

STATE OF MICHIGAN
COURT OF APPEALS

KRISTINE K. AHLES,

Plaintiff-Appellee,

v

PHILIP J. AHLES,

Defendant-Appellant.

UNPUBLISHED

February 18, 2021

No. 351545

St. Clair Circuit Court

LC No. 17-000366-DM

Before: JANSEN, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Defendant, Philip J. Ahles, appeals as of right the Amended Default Judgment of Divorce. We reverse, vacate the portion of the Amended Default Judgment of Divorce ordering defendant pay \$3,325 to plaintiff, Kristine K. Ahles, to equalize the marital estate, and remand for entry of a Second Amended Default Judgment of Divorce consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

This is the second appeal in this matter. Previously, this Court remanded this matter to the trial court to make adequate factual findings to support its division of marital property in the original default judgment of divorce. See *Ahles v Ahles*, unpublished per curiam opinion of the Court of Appeals, issued March 28, 2019 (Docket No. 340483). On remand, the trial court held an evidentiary hearing, where it heard testimony from plaintiff regarding the value of various marital assets.

Plaintiff first testified that she and defendant purchased the marital home in 1995. At the time the first default judgment of divorce was entered in September 2017, plaintiff had the home appraised. The value of the home was determined to be \$135,000. Bank records from Fifth Third Bank were offered by plaintiff, and showed that as of September 2017, the parties owed \$105,726.42 on the mortgage. Plaintiff went on to testify that in September 2017, at the time the original default judgment of divorce was entered, if the trial court had ordered plaintiff to “share some equity with” defendant, she would have been unable to get a mortgage on the home on her own, and that she would have had to sell the marital home, with 7% commission going to a realtor. Plaintiff agreed that 7% of \$135,000 would yield \$9,450 in commission to a realtor.

Plaintiff also provided testimony regarding other items of personal property owned by the parties during the marriage. Plaintiff testified that in September 2017, she was awarded a 2008 Chevrolet Aveo with approximately 195,000 miles on it. Plaintiff estimated that the car was worth \$500 to \$600. Plaintiff also testified that in the original default judgment of divorce, defendant was awarded a 2002 Chevrolet Trail Blazer, a 2001 Chevrolet truck, 1998 Ford Ranger, and a pontoon boat. Plaintiff believed that all three vehicles and the pontoon boat had more value than the Chevrolet Aveo, but plaintiff had no objection to defendant receiving all three vehicles and the boat.

Defendant had also received, as part of the default judgment of divorce, all of the tools used in his work as a fabricator; a “low ball” estimate of the value of the tools was \$20,000. With a few exceptions, plaintiff kept all other belongings in the marital home. Plaintiff testified that the distribution of personal property was fair, and that “considering the valuable tools,” the “award of the house to [plaintiff] without payment of equity” was fair. Plaintiff testified that the parties did not have any joint debts, other than the mortgage. Plaintiff had financed the living room furniture, and was paying off that account on her own. All other furniture in the home had been hand-me-downs.

After the conclusion of plaintiff’s testimony, the trial court made findings of fact on the record. The trial court found:

Now, listening to the testimony from [plaintiff], it appears that the major piece of property that the parties owned was a marital home, which has an appraised value of, at the time of the entry of original Judgement of Divorce, an appraised value of [﻿\$]135,000. She has solely, since that time, contributed to any reduction of the mortgage debt. The debt, at that time, was [﻿\$]105,726, leaving a[n] equity of \$29,274.00. There was a 2008 Chevy Aveo that had 195,000 miles on it. The testimony was that the estimated value of that was . . . five or six hundred dollars. The Court will establish a value of \$550.00. There was no evidence of value with regard to the 2002 Trail Blazer; the 2001 Chevy truck; or the 1998 Ford Ranger; or the Pontoon boat. The Court will give a nominal value of the same amount as the Aveo at \$550.00 for each one of those.

