

STATE OF MICHIGAN  
COURT OF APPEALS

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CHARLENE K. MORGAN,

Plaintiff-Appellee,

v

EVANS W. MORGAN, JR.,

Defendant-Appellant.

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UNPUBLISHED

August 13, 1996

No. 179592

LC No. 92-171376

Before: Wahls, P.J., and Young and H.A. Beach,\* JJ.

PER CURIAM.

Defendant appeals as of right the property settlement in this divorce case. We vacate the property settlement and remand to allow the trial court to further articulate its findings of fact.

On an appeal from a divorce action, the factual findings are to be upheld unless they are clearly erroneous. *McDougal v McDougal*, 451 Mich 80, 87; \_\_\_ NW2d \_\_\_ (1996). A dispositional ruling, however, should be affirmed unless the appellate court is left with the firm conviction that it was inequitable. *Id.* The following factors are to be considered wherever they are relevant to the circumstances of a particular case: (1) duration of the marriage; (2) contributions of the parties to the marital estate; (3) age of the parties; (4) health of the parties; (5) life status of the parties; (6) necessities and circumstances of the parties; (7) earning abilities of the parties; (8) past relations and conduct of the parties; and (9) general principles of equity. *Id.*, p 89. There may be additional factors that are relevant to a particular case. *Id.*

Here, the trial court awarded plaintiff approximately eighty-four percent and defendant approximately sixteen percent of the marital assets. After reviewing the record, we hold that the trial court did not clearly err in finding that plaintiff contributed substantially more to the marital estate than defendant. *Id.*, p 87.

As to the trial court's dispositional ruling, we remand for further findings of fact. The benchmark of equity and fairness in property division is rough congruence. *Jansen v Jansen*, 205 Mich

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\* Circuit judge, sitting on the Court of Appeals by assignment.

App 169, 171; 517 NW2d 275 (1994). Any significant departure from this standard must be supported by a clear exposition of the trial court's rationale. *Id.* Although there will be many cases where some, or even most, of the factors listed above will be irrelevant, where any of those factors are relevant to the value of the property or to the needs of the parties, the trial court must make specific findings of fact regarding those factors. *McDougal, supra*, p 88.

Here, in explaining the basis for its unequal dispositional ruling, the trial court focused on the contributions of the parties during the marriage. However, this Court remanded for reconsideration in one recent case where the trial court attached disproportionate weight to a finding that one party's contribution and industry greatly exceeded that of the other party. *Jansen, supra*, p 171. Here, other factors were relevant to the value of the property and the needs of the parties. For instance, there was uncontroverted evidence that defendant was diagnosed with bladder cancer in 1980. The trial court failed to determine the extent to which defendant's remaining incontinence and colostomy bag inhibited his ability to work. The age of the parties and the duration of their marriage were relevant factors for the trial court to consider. Although facts showed that plaintiff's earning capacity was much greater than that of defendant's, the trial court did not appear to consider relative earning capacities and life statuses when dividing the marital property. On the other hand, the trial court also should have resolved issues of fault before making its disposition. In particular, there were allegations that defendant improperly removed funds from the couple's farm account. Importantly, we do not hold that the trial court's dispositional ruling either was or was not equitable. Rather, we reiterate that, on remand, the trial court must make specific findings of fact regarding those factors relevant to the value of the property or to the needs of the parties. *McDougal, supra*, p 88.

Because the issue may appear again on remand, we note that plaintiff's vested pension rights that accrued during the marriage are part of the marital estate subject to division. MCL 552.18(1); MSA 25.98(1). However, nothing forbids the trial court from awarding the pension benefits solely to plaintiff. *Keen v Keen (After Remand)*, 160 Mich App 314, 318; 407 NW2d 643 (1987). Rather, the benefits must be distributed so as to achieve a fair and equitable distribution of property. *Id.*

Reversed and remanded for findings consistent with this opinion. We do not retain jurisdiction.

/s/ Myron H. Wahls

/s/ Robert A. Young

/s/ Harry A. Beach