

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

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SUSAN BRALEY,

Plaintiff-Appellee,

v

ROBERT JAMES BRALEY, JR.,

Defendant-Appellant.

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UNPUBLISHED

May 27, 2021

No. 354897

Gladwin Circuit Court

LC No. 19-010132-DM

Before: CAMERON, P.J., and BORRELLO and REDFORD, JJ.

PER CURIAM.

In this divorce action, defendant appeals as of right the judgment of divorce entered following a bench trial. Defendant challenges certain rulings related to the property settlement. For the reasons set forth in this opinion, we affirm in part, reverse in part, and remand for further proceedings.

**I. BACKGROUND**

The parties were married on October 10, 2010. They have one adopted minor child, who is also plaintiff’s biological grandson. Plaintiff filed for divorce on July 26, 2019, and a bench trial was held on July 9, 2020. The issues on appeal only concern the property settlement and specifically pertain only to a particular bank account at Members First Credit Union and two parcels of real property (the Buzzell Road property and the Knox Road property). Accordingly, our discussion of the facts will be appropriately narrow and will include additional facts only as necessary to provide relevant context.

**A. THE BUZZELL ROAD PROPERTY**

Plaintiff testified that she owned a residence on Buzzell Road before she and defendant were married. She purchased the home for \$77,000 “between 1995 and 1998” and paid cash. At the time of trial, the Buzzell Road property had been appraised and determined to be worth \$78,000.

Plaintiff testified that she and defendant began living together in 2008 and that she mortgaged the Buzzell Road property for \$71,000 at defendant's request because defendant indicated he "had no money." At the time of trial, plaintiff still owed \$38,000 on the mortgage. The Buzzell Road home was still in plaintiff's name at the time of trial, the mortgage was in plaintiff's name alone, and defendant's name had never been on the mortgage or the deed for the property. Plaintiff testified that she had made all of the mortgage payments on the Buzzell Road home, that she had paid the property taxes and homeowner's insurance, and that defendant had never paid any of the mortgage payments. However, plaintiff indicated that defendant paid \$3,500 to have a new roof installed on the Buzzell Road home. Plaintiff further testified that this was defendant's sole contribution to this property, although she acknowledged that he cut the lawn once or twice. According to plaintiff, she had rented the property and had an agreement with her renters that they would take care of minor repairs with corresponding deductions to be made from their rent.

Defendant did not dispute that the Buzzell Road property was in plaintiff's name or that plaintiff paid all of the payments on this property. However, defendant claimed to have contributed substantial amounts of time and money toward improving this property during the marriage. Defendant specifically testified:

[W]e had three or four renters in there. There was long periods between them. Sometimes the lawnmowers weren't running up there. We took one mower from the Knox Road up there to mow. We mowed. We -- sometimes we had to rake it all up. We did that. We trimmed the brush, the trees all the time. And if you look at the amount of time in elapses on her record between renters, there was a lot of that time that that place needed personal care. We provided it. I primarily provided it. I went up there when one of the tenants moved out. They had built a room inside of the pole building. They cut all the electrical stuff. I spent several days pulling that outta there, fixing up the electrical, buying new electrical. I'm getting Adam's Electric to come in and help me rewire the building so all the outlets worked and all of those things. I paid for all of that. I, you know, I did a lot of work to help. That house was sold. It came back to us with a quit deed a couple of times. It was sold to Jessica Johnson and them so they could get a loan -- that was a subsidy if you owned the house that you could get. And so, we signed it over to them. They filed and got that subsidy and those things. Susan has a quit claim debt [sic] when she got it back. But it came back during our marriage. And then she sold it again to Kevin Koontz and them on a land contract. I believe she had to go through pros -- different processes to get it back in our name in her name again. So, I feel that since it came back in her name several times while we were married, I should be entitled to at least something for the work I did up there and for the improved value in it. So, I rest my case.

Defendant also testified that he helped install insulation in the attic of the Buzzell Road house, but plaintiff paid for the insulation. Defendant claimed that he did "over fifty percent of the time and work" at the Buzzell Road property since the time that he and plaintiff began living together.

Plaintiff testified that she did not know if defendant paid the \$250 for moving a handicap ramp or \$500 for repairs on a “dog coup roof” at the Buzzell Road property. Plaintiff admitted that defendant did wiring repairs on the Buzzell Road property, and seemed to admit that defendant paid some amount toward the dog coup repairs. Plaintiff testified that defendant was not as involved in maintaining the Buzzell Road property as he claimed and that defendant spent approximately five percent of his time doing maintenance work on the property.

Plaintiff testified that at some point during the marriage, she had a “rent-to-own type agreement” with another party to buy the Buzzell Road property. However, that party eventually decided not to purchase the property and plaintiff “got it back” via a quitclaim deed. Plaintiff further testified that she had three renters that “wanted it, but didn’t buy it.”

## B. THE KNOX ROAD PROPERTY

Plaintiff testified that in 2008, she and defendant bought a home on Knox Road for approximately \$115,000. They purchased the home as joint tenants with full rights of survivorship. Both plaintiff and defendant were obligated on the mortgage. At the time of trial, this property had been appraised and valued at \$128,000. Plaintiff described the improvements she and defendant made to the Knox Road property as follows:

A big pole barn was put up with a cement floor and an office. Mud room on the back of the house. Two sheds for livestock. Steel roof was put on the home. Office was roughed in in the pole barn with insulation and lights and a little canning room. Fenced in a large area for birds, chickens, ducks, geese. Bob tiled some of the fields. Gravel was put in our driveway.

Plaintiff testified that she paid \$4,000 for the escrow account and earnest money related to the purchase of the Knox Road home, \$17,701 for the pole barn supplies, and \$26,930.31 for construction costs related to the pole barn. Plaintiff also paid defendant’s \$25,000 child support arrearage and \$3,000 in related attorney fees for defendant before she and defendant were married. Plaintiff testified that she used the \$71,000 that she obtained from mortgaging the Buzzell Road property, as well as some of her own additional money to pay these costs. Plaintiff stated that she had contributed over \$400,000 toward the Knox Road home during the time she and defendant lived there, including paying for the propane, working in the yard and garden, and providing “about 90 percent” of the care for defendant’s disabled adult son who required care 24 hours per day, seven days per week. Plaintiff paid for repairs on the Knox Road Property. She also paid for the couple’s cell phones, Direct TV, and food. Plaintiff indicated that she paid for “ninety percent of clothing” and the costs of any “Christmas and gift buying associated with the marriage.”

Defendant also testified about the circumstances of the purchase of the Knox Road home, stating that plaintiff “put up the initial down payments or the initial escrow amounts and all of those things.” Defendant further testified that the couple obtained a \$15,000 interest-free loan from the federal government and that they still owed \$3,000 on that loan.

Defendant agreed that plaintiff had paid for the construction of the pole barn in approximately 2009, but defendant testified that he paid approximately \$17,000 for an expansion that was completed about 5 years later. Defendant also indicated that he paid for the mudroom

steel roof, gutters, downspouts, and other maintenance on the house that included new floors, expenses related to the well, and blacktop and gravel for the driveway. Defendant testified that he paid the utilities and that he contributed to buying food. Defendant testified that plaintiff only provided about 20 percent of the care for his disabled adult son.

Both plaintiff and defendant testified that defendant made all of the monthly mortgage payments on the Knox Road property. Plaintiff testified that defendant paid \$77,000 to complete repayment of the loan and discharge the mortgage on the Knox Road property at some point approximately three or four years before the trial. Defendant testified that he completed repayment of the mortgage loan, with the exception of the \$3,000 still owed on the federal loan, after he received an inheritance from his father and insurance proceeds from the death of his son. Defendant indicated that he paid about \$70,000 to repay the mortgage, which consisted of \$64,500 that he received from his father and \$5,000 from the insurance proceeds related to his son's death.<sup>1</sup> Defendant also testified that at some point before completely repaying the mortgage, he had refinanced the mortgage and that he had contributed \$20,000 from his "son's inheritance" to the mortgage as part of the refinance. It appears from the testimony that defendant was referring to the insurance proceeds from his son's death. According to defendant, the total amount of the house payments he made on this property was \$164,987.55.

### C. MEMBERS FIRST CREDIT UNION ACCOUNTS

Plaintiff testified that she had a checking account and savings account with Members First Credit Union and that both of these accounts were solely in her name and always had been in her name alone. However, plaintiff subsequently admitted during her testimony that defendant's name was on her Members First Credit Union account "for a time" that exceeded two years. She removed defendant from the account in approximately May 2019, before she and defendant separated in July 2019. It appears that there was between \$20,000 and \$24,000 in the savings account and approximately \$2,000 in the checking account at some point near the time of trial. At the time that the parties separated, there apparently was \$32,435.49 in plaintiff's Members First Credit Union savings account.

Plaintiff indicated that she and defendant had separate bank accounts when they first moved in together and that they kept their money separate throughout the marriage. Plaintiff testified, "I never wrote a check out of his account and he never wrote one out of mine." Plaintiff further testified that she never put money into his account and that he never put money into her account. Specifically, plaintiff testified that defendant never contributed any money to either of her Members First Credit Union accounts.

Defendant also testified that he and plaintiff kept their bank accounts separate during the marriage. He specifically testified that he did not put any money into plaintiff's accounts, including during the time when his name was also on these accounts. He agreed with plaintiff's assessment that the parties' respective bank accounts remained separate even after they were

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<sup>1</sup> Defendant testified that his son died in May 2010 and that his son "had an insurance policy at work which payed me a hundred and sixty thousand dollars." Defendant put this money in a separate account to use for "special things."

placed in both parties' names. Defendant indicated that until March 2020, he had never received any of the money from the \$930-per-month adoption subsidy that the parties received for their minor adopted son, whom they had adopted in approximately 2016. Plaintiff testified that she had received this subsidy during the marriage. At the time of trial, however, defendant was receiving the entirety of this subsidy.

Additionally, defendant testified that plaintiff was injured when they first began living together in 2008 and that plaintiff received \$35,000 in worker's compensation for the time she was off of work related to that injury. Defendant stated that he cared for plaintiff for "several months" while she was injured and that he never received any amount from the worker's compensation money. Defendant testified that he believed the \$25,000 in child support that plaintiff paid on defendant's behalf was a gift.

With respect to plaintiff's Members First Credit Union savings account specifically, defendant testified as follows on direct examination:

*Q.* I understand. The Member's First Credit Union is in Susan Braley's name today?

*A.* Yes.

*Q.* But they had indicated that it had a twenty-four-thousand dollar balance but had a thirty-two thousand four hundred thirty-five-dollar balance back when you separated. Do you lay claim any today on that one?

*A.* Yes. Because I believe that's where all the funds went from the subsidies that we received. I think I should either be entitled to some of that or some of the subsidy money that she received. I -- I, you know, that money, she got forty-four thousand dollars in it before -- before I started getting any money. Where did it go? It had to go into that account or another account. She also received a surplus on the rent that went into some account. Yeah. I would lay claim that I should get money back from one of those two entities. [Tr, 109-110.]

However, defendant stated that he had "no claim" on plaintiff's Members First Credit Union checking account.

Plaintiff testified on cross-examination as follows regarding the source of the money in her Members First Credit Union accounts:

*Q.* Okay. So, you would agree though -- though -- back when you separated it was at thirty-two thousand, four thirty-five and forty[-nine cents]?

*A.* Yes.

*Q.* All right. And that, you're claiming is your sole and separate property, is that correct?

*A.* Yes.

Q. The funds that went into that, can you identify where they came from? Did they come from the adoption subsidy? Rent? Your savings? What?

A. I can't identify where they all came from.

Q. The checking account that shows two thousand, when was that two thousand balance? I assume that's just in your name as well?

A. That's my checking account, yes.

Q. So, that's where your -- that's where your social security would go and so will your pension, that type of thing, is that correct?

A. Yes.

However, plaintiff testified on redirect examination that although she received the adoption subsidy money for a time, she used it for the entire family's expenses, including food, clothing, orthodontic expenses for the couple's adopted son, and tutoring for their adopted son. Plaintiff also testified that the money in her credit union account was the money she had left from the award she received in her 2008 worker's compensation case. Plaintiff testified that the worker's compensation award stemmed from an injury she suffered in fall 2008 and that she recovered in approximately 3 to 4 months.

#### D. THE TRIAL COURT'S RULING

After the trial, the trial court issued a written opinion and order. As pertains to the issues raised on appeal, the trial court made findings regarding the property settlement, including findings specific to the adoption subsidy, the Members First Credit Union accounts, the Buzzell Road property, and the Knox Road Property.

With respect to the adoption subsidy, the trial court found that "Defendant shall be entitled to receive the [\$930] adoption subsidy in full, as the court ordered physical custodial parent, from December 2019 until the present<sup>2</sup>" and that "Defendant shall be entitled to one-half of the adoption subsidy received by the Plaintiff between July 2019 to December 2019."

With respect to the Members First Credit Union accounts, the trial court found as follows:

The Plaintiff has accounts with Members First Credit Union, both checking and savings. The parties agree the Plaintiff's checking account is her sole property. The parties dispute the savings account. The Plaintiff contends that the monies contained in the account are her Worker's Compensation award from an injury in 2008. The Defendant contends that the monies are the adoption subsidy payments

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<sup>2</sup> There is a temporary custody order from December 2019 providing for the parties to share joint legal custody of the minor child and for defendant to have physical custody. The judgment of divorce also provided for joint legal custody and for defendant to have physical custody.

received by the Plaintiff between July 2019 and January 2020, as well as rental income received for the Buzzell Road property during the marriage. There was no evidence presented that clarified where the source of those monies. The Plaintiff is awarded the savings account as her sole property.

Regarding the two parcels of real property, the trial court found as follows:

The Buzzell Road property was purchased by the Plaintiff well before the marriage. The Knox Road property was purchased by the parties prior to the marriage but with separate funds from each and a joint loan.

The Buzzell Road property has an appraised value of seventy-eight thousand dollars (\$78,000). The parties borrowed thirty-eight thousand dollars (\$38,000) secured by the Plaintiff's Buzzell Road property to purchase the Knox Road house, along with a government loan of three thousand dollars (\$3,000). The parties then rented out the Buzzell Road property during the marriage. The value of the Buzzell Road property has not increased during the marriage.

The Knox Road house has an appraised value of one hundred twenty-eight thousand dollars (\$128,000) and zero debt.

The Defendant used his inheritance from his son and his father to pay off the debt on the Knox Road house. He testified that he paid off sixty-nine thousand, five hundred dollars (\$69,500) of debt secured by the Knox Road house with these funds.

Each party shall have their separate property used to purchase and payoff the Knox Road property restored to them. The Plaintiff shall receive thirty-eight thousand dollars (\$38,000) from the Defendant as her separate share of the equity of the Knox Road home. The Defendant shall receive credit for sixty-nine thousand, five hundred dollars (\$69,500) of the equity of the Knox Road home as his separate property share. The Court considers the balance of twenty thousand, five hundred dollars (\$20,500) to be the marital portion of the Knox Road home.

The Defendant shall receive the Knox Road property. The Defendant shall pay to the Plaintiff the sum of thirty-eight thousand dollars (\$38,000) as her separate property portion of the equity in the Knox Road property and the sum of ten thousand, two hundred and fifty dollars (\$10,250) as the Plaintiff's one-half marital equity in the Knox Road home. The parties shall be equally responsible for one-half of the government loan with a balance of \$3,000.

The Plaintiff shall receive the Buzzell Road property free and clear of any claim by the Defendant and shall be responsible for any debt associated with the Buzzell Road property, holding the Defendant harmless.

The judgment of divorce was entered on September 8, 2020, containing provisions consistent with the above quoted portions of the opinion and order. The trial court granted defendant's motion for a stay of proceedings pending the disposition of this appeal.

## II. STANDARD OF REVIEW

This Court reviews a trial court's findings of fact following a bench trial in a divorce action for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *McNamara v Horner*, 249 Mich App 177, 182; 642 NW2d 385 (2002). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made." *McNamara*, 249 Mich App at 182-183. "If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts." *Sparks*, 440 Mich at 151-152. "A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable." *McNamara*, 249 Mich App at 183.

## III. ANALYSIS

The issues presented on appeal generally revolve around the treatment of separate assets. "[T]he trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets." *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). "Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party." *Id.* at 494.

The general rule for distinguishing between marital and separate property has been stated by this Court as follows: "marital property is that which is acquired or earned during the marriage, whereas separate property is that which is obtained or earned before the marriage." *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010), citing MCL 552.19. With respect to determining whether property was acquired or earned during the marriage for purposes of ascertaining whether it is marital property, the *beginning of the marriage* is the proper starting point and it is improper to consider any period of cohabitation preceding the marriage because Michigan does not recognize common-law marriage. *Reeves*, 226 Mich App at 493 & n 1. Additionally, "separate assets may lose their character as separate property and transform into marital property if they are commingled with marital assets and treated by the parties as marital property." *Cunningham*, 289 Mich App at 201 (quotation marks and citations omitted). "The mere fact that property may be held jointly or individually is not necessarily dispositive of whether the property is classified as separate or marital." *Id.* at 201-202.

### A. MEMBERS FIRST CREDIT UNION SAVINGS ACCOUNT

Defendant argues that the Members First Credit Union savings account should have been treated as marital property and divided equally because plaintiff did not prove that it was separate property.

The only factual dispute regarding this savings account was the source of the funds it contained. Defendant claimed that the savings account contained the money plaintiff had received during the marriage from the adoption subsidy for the parties' child, as well as rental income that plaintiff had received from tenants of the Buzzell Road property during the marriage. Plaintiff first testified that she could not identify the source of the funds in her Members First Credit Union savings account but later testified that the money in the account was the remainder of her 2008



worker's compensation award. It was undisputed that plaintiff's worker's compensation award was based on a 2008 injury and was received around that time, all of which occurred before the marriage in 2010. Plaintiff also acknowledged that she received the adoption subsidy money during the marriage but testified that she spent that subsidy money on expenses related to the needs of the entire family.

Resolution of this factual dispute over the source of the savings account money was of crucial importance to the analysis because "income earned by one spouse during the duration of the marriage is generally presumed to be marital property," *Cunningham*, 289 Mich App at 201, while "workers' compensation benefits awarded for periods before the marriage or after its dissolution are akin to a party's individual earnings and are to be considered separate property because those earnings fall outside the beginning and the end of the marriage," *id.* at 206.

In this case, the trial court expressly acknowledged the conflicting testimony presented by each party about the source of the savings account money and then stated that there "was no evidence presented that clarified where [sic] the source of those monies." In context, this statement by the trial court is best understood as a recognition that neither party presented additional evidence, such as documents, to corroborate their respective oral trial testimony. The Members First Credit Union statement that was referred to at trial and admitted as an exhibit is from July 2019 and shows the balance of the savings account but does not show the source of that money. That statement does not have any information about that account predating July 1, 2019, and it does not show any deposits other than an approximately \$11 dividend earned on the balance that month. Accordingly, the only evidence presented to the trial court regarding the source of the money in the Members First Credit Union savings account was the conflicting testimony of the parties.

The trial court ruled without further explanation that the savings account would be awarded to plaintiff as "her sole property." Thus, the trial court necessarily credited plaintiff's testimony over defendant's testimony because plaintiff's testimony involved a claim that the money was obtained before the marriage and thus was separate property, while defendant claimed in his testimony that the money was earned during the marriage and thus was marital property. *Cunningham*, 289 Mich App at 201, 206. It is well established that the trial court is in a better position than an appellate court to judge matters of witness credibility. *Sparks*, 440 Mich at 147. This finding was not clearly erroneous because it does not leave this Court with a definite and firm conviction that a mistake was made. *McNamara*, 249 Mich App at 182-183.

As previously noted, there was no dispute that plaintiff's worker's compensation award was based on an injury and resulting missed time at work that occurred before the parties were married. This Court has specifically stated that "[b]ecause a spouse's earnings are classified as marital property only between the beginning and end of the marriage, we hold that workers' compensation benefits are to be considered marital property only to the extent that they compensate for wages lost *during* the marriage, i.e., between the beginning and the end of the marriage." *Cunningham*, 289 Mich App at 206 (citation omitted). Worker's compensation benefits "awarded for periods before the marriage" constitute separate property. *Id.* It is unclear from the record when plaintiff actually received her worker's compensation benefits even though the evidence was uncontradicted that those benefits were solely related to a period of time that predated the marriage. Accordingly, even if she actually received the money after the parties were

married, it would still be considered separate property under these circumstances. *Id.* (“It is not difficult to imagine factual circumstances in which a spouse would receive workers’ compensation benefits during the marriage covering a period before the marriage. Such benefits would not be classified as marital property, but as separate property.”). Accordingly, based on the trial court’s factual finding regarding the source of the money in the savings account, this money was initially separate property.

That conclusion does not end the analysis, however, because “separate assets may lose their character as separate property and transform into marital property if they are commingled with marital assets and treated by the parties as marital property.” *Cunningham*, 289 Mich App at 201 (quotation marks and citations omitted). Hence, we must also consider how this money was treated during the course of the parties’ marriage in this case.

It was undisputed at trial that plaintiff maintained the Members First Credit Union savings account as a separate account that was in her name alone at the time of trial and that the account had always been in plaintiff’s name with the exception of an approximately two-year period during which defendant was also listed on the account. It was also undisputed that the parties had maintained separate bank accounts since the beginning of their relationship and throughout the duration of the marriage. “The mere fact that property may be held jointly or individually is not necessarily dispositive of whether the property is classified as separate or marital.” *Cunningham*, 289 Mich App at 201-202. However, the uncontradicted record evidence supports the conclusion that the money in plaintiff’s Members First Credit Union savings account retained its separate character throughout the marriage based on how the parties treated the money in their respective accounts. Our review of the record does not leave us with a definite and firm conviction that the trial court made a mistake in finding that this savings account was plaintiff’s separate property, and this finding was therefore not clearly erroneous. *McNamara*, 249 Mich App at 182-183.

In light of the trial court’s factual findings regarding the savings account at issue, the trial court’s ruling awarding the entirety of the account to plaintiff as her separate property was fair and equitable. *Sparks*, 440 Mich at 151-152; *Reeves*, 226 Mich App at 494. We therefore affirm this ruling. *McNamara*, 249 Mich App at 183.

Based on this conclusion, defendant’s argument that plaintiff failed to meet her alleged burden of proof to show that the savings account was separate property, as well as the resulting dispute between the parties on appeal over the proper allocation of the burden of proof regarding whether property is separate property or marital property, is moot. “A matter is moot if this Court’s ruling cannot for any reason have a practical legal effect on the existing controversy.” *Garrett v Washington*, 314 Mich App 436, 449; 886 NW2d 762 (2016) (quotation marks and citation omitted). This Court generally does not decide moot issues. *Id.*

## B. THE BUZZELL ROAD PROPERTY

Defendant next argues that the trial court erred by awarding plaintiff sole interest in the Buzzell Road property without addressing defendant’s claim that he contributed to the improvement of the property and was therefore entitled to an award of some of the value of the Buzzell Road property under MCL 552.401. Defendant argues that he contributed to the property

by paying \$3,500 for a new roof, moving a handicap ramp, repairing a dog coup, performing electrical repair work, helping install insulation, and doing yard work.

Defendant does not appear to actually contest in his appellate argument that the Buzzell Road property was plaintiff's separate property. Instead, he seemingly contends only that the trial court should have invaded this separate property and awarded a percentage of its value to defendant based on his contributions to this asset. As previously noted, each spouse generally "takes away from the marriage that party's own separate estate with no invasion by the other party." *Reeves*, 226 Mich App at 494. However, a spouse's separate estate may be invaded for redistribution under either of two statutory exceptions, which are contained in MCL 552.23 and MCL 552.401. *Reeves*, 226 Mich App at 494. Here, defendant relies only on the exception in MCL 552.401,<sup>3</sup> which provides in relevant part as follows:

The circuit court of this state may include in any decree of divorce or of separate maintenance entered in the circuit court appropriate provisions awarding to a party all or a portion of the property, either real or personal, owned by his or her spouse, as appears to the court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property.

Pursuant to this exception, "when one significantly assists in the acquisition or growth of a spouse's separate asset, the court may consider the contribution as having a distinct value deserving of compensation." *Reeves*, 226 Mich App at 495. It was undisputed that the Buzzell Road property was used as a rental property during the course of the parties' marriage and was not the marital home where the parties lived. With respect to rental properties, the marital estate may include the "increase in value (whether by equity payments or appreciation) that occurred between the beginning and the end of the marriage" but does *not* include "the increase in value (by the down payments and equity payments) that *occurred before the parties married.*" *Id.* at 496 (citation omitted; emphasis added); see also *Korth v Korth*, 256 Mich App 286, 293; 662 NW2d 111 (2003) (holding that under MCL 552.401, "the trial court should have included in the marital estate the appreciation in the property after the parties were married, but should not have included the equity values of the property before the marriage.").

In this case, it was undisputed that plaintiff owned the Buzzell Road property before the marriage, having purchased it for \$77,000 in cash at some point between approximately 1995 and 1998. The parties were married in 2010. Thus, even accepting all of defendant's claimed contributions to the Buzzell Road property as true, the pertinent question to resolve before defendant could be found to be entitled to any share in the value of the Buzzell Road property is

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<sup>3</sup> Defendant's brief cites MCL 552.23(1), which permits invasion of separate assets "if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage who are committed to the care and custody of either party." However, defendant does not make any argument on appeal that invasion of the Buzzell Road property is warranted because the property awarded to him was insufficient to provide suitable support and maintenance. Therefore, any argument relying on MCL 552.23(1) is abandoned. *Reed v Reed*, 265 Mich App 131, 163; 693 NW2d 825 (2005).

whether there was any increase in the value of this property *during the marriage* to which defendant's efforts contributed. *Reeves*, 226 Mich App at 496; *Korth*, 256 Mich App at 293.

However, defendant does not cite any record evidence of the value of the Buzzell Road property or plaintiff's equity in the property in 2010 when the parties were married. There was evidence at trial that the property had recently been appraised to be worth \$78,000. Yet, without any evidence regarding the value of the home and plaintiff's equity in 2010, the trial court was without sufficient information to determine whether there was any increase in value or equity during the course of the marriage. Accordingly, we are not left with a firm conviction that it was inequitable for the trial court to decline to invade this separate property belonging to plaintiff under MCL 552.401 because there was no evidence that defendant's contributions assisted in the acquisition, improvement, accumulation, growth, or increase in value of the property. MCL 552.401; *Reeves*, 226 Mich App at 495-496; *Korth*, 256 Mich App at 293; *McNamara*, 249 Mich App at 183. The trial court ruling is affirmed in this respect.<sup>4</sup>

### C. THE KNOX ROAD PROPERTY

Finally, defendant argues that the trial court erred by not returning to him all of his separate property invested in the Knox Road property. Specifically, defendant argues that the trial court should have returned to him the \$20,000 he received in insurance proceeds from the death of his son and that defendant invested in the property.

The trial court awarded the Knox Road property to defendant but found that

[e]ach party shall have their separate property used to purchase and payoff the Knox Road property restored to them. The Plaintiff shall receive thirty-eight thousand dollars (\$38,000) from the Defendant as her separate share of the equity of the Knox Road home. The Defendant shall receive credit for sixty-nine thousand, five hundred dollars (\$69,500) of the equity of the Knox Road home as his separate property share. The Court considers the balance of twenty thousand, five hundred dollars (\$20,500) to be the marital portion of the Knox Road home.

The trial court's determination of the parties' respective separate shares was based on the trial court's findings that "[t]he parties borrowed thirty-eight thousand dollars (\$38,000) secured by the Plaintiff's Buzzell Road property to purchase the Knox Road house, along with a government loan of three thousand dollars (\$3,000)" and that defendant "testified that he paid off sixty-nine thousand, five hundred dollars (\$69,500) of debt secured by the Knox Road house" with funds derived from defendant's "inheritance from his son and his father."

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<sup>4</sup> Although defendant argues that his contributions improved the property by *maintaining* the value of the property even if the property's value did not increase, defendant does not cite any legal authority to support his contention that this is a sufficient basis on which to invade separate assets under MCL 552.401. Thus, defendant has abandoned this argument. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Korth*, 256 Mich App 294 (quotation marks and citation omitted).

However, the testimony at trial reflected that the \$69,500 that defendant contributed to the house consisted of a \$64,500 inheritance from his father as well as \$5,000 from the insurance proceeds he received as a result of his son's death, and the testimony further reflected that defendant also used an additional \$20,000 from those same insurance proceeds to help repay the debt secured by the mortgage on the Knox Road property. The trial court did not make any reference to this additional \$20,000, nor did it explain why this money was not included in defendant's contributions to the property despite being from the same source as funds that the trial court did include. Moreover, the trial testimony also indicated that the parties obtained a \$15,000 loan from the federal government, not a \$3,000 loan, although the parties still owed \$3,000 on this loan.

