

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTY MAE RICHARDS,

Plaintiff-Appellant,

v

DAVID JAMES RICHARDS,

Defendant-Appellee.

UNPUBLISHED

April 16, 2020

No. 348883

Houghton Circuit Court

LC No. 2018-017095-DO

Before: CAVANAGH, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Following a one-day divorce trial, the circuit court valued the parties' marital assets and debts, which included both personal and business properties. In lieu of ordering David Richards to pay Christy Richards a lump sum for her share of the marital assets, the court ordered David to continue paying the mortgage on Christy's business property. On appeal, Christy contends that the circuit court erred in including the debt associated with David's business as marital property, but not the value of that business. She also challenges the court's ordered method of recompense for her share of the estate. We vacate the property division in the judgment of divorce and remand for further proceedings consistent with this opinion.

I. BACKGROUND

David and Christy Richards married on October 4, 2008. The couple has no children together, but Christy has a minor daughter from a previous relationship. Over the years, David abused substances and lost control of his life. His business fell on hard times and he was convicted of domestic violence for threatening Christy. Christy ultimately filed for divorce on December 4, 2018.

During the marriage, the parties lived together in a home purchased by David before the marriage that had become marital property through Christy's financial investments. They each own their own business; Christy owns a salon and David owns a used car sales and auto repair business incorporated under the name D&A Richards, Inc. In total, they owned five pieces of real estate. They also had significant debt. The parties could not agree on the division of their assets and debts and the matter eventually went to trial.

At trial, the parties presented evidence regarding the value of their real estate holdings, their vehicles, and other miscellaneous items. They also presented evidence regarding their outstanding debts. Relevant to the issues on appeal, Christy's counsel presented a document listing values for "inventories" at David's business. For the year 2017, Christy's documentation revealed a beginning inventory of \$534,183 and an ending inventory of \$450,104. D&A Richards' 2017 federal income tax return listed \$1,828,418 in gross receipts, with "cost of goods sold" identified as \$1,139,272, leaving a gross profit of \$689,146. The inventory consisted of the used cars to be sold on the lot; David agreed that the auto repair side of his business did not "really have any inventories." Christy's counsel inquired, "[I]s this the same inventory that the line of credit that you use goes to finance these cars?", and David responded, "Part of it is, yes." Also related to this business, David presented evidence that he paid out \$356,868 in salaries in 2017.

David testified that his name alone was on the deed and mortgage for Christy's salon. Christy, on the other hand, claimed that the salon building was deeded in her name as well as David's. Christy testified that they purchased the building with a \$60,000 mortgage and that she personally had repaid \$23,000 so far; with interest, this left a balance of approximately \$43,000. Christy paid the mortgage from the chair rents she collected from other stylists and her tenant in an apartment also located on the property. In 2017, Christy netted \$54,486 from her salon business. In relation to David's business, Christy asserted that the business was not worth "much" when she married David as his first wife "took money from him." She believed the business was worth "[n]ot much no more" at the time of the divorce hearing. Christy asserted that she was entitled to a share of David's business because she signed paperwork for the loans and "went through . . . a lot of crap in his life." She asked for her salon and a down payment to buy a house.

After the trial, both parties submitted proposed findings of fact for the court's consideration. Relevant to this appeal, David asserted that no evidence had been presented regarding the value of his business. He expounded that "[t]he corporate tax returns show that the business has lost \$48,000.00 in 2017, and lost \$59,000.00 in 2016. Further, the business has a significant line-of-credit (\$300,000.00), and Dave was required to transfer his pre-marital individually-owned collector/muscle car collection to D&A Richards, Inc., to provide collateral" to his bank.

Christy did not agree with David's assessment and asserted that David's business had \$500,000 in inventory, \$77,000 "Cash on Hand," and \$15,000 in accounts receivable, all of which she counted toward valuing David's business.

The trial court issued a written opinion and order on April 16, 2019. The court found that in 2017, Christy's salon "showed a profit of over . . . \$50,000" and that she was "the recipient of rental income (\$17,742.00) derived from her renting chairs located within her salon, and by renting an apartment located on the premises." David's business, "[a]lthough once highly profitable," had "fallen on hard times, largely due to [David's] substance abuse." The court noted that David's "business carries substantial debt, which not only encumbers the business and the premises from which it operates, but . . . also encumbers all of the other real estate holdings of the parties," except for Christy's hair salon. According to David's 2017 income tax returns, he earned a salary from his business of \$62,198.00.

The court proceeded to value the real estate owned by the parties. Although David had not added Christy's name to the deed for the marital home, she was named on the mortgage. The property had a market value of \$336,000, but was encumbered by an \$89,855.60 mortgage. The property housing David's business was valued at \$230,000, and was encumbered by a \$168,616.23 mortgage. The business property also secured a revolving line of credit used to purchase inventory, totaling \$273,578.42. David also owned a separate building that housed an auto parts store, but that business was controlled by a third party. The building was valued at \$175,000, and was encumbered by an \$80,141.18 mortgage. A storage building used for David's business was valued at \$60,000, with a mortgage lien of \$30,878.03. And the building housing Christy's hair salon was valued at \$75,000, with a mortgage of \$44,042.45, and other business debts of \$2,456.37. The parties carried additional secured debt of \$139,998.52. The court noted that "[t]he debt [had] been amassed/created due to [David's] abuse of substances and is, for the most part, related to" his business ventures. Moreover, after Christy filed for divorce, David took an additional personal loan of \$20,000.

The court further noted that David owned several "muscle cars" in his personal collection. The court found that only one was purchased during the marriage and it was valued at \$38,100.

The court continued that the parties did not provide a business valuation of either of their ventures. The court declined to assign a value for either business given the lack of evidence. The court acknowledged that both parties wished to retain their own businesses, independent of the other. "It should be noted that [Christy's] business is apparently doing quite well, and the profitability of her business has improved each year since its coming into being. The same, however, cannot be said for D&A Richards, Inc., due to [David] not attending to the business in an appropriate manner."

Ultimately, the court valued the entire marital estate at \$914,100 and marital debt at \$829,566.80, for a total equity value of only \$84,533.20. The court awarded each party their businesses and business properties "free and clear of any claim of the other party." The court awarded David the marital home, the storage unit, and the building he rented out for an auto parts store, as well as the entirety of his muscle car collection. David was ordered to repay the entirety of the marital debt, except for that connected with Christy's business expenses. However, in lieu of awarding Christy a lump sum to cover her half share of the equity in the marital property, the court ordered David to continue paying the mortgage on Christy's business property. Shortly thereafter, the court entered a divorce judgment memorializing this property division.

II. ANALYSIS

As noted, Christy challenges the court's failure to assign a value to David's business while counting the business's debts against the value of the marital estate. "The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances." *Berger v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008). When distributing the marital estate, the court must make underlying factual findings, such as valuing marital assets and debts. We review those factual findings for clear error. *Cassidy v Cassidy*, 318 Mich App 463, 477; 899 NW2d 65 (2017). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake was made." *Id.* If the court's factual findings are supported, we consider whether the

ultimate division “was fair and equitable” under the circumstances. *Id.* We must affirm the lower court’s ultimate disposition “unless this Court is left with a firm conviction that the division was inequitable.” *Id.*

Trial courts have a duty to value property in a divorce proceeding. As held in *Olson v Olson*, 256 Mich App 619, 627-628; 671 NW2d 64 (2003):

[I]t is settled law that trial courts are required by court rule to include a determination of the property rights of the parties in the judgment of divorce. MCR 3.211(B); *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). As a prelude to this property division, a trial court must first make specific findings regarding the value of the property being awarded in the judgment. *Beaty v Beaty*, 167 Mich App 553, 556; 423 NW2d 262 (1988). There are numerous ways in which a trial court can make such a valuation, but the most important point is that the trial court is obligated to make such a valuation if the value is in dispute. Accordingly, we have held that a trial court clearly errs when it fails to place a value on a disputed piece of marital property. *Steckley v Steckley*, 185 Mich App 19, 23-24; 460 NW2d 255 (1990) (the trial court clearly erred in failing to determine value of the plaintiff’s interest in McDonald’s franchises); *McNamara v McNamara*, 178 Mich App 382, 393; 443 NW2d 511 (1989) (the trial court abused its discretion in failing to place value on law practice); *Kowalesky v Kowalesky*, 148 Mich App 151, 157; 384 NW2d 112 (1986) (the trial court clearly erred in failing to place value on accounts receivable of dental practice). Hence, it was not enough in this case to simply conclude that because neither party submitted persuasive evidence regarding the value, the parties should be left to settle the value after the judgment and findings were entered. . . . Once trial commenced, the trial court’s duty to determine a value was triggered, and the parties did not have a continuing obligation to settle the issue.

However, “[t]he general rule applicable to valuation of marital assets is that the party seeking to include the interest in the marital estate bears the burden of proving a reasonably ascertainable value; if the burden is not met, the interest should not be considered an asset subject to distribution.” *Wiand v Wiand*, 178 Mich App 137, 149; 443 NW2d 464 (1989), citing *Miller v Miller*, 83 Mich App 672, 677; 269 NW2d 264 (1978), and *Beaty v Beaty*, 167 Mich App 553, 557; 423 NW2d 262 (1988). Neither party met their burden of establishing the value of either David’s or Christy’s business in this case.

Christy presented evidence that David’s car sales business had approximately \$500,000 in inventory. That inventory secured a \$300,000 line of credit. Common sense dictates, however, that the remaining \$200,000 would not be pure profit. For example, David paid almost \$357,000 in salaries in 2017, and had an outstanding mortgage on this property for almost \$170,000 that required monthly payment. The business profits would also cover utilities, advertising, insurance, and other costs of business, but Christy presented no evidence in this regard. It would not have been possible for the circuit court to value David’s business without further information. Similarly, the parties presented little evidence about the value of Christy’s business. The parties presented evidence regarding the mortgage due, chair rentals received, and net profits, but no evidence regarding the cost of daily operations, such as utilities and supplies.

This Court has held, “If the court does not have ample information *from the expert testimony presented* to determine a fair value, it may appoint its own disinterested appraiser to assist the court.” *Steckley*, 185 Mich App at 23 (emphasis added). There was no expert testimony in this case; neither party hired an accountant or other business appraisal expert to value the businesses for the purpose of the divorce. And given the parties’ agreement that David’s business was not worth much, the circuit court could reasonably determine that assigning an independent evaluator would have been cost prohibitive. Ultimately, without sufficient evidence, the court did not clearly err in determining that it could not assign a value to David’s business.

The court clearly erred, however, in disparately treating the parties’ businesses in calculating the value of the marital estate without explaining this decision. The court included the assessed real estate values and mortgages on the business properties of both parties when making its calculations. The court also included David’s business line of credit as a marital debt. The court did not count the miscellaneous business debts connected with the salon as a marital debt; the credit card debts representing supplies for the salon were treated as Christy’s separate debt. The business line of credit was collateralized with the used car inventory and was used to keep the dealership stocked. Although the dealership real estate also served as collateral for the line of credit, it appears inequitable to treat the parties’ businesses differently in this regard. Ultimately, if the inventory and supply debt of one business were treated as separate or marital property, the same should be true of the other. Accordingly, we vacate the court’s property division in the judgment of divorce and remand for either reconsideration or further explanation in this regard.

Christy also challenges the method by which David was permitted to remit her share of the marital estate. Specifically, rather than awarding Christy a lump sum for her share of the marital estate, the court ordered David to continue paying the mortgage on the building housing Christy’s salon business. Christy expresses concern that David could relapse into substance abuse and stop making payments, leading to the loss of her business. “Every divorce case must be evaluated on its own merits. However, it would be a rare divorcing couple who would benefit from a judgment that requires them to maintain an ongoing business relationship.” *McDougal v McDougal*, 451 Mich 80, 91 n 9; 545 NW2d 357 (1996). This is exactly what the circuit court’s current order does. On remand, after the court reevaluates the marital estate and the value of each parties’ half share, the court must determine a new method of recompense that does not pin the continuation of Christy’s business on David’s involvement.

We vacate in part the judgment of divorce and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher