

STATE OF MICHIGAN
COURT OF APPEALS

RACHELLE LYNN SHAFFER,
Plaintiff-Appellee,

UNPUBLISHED
October 23, 2003

v

RANDY SCOTT SHAFFER,
Defendant-Appellant.

No. 240885
St. Clair Circuit Court
LC No. 01-001368-DM

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

MEMORANDUM.

Defendant appeals as of right from the judgment of divorce entered after a trial on stipulated facts. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed for divorce after defendant was convicted of assault with intent to commit sexual penetration involving the parties' eleven-year-old daughter, and was sentenced to 2½ to 10 years' imprisonment. Defendant's parental rights to his daughter were terminated. The parties stipulated that the marital estate included a home with net equity of \$115,000 and that defendant would receive his pension valued at \$8,000. Defendant was earning \$30,000 per year prior to his incarceration, and plaintiff had an earning capacity of \$6,400 per year. The court awarded plaintiff the marital home.

“When apportioning a marital estate, the trial court’s goal is to reach an equitable division in light of all the circumstances.” *Welling v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999). The dispositional ruling is discretionary, and will be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.* at 709-710. Significant departures from a congruent division must be explained clearly by the court. *Id.* at 710.

When dividing a marital estate, the court should consider the duration of the marriage, the contribution of each party to the marital estate, each party’s station in life, each party’s earning ability, each party’s age, health and needs, fault or past misconduct, and any other equitable circumstance. *Id.*

While fault remains one of the relevant factors in a property division, a trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance. *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992).

Here, the trial court considered plaintiff's fault not only as it affected the marriage, but also as it destroyed his earning capacity and ability to provide child support and spousal support. Defendant agreed that he had a continuing obligation to support his children, and the trial court did consider plaintiff's earning capacity. Given the circumstances of the case, the award is not inequitable, and the trial court did not abuse its discretion.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello