

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

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KATHLEEN B. KOPENSKI,  
Plaintiff-Appellee,

UNPUBLISHED  
August 21, 2007

v

JACK KOPENSKI,  
Defendant-Appellant.

No. 268573  
Barry Circuit Court  
LC No. 04-000478-DO

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

PER CURIAM.

Defendant appeals as of right an October 11, 2005, judgment of divorce. We affirm.

Plaintiff and defendant were married on August 30, 1985. One child was born of the marriage. On September 17, 2004, plaintiff filed a complaint for divorce. Following a one-day bench trial, the trial court granted the parties a divorce. The trial court fashioned a property distribution, in which it awarded approximately \$216,000 in marital assets to plaintiff, and \$170,000 in marital assets to defendant. The trial court concluded that it was “a fair division” given the treatment of the marital home,<sup>1</sup> and the fact that the court declined to award spousal support in favor of plaintiff.

Defendant contends that the trial court erred in concluding that the value of his furniture installation business was a marital asset subject to distribution. Defendant also contends that the trial court erred in concluding that only a portion of plaintiff’s pension, and not the entire pension, was a marital asset subject to distribution.<sup>2</sup>

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<sup>1</sup> The trial court valued the parties’ marital home at \$600,000. The record reflects that defendant purchased plaintiff’s interest in the home for \$275,000, pursuant to the judgment of divorce, and a postjudgment order entered by the trial court.

<sup>2</sup> Trial testimony established that, at the time of trial, plaintiff had been employed at Steelcase for 34 years, and her pension was valued at \$549,000. Plaintiff was married to defendant for 20 of the 34 years of her employment. This Court has instructed trial courts calculating the value of pension benefits that accrued both during and before the marriage to “employ a fraction of the  
(continued...) ”

Generally, “[t]his Court reviews a property distribution in a divorce case by first reviewing the trial court’s factual findings for clear error, and then determining whether the dispositional ruling was fair and equitable in light of the facts.” *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003). However, defendant raises these issues for the first time on appeal. “Issues raised for the first time on appeal are not ordinarily subject to review.” *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). In fact, defendant conceded, in his trial brief, that his business was a marital asset, and that only the portion of plaintiff’s pension that was attributable to the parties’ 20-year marriage was marital property subject to distribution. Defendant did not raise any issues at trial regarding the business or the pension that were inconsistent with the positions that he adopted in his trial brief. Defendant is bound by his lower court position. He cannot prevail on contrary arguments in this Court. “A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court.” *Living Alternatives for the Developmentally Disabled, Inc v Dep’t of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994). See also *Grant v AAA Michigan/Wisconsin, Inc (On Remand)*, 272 Mich App 142, 148; 724 NW2d 498 (2006).

Defendant does not challenge the trial court’s valuation of the business, or its valuation of the portion of plaintiff’s pension that was attributable to the parties’ marriage. Further, defendant does not otherwise assert that the dispositional ruling was inequitable in light of all of the facts of this case. *Olson, supra* at 622. Therefore, defendant is not entitled to relief from the property distribution set forth in the judgment of divorce.

We affirm.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

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(...continued)

years the parties were married while the spouse employee earned his pension over the number of years in which the employee spouse worked to build the pension benefits.” *Vander Veen v Vander Veen*, 229 Mich App 108, 112; 580 NW2d 924 (1998); *Pickering v Pickering*, 268 Mich App 1, 8; 706 NW2d 825 (2005). Thus, in arriving at the value of the marital portion of plaintiff’s pension, the trial court applied the following formula:

The Plaintiff has a pension with Steelcase valued at \$549,000, a defined contribution plan. I’ve tried to reduce that to an after-tax figure, so I took 67 percent of that, which comes out to 368,000. And then I multiplied that by 20 thirty-fourths [20/34], which is the marital portion of that. And so I get a[n] after-tax marital portion equal to \$216,000.