parties. The trial court heard the parties' arguments, and ruled that the judgment of divorce would correct any errors. However, the judgment of divorce contains the same awards as in the trial court's order.

### II. THE TRIAL COURT'S FACTUAL FINDINGS

#### A. STANDARD OF REVIEW

This Court reviews the trial court's factual findings for clear error, including the trial court's valuation of marital assets.<sup>1</sup> The trial court's factual findings are clearly erroneous if after considering all of the evidence, we are definitely and firmly convinced that the trial court made a mistake.<sup>2</sup> However, we will not substitute our judgment for that of the trial court.<sup>3</sup>

#### B. LEGAL STANDARDS

The trial court must determine the property rights of parties in a judgment of divorce.<sup>4</sup> The parties' stipulations of fact are binding on the trial court.<sup>5</sup> But the trial court clearly errs if it

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<sup>1</sup> *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010).

<sup>2</sup> *Beason*, 435 Mich at 805.

<sup>3</sup> *Id.*

<sup>4</sup> MCR 3.211(B); *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003).

<sup>5</sup> *Gates v Gates*, 256 Mich App 420, 426; 664 NW2d 231 (2003).

fails to make specific findings of fact on the values of disputed marital properties.<sup>6</sup> The trial court's findings of fact are sufficiently specific if the parties can "determine the approximate values of their individual awards by consulting the verdict along with the valuations to which they stipulated."<sup>7</sup>

### C. APPLYING THE STANDARDS

We conclude that the trial court clearly erred when it made essential findings of fact. First, the trial court determined that the parties' marital home was valued at \$127,948. This amount was clearly erroneous because the parties stipulated that the home was valued at \$243,000; \$127,948 was the value of the home's mortgage. We are convinced that the trial court made a mistake when it adopted the value of the mortgage as the value of the marital home.

Second, the parties stipulated that the combined value of the farm parcels was \$564,700. The parties only disputed whether certain parcels were marital property or Donald Mantey's separate property. The trial court found that this property was marital. It then found that the farm parcels' value was \$399,980, which was the value Donald Mantey proposed if the trial court found that certain farm parcels were separate property. This award is inconsistent with the parties' stipulation, and we conclude that the trial court clearly erred when it found the value of the farm parcels was \$399,980.

Third, the trial court did not make any findings on the disputed value of the wind leases.

Fourth, concerning the disputed Mantey Hills property, the trial court found that:

Defendant will receive the property known as Mantey Hills. Plaintiff, as of the date of filing for divorce, had a remote contingency interest in the property, but the value of her interest, at best, would be minimal.

The trial court did not explain this finding, and its finding is very difficult for this Court to review in light of the parties' arguments. Donald Mantey argued that he successfully conveyed the interest, and that because the Mantey Hills partnership held the property with rights of survivorship, Debra Mantey only had a remote interest in the property. In contrast, Debra Mantey argued that because Donald Mantey's attempt to convey his interest in the property to the Mantey Hills partnership in 1996 did not have her signature, the conveyance was invalid under the Michigan statute of frauds<sup>8</sup> because she had an interest in the property. She also argued that, in the alternative, the Mantey Hills partnership itself had value.

If the trial court's finding was meant to reject Debra Mantey's argument that the conveyance was void because her dower interest in the property was speculative and contingent,

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<sup>6</sup> *Woodington*, 288 Mich App at 364; *Olson*, 256 Mich App at 627.

<sup>7</sup> *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993).

<sup>8</sup> See MCL 566.108.

then the trial court erred. Though a dower interest is a contingent interest that vests on the death of the husband, the law also protects the interest before it vests.<sup>9</sup> “[T]he statute of frauds requires both the seller and his wife with a dower interest to sign a purchase agreement in order to create a valid contract for the sale of land.”<sup>10</sup> Without further analysis, we are not definitely and firmly convinced that Debra Mantey’s dower interest in the property was too speculative and contingent to potentially void the transfer under the statute of frauds.

If the trial court’s finding was meant to accept Donald Mantey’s argument that Debra Mantey’s eventual interest in the partnership itself was speculative and contingent, we again conclude that the trial court erred. We reiterate that the trial court found that although some of the parties’ property was gifted, it was all marital property. The partnership agreement also provides that partnership interests themselves are valued at \$160,000, which mathematically breaks down to a value of \$40,000 for each partner. Thus, if Donald Mantey’s transfer of property was valid, it appears that Debra Mantey has some interest in the partnership itself. The trial court should have determined a value for this disputed property. Thus, we conclude that the trial court made a mistake.

We reiterate that the trial court must make findings of fact “essential to a proper resolution of the legal questions” so that this Court can determine if the judgment was legally correct and equitable.<sup>11</sup> We conclude that this portion of the trial court’s order requires clarification so that we can engage in meaningful appellate review.

Fifth, Debra Mantey argues that the trial court clearly erred when it determined that it must offset her award by \$24,000—\$20,000 for her advance and \$4,000 for accountant fees. We conclude that this finding was not clearly erroneous. Debra Mantey agreed that the trial court would deduct the \$20,000 advance from her property settlement. The trial court further ordered Donald Mantey to pay \$4,000 to Debra Mantey’s accountant to appraise the parties’ businesses, and the trial court’s order indicates that it would deduct this amount from Debra Mantey’s eventual property settlement. Thus, it does not appear that the trial court made a mistake when it deducted \$24,000 from Debra Mantey’s property award for the advance and accountant fees.

If the trial court’s findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts.<sup>12</sup> Because the trial court clearly erred when it valued the marital assets, we cannot determine whether the division of property was equitable.

On remand, the trial court should: (1) adopt the parties’ stipulated value of the marital home; (2) adopt the parties’ stipulated value of the farm parcels; (3) make a finding of fact on the

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<sup>9</sup> *Thomas v Dutkavich*, 290 Mich App 393, 406; 803 NW2d 352 (2010).

<sup>10</sup> *Slater Mgt Corp v Nash*, 212 Mich App 30, 32; 536 NW2d 843 (1995);

<sup>11</sup> *Sparks v Sparks*, 440 Mich 141, 163; 485 NW2d 893 (1992); see MCR 2.517.

<sup>12</sup> *Sparks*, 440 Mich at 151-152.

disputed value of the royalties on the wind leases; and (4) make a finding of fact on the value of the Mantey Hills partnership, and resolve the related legal questions about whether Debra Mantey's interest is in the Mantey Hills partnership itself or the partnership's property.

### III. SPOUSAL SUPPORT

#### A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's findings of fact concerning spousal support.<sup>13</sup> If the trial court's findings of fact are not clearly erroneous, this Court must decide whether the disposition ruling was fair and equitable.<sup>14</sup> This Court reviews for an abuse of discretion the trial court's decision to award spousal support, and must affirm the trial court's decision unless it was inequitable.<sup>15</sup>

#### B. LEGAL STANDARDS

The objective of spousal support is to balance the incomes and needs of the parties in a way that is just and reasonable under the circumstances of the case.<sup>16</sup> To determine whether spousal support is just and reasonable, the trial court should consider a wide variety of factors, including:

(1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay spousal support; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (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.<sup>17</sup>

#### C. APPLYING THE STANDARDS

Here, the trial court's entire finding concerning spousal support was as follows:

Because of the size of the property division and other considerations, i.e., assumption of debt and medical, and considering the factors enumerated in *Sparks* . . . THE Court awards no alimony to either party[.]

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<sup>13</sup> *Gates*, 256 Mich App at 432; *Beason*, 435 Mich at 805.

<sup>14</sup> *Sparks*, 440 Mich at 151-152; *Gates*, 256 Mich App at 433.

<sup>15</sup> *Id.* at 432-433.

<sup>16</sup> *Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008).

<sup>17</sup> *Berger*, 277 Mich App at 726-727.

We conclude that the trial court has not made sufficient factual findings for us to determine whether the divorce judgment was fair and equitable. We have already concluded that we cannot affirm the one factual finding that the trial court relied on when declining to award spousal support: its distribution of the marital property. Further, the trial court's findings of fact are deficient in light of the other factors that appear from the record to be relevant to this specific case, including the disputed length of the parties' marriage, the parties' needs and ability to pay, the parties' present situations, the parties' former standards of living, and whether one party was dependent on the other for support. Though the trial court need not make findings on every factor, "[t]he trial court should make specific factual findings regarding the factors that are relevant to the particular case."<sup>18</sup> The trial court should take care not to give only one factual finding disproportionate weight.<sup>19</sup> Again, we reiterate that the trial court must make findings of fact "essential to a proper resolution of the legal questions."<sup>20</sup> On remand, the trial court should make specific factual findings on the relevant factors, so that this Court may determine whether its decision not to award spousal support was an abuse of discretion.

#### IV. SPOUSAL SUPPORT ARREARAGE

##### A. ISSUE PRESERVATION

Donald Mantey argues that this Court cannot consider whether he was in arrears on temporary spousal support awarded to Debra Mantey during the pendency of the trial because the issue was not decided by the trial court. We note that "[g]enerally, an issue is not properly preserved if it is not raised before, addressed, or decided by the circuit court or administrative tribunal."<sup>21</sup> Here, Debra Mantey raised this issue before the trial court—the trial court simply failed to address it. This Court will not punish a party for the omission of the trial court.<sup>22</sup> Thus, we will consider this issue.

##### B. ANALYSIS

Debra Mantey argues that the trial court erred when it failed to address whether Donald Mantey was in arrears on his spousal support. The record supports Debra Mantey's assertions that (1) Donald Mantey was withholding \$918 from spousal support for health insurance costs and (2) the trial court already considered this amount when it awarded temporary spousal support. The record also supports Donald Mantey's assertion that the trial court's order may have required him to pay for Debra Mantey's health insurance twice. On remand, the trial court shall making findings of fact and a determination on the merits of this issue.

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<sup>18</sup> *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003).

<sup>19</sup> See *Sparks*, 440 Mich at 162-163.

<sup>20</sup> *Id.* at 163; see MCR 2.517.

<sup>21</sup> *Polkton Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

<sup>22</sup> *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994).

## V. CONCLUSION

We conclude that the trial court clearly erred when valuing the parties' property for division. We affirm the trial court's decision to offset Debra Mantey's property distribution by \$24,000 for advances and accountant fees. But we reverse the remainder of the trial court's judgment, and remand for corrections, determinations on the issues concerning spousal support, and further factual findings consistent with this opinion.

We affirm in part, reverse in part and remand. We do not retain jurisdiction. Neither party having prevailed in full, neither may tax costs.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Douglas B. Shapiro