Finally, there is no apparent correlation between the \$38,000 the trial court attributed to plaintiff and the amount she testified that she contributed to the Knox property. Plaintiff testified that she obtained a loan of \$71,000 that was secured by a mortgage on the Buzzell Road property and that she used some of this money for expenses related to the purchase and improvement of the Knox Road property. Plaintiff testified that she paid \$4,000 for the escrow account and earnest money related to the purchase of the Knox Road home, \$17,701 for the pole barn supplies, and \$26,930.31 for construction costs related to the pole barn. There was testimony indicating that this pole barn was built in 2009, while the Knox Road property was purchased in 2008.

Accordingly, the factual findings on which the trial court based its ruling regarding the Knox Road property were clearly erroneous because they were unsupported by the record evidence. Consequently, we hold a definite and firm conviction that a mistake was made. *McNamara*, 249 Mich App at 182-183. To the extent the trial court may have had some basis for the findings it made, it did not provide any explanation of its reasoning and thereby left this Court without an adequate record to provide meaningful appellate review of these findings. *Woodington v Shokoohi*, 288 Mich App 352, 354, 357; 792 NW2d 63 (2010) (stating that remand is warranted when a trial court's findings and lack of reasoning provides an insufficient basis for meaningful appellate review).

Moreover, in determining that the parties were entitled to have their separate property invested in the Knox Road property returned to them, the trial court seemingly ignored the fact that "separate assets may lose their character as separate property and transform into marital property if they are commingled with marital assets and treated by the parties as marital property." *Cunningham*, 289 Mich App at 201 (quotation marks and citations omitted).

Although the Knox Road property was purchased before the marriage, this was not a situation where one party had individually purchased the property before the marriage with separate funds. See, e.g., *Reeves*, 226 Mich App at 495. Instead, the testimony at trial indicated that plaintiff and defendant purchased the Knox Road home as joint tenants with full rights of survivorship, that both plaintiff and defendant were obligated on the mortgage, and that plaintiff contributed the \$20,000 at issue to repaying the loan on the Knox Road home at some point. It is not clear when this payment occurred, but the record reflects that both the death of defendant's son and the marriage between plaintiff and defendant occurred in 2010.<sup>5</sup> There was further testimony

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<sup>5</sup> Defendant's son died in May, and defendant and plaintiff were married in October.

that both parties contributed to the household through financial means or help with daily tasks. See *id.* at 495-496 (“The sharing and maintenance of a marital home affords both spouses an interest in any increase in its value (whether by equity payments or appreciation) over the term of a marriage. Such amount is clearly part of the marital estate.”).

Assuming without deciding that the \$20,000 was initially defendant’s separate property, the trial court made no findings to indicate whether defendant’s act of using those funds to pay for the marital home that was owned jointly by the parties and which secured a mortgage on which both parties were obligated constituted a failure to maintain the \$20,000 as separate property and instead demonstrated comingling with marital property such that its character was transformed. See *Cunningham*, 289 Mich App at 208 (“Although the award of workers’ compensation benefits derived from litigation predating the parties’ marriage, and a portion of it is theoretically traceable as defendant’s separate property, defendant’s actions after receiving the funds established that he intended to contribute \$90,000 of those funds to the marital purpose of acquiring a new home.”). The trial court also failed to consider whether these actions by the parties demonstrated an intent to treat the home as marital property rather than any intent to maintain separate property as separate throughout the marriage. *Id.*

Because the trial court did not address these issues, there is no ruling for this Court to review with respect to determining whether defendant is actually entitled to receive the money he invested in the home that he claims is separate property. “Appellate review is limited to issues actually decided by the trial court.” *Allen v Keating*, 205 Mich App 560, 564; 517 NW2d 830 (1994). Because of the inadequate record regarding the trial court’s findings and reasoning with respect to the distribution of the Knox Road property, we reverse the trial court’s ruling in this regard and remand for the purpose of allowing the trial court to address these matters under the proper legal standards. *Id.*; *Woodington*, 288 Mich App at 354, 357.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs are awarded. MCR 7.219.

/s/ Thomas C. Cameron  
/s/ Stephen L. Borrello  
/s/ James Robert Redford