The tools were testified to that [defendant] had acquired over the marriage were considerable, including several large rolling tool chests with tools in them; grinders as well. There was an estimated value placed on those tools at about [﻿\$]20,000. The Court will find that, as described, several large rolling tools chest, with hand tools and all kinds of grinders, as described, will have a value of \$10,000.00.

The furniture in the home was described as hand me down furniture that had no particular value. The Court will give those, as a group, because there was no specific evidence presented as it relates to the individual values, but the description of those, I’ll give those a value of approximately- well, I’ll set a value at \$5,000.00 for the entire amount.

* * *

There are no joint debts. The – there is no evidence that there are any retirements – retirement savings or pensions with regard to the parties. I note the original Judgment of Divorce left that each party would have their own, if there were any, and there was no evidence that there are any.

All right, based on the factors set forth in the case law, as I've indicated, I have made findings of fact as it relates to the assets of the marriage that has been established. And, that would be, that [defendant] will have the tools he was awarded in the original Judgement. [Plaintiff] will have . . . the furniture in the home, as well as the Aveo. [Defendant] is awarded the Trail Blazer, the Chevy truck, the Ford Ranger and the Pontoon boat. And, they will share in the equity of the marital home. The equity, however, will be reduced by the cost that would be to sell the marital home, as that would be the distribution, should that be sold. And, although there are no other – there's no other evidence as it relates to the costs set forth in the home, there is a commission that would normally be charged at 7%. That leaves the-each party would be awarded \$9,912.00 from that equity. If you take the award and the values set forth, the-it would be \$22,112.00 to [defendant] and \$15,462 to [plaintiff], so I am going to divide that difference. [Defendant] will owe [plaintiff], \$3,325.00, that will equalize the marital estate. And, the Judgment of Divorce may be – an amended Judgment of Divorce may be entered consistent with that distribution.

An Amended Default Judge of Divorce was entered on October 30, 2019. This appeal followed.

II. STANDARD OF REVIEW

This Court has explained the standard of review for distribution of marital property as follows:

In deciding issues on appeal involving division of marital property, this Court first reviews the trial court's findings of fact. Findings of fact, such as a trial court's valuations of particular marital assets, will not be reversed unless clearly erroneous. 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. If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and will be affirmed unless this Court is left with a firm conviction that the division was inequitable. [*Cassidy v Cassidy*, 318 Mich App 463, 476-477; 899 NW2d 65 (2017).]

III. ANALYSIS

Defendant argues on appeal that the trial court's factual findings are unsupported by the record evidence, and thus cannot stand. We agree.

As previously articulated by this Court in defendant's first appeal,

A trial court must make specific findings of fact regarding the value of each disputed piece of marital property awarded to each party in the judgment. A trial court's findings of fact are inadequate if they are not sufficiently specific to enable the parties to determine the approximate values of their individual awards by consulting the verdict along with the valuations to which they stipulated. [*Woodington v Shokoohi*, 288 Mich App 352, 364-365; 792 NW2d 63 (2010) (citation omitted).]

While there is no mathematical formula used to determine how marital property should be divided, distribution must be equitable. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992). In order to determine if a piece of marital property has been equitably divided, the value of any property at issue must be known. *Woodington*, 288 Mich App at 364-365.

Generally, the party seeking to include a [piece of property] for distribution in the property settlement bears the burden of proving the reasonably ascertainable value of the [property]. If that party does not meet his burden, then the [property] should not be considered an asset subject to distribution. [*Magee v Magee*, 218 Mich App 158, 165; 553 NW2d 363 (1996) (citation omitted).]

Defendant argues that the trial court erred by reducing the equity in the marital home by 7%, which would represent a realtor's commission if the home were to be sold, and by assigning "arbitrary" and "speculative" values to four motor vehicles, a pontoon boat, defendant's tools, and the furniture inside the marital home. In assigning factually unsupported values to these items, the trial court valued defendant's portion of the marital estate at \$22,112 to plaintiff's \$15,462, and ordered defendant to pay \$3,325 to plaintiff in order to "equalize the marital estate."

We initially note, and defendant concedes, that the trial court's initial valuation of the marital home is accurate. Plaintiff submitted to the trial court an appraisal, completed in September 2017, the time the divorce was initially finalized, which valued the home at \$135,000. Plaintiff also submitted evidence that the parties had an existing mortgage on the home at that time, and owed \$105,726.42. Thus, as of September 2017, the parties' equity in their home totaled \$29,273.58.

We conclude, however, that the trial court erroneously deducted a 7% realtor's commission on the sale of the home if it were to sell for \$135,000. This 7% realtor's commission totaled \$9,450, and reduced the parties' equity in the home to \$19,823.58. This 7% commission figure was based off of plaintiff's testimony that in September 2017, if plaintiff had been ordered to pay defendant his portion of the home's equity, she would have been forced to sell the home. However, plaintiff offered no evidence that she was actually planning on selling the home, or that she had even met with a realtor. Moreover, plaintiff offered no evidence to substantiate her position that any realtor would have taken a 7% commission on the sale, if the 7% commission was a standard commission, if the home would be listed at \$135,000, or if comparable homes in plaintiff's area had sold for close to \$135,000. Thus, the trial court's finding that the parties' equity in the home should be reduced by a hypothetical 7% realtor commission was speculative, and therefore inadequate. We conclude that the trial court's original valuation of the marital home was accurate, and that parties' joint equity in the marital home as of September 2017 was \$29,273.58, or \$14,636.79 each.

Next, we agree with defendant that the trial court's factual findings regarding the value of four motor vehicles, a pontoon boat, defendant's tools, and the furniture inside the home were inadequate. Plaintiff sought to include all of the aforementioned items in the marital estate, yet failed to present any evidence regarding their value. With respect to the motor vehicles, plaintiff testified that she estimated her 2008 Chevrolet Aveo was worth between \$500 and \$600. However, plaintiff failed to substantiate that estimate with any reasonably ascertainable evidence, for example, a Bluebook value for the car in its present condition. When the trial court assigned a value to the Chevrolet Aveo of \$550, the midpoint of plaintiff's unsubstantiated estimate, the trial court's finding was not based on any fact in evidence, and thus was speculative. Such a finding is inadequate, and cannot stand.

The trial court also assigned a value of \$550 to three other motor vehicles and a pontoon boat. However, plaintiff failed to produce any evidence, for example the Bluebook value, of the value of a 2002 Chevrolet Trail Blazer, a 2001 Chevrolet truck, and a 1998 Ford Ranger. Moreover, plaintiff failed to provide any evidence of the value of the pontoon boat. Plaintiff also testified that estimated defendant's tools were worth, at a minimum, \$20,000. Plaintiff failed to present any actual evidence, beyond her own estimate, regarding the value of the tools, and the trial court went on to arbitrarily assign the tools a value of \$10,000. Finally, plaintiff testified that she had financed her living room furniture, but most everything else inside the home were hand-me-downs. Yet despite plaintiff's failure to present any evidence regarding their value, the trial court assigned a value of \$5,000 to the furniture inside the marital home.

Again, the trial court's findings regarding the value of the aforementioned personal property is not based on any fact in evidence, and thus, is speculative. These findings are inadequate and therefore cannot stand. Accordingly, we conclude that where plaintiff sought to include all of the aforementioned property in the marital estate, yet failed to meet her burden of proving the property's reasonably ascertainable value, the property should not have been "considered an asset with value subject to distribution" in the marital estate. *Magee*, 218 Mich App at 165.

While erroneously relying on the \$550 figures, the \$10,000 valuation of defendant's tools, and the \$5,000 valuation of the furniture inside the marital home, as well as the 7% reduction in the parties' equity in the marital home, the trial court found that plaintiff's share of the marital estate, comprised of her half of the marital home's equity, the Chevrolet Aveo, and the furniture, was valued at \$15,462. Comparatively, the trial court found that defendant's share of the marital estate, comprised of defendant's share of the marital home's equity, the Chevrolet Trail Blazer, the Chevrolet truck, the Ford Ranger, the pontoon boat, and defendant's tools, was valued at \$22,112. Accordingly, the trial court ordered defendant to pay to plaintiff \$3,325, one-half of the difference between the two values, to equalize the marital estate.

We conclude that where plaintiff failed to provide evidence of the reasonably ascertainable value of the four motor vehicles, the pontoon boat, defendant's tools, and the furniture inside the marital home, these items of personal property should not have been considered assets with value subject to distribution, *Magee*, 218 Mich App at 165, and the equity in the marital home should not have been reduced by 7%. This leaves the marital home as the sole asset of value subject to equitable distribution. On the basis of the foregoing, we further conclude that the parties' shares of the marital estate were equal, and had a value of \$14,636.79 each. Therefore, defendant should

not be required to pay any monies to plaintiff to equalize the marital estate, as the estate is already equal. Finally, we conclude that all other distribution of personal property, including the personal property erroneously described within this opinion, was equitable where plaintiff expressly testified on remand that she was satisfied with the distribution of personal property, and did not seek any spousal support in exchange for receiving the marital home.

We reverse, vacate the portion of the Amended Default Judgment of Divorce ordering defendant pay \$3,325 to plaintiff to equalize the marital estate, and remand for entry of a Second Amended Default Judgment of Divorce consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Michael J. Riordan

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Servitto, J. (*concurring*)

I agree with the majority's conclusion that the trial court erroneously deducted a theoretical 7% realtor's commission on the sale of the marital home when there was no evidence that plaintiff planned on selling the home. I also agree that the majority's conclusion that the trial court's factual findings regarding the values of specific other assets awarded were inadequate. I write separately to note that even if the values assigned the specific other assets awarded were factually supported and correct, the trial court still erred in ordering defendant to pay \$3,325 to plaintiff to "equalize" the marital estate.

At a September 2017 pro confesso hearing, plaintiff testified that there was approximately \$105,000 owing on the marital home and that the home had a value of approximately \$101,000. This turned out to be an erroneous belief on plaintiff's part. When the trial court held an evidentiary hearing on remand from this Court, plaintiff testified that since the pro confesso hearing in September 2017, she had an appraisal performed on the home which showed that the value of the marital home in September 2017 was actually \$135,000.

In rendering its decision on remand, the trial court noted that was a low asset and very little debt marriage. The trial court stated that the marital home had, at the time of the divorce, a value of \$135,000 with \$105,726 owing on it, thus equaling \$29,274 in equity. I find no error in this regard. The trial court determined that defendant was awarded \$12,200 in other marital assets and plaintiff was awarded \$5,550 in other marital assets. If, the equity in the home was to be divided

between the two parties, each would be entitled to \$14,637 in equity. However, defendant never actually received any of the equity in the marital home.

This is not a situation where defendant actually received his portion of the equity in the marital home initially and a later appraisal showed that he took more than his equal part of the equity. Plaintiff was awarded and retained the marital home, including all of the equity in it until at least the time of the evidentiary hearing. She could thus have, for example, obtained a mortgage in her name that took the equity in the home into account. Defendant, having received only \$12,200 in tangible assets in the divorce did not and does not have this opportunity. Having not received any actual payment of or interest in the equity, there is nothing for him to “equalize” in the marital estate. Indeed, plaintiff received the \$29,274 in equity in addition to her \$5,500 in other assets while defendant received only the \$12,200 in tangible assets. It is perplexing how, on those facts, the trial court found that *defendant* owed *plaintiff* additional monies in order to equalize the division of martial assets.

/s/ Deborah A. Servitto