

STATE OF MICHIGAN
COURT OF APPEALS

DEBRA FAYE LEGROS,

Plaintiff-Appellee,

v

LUC LEGROS,

Defendant-Appellant.

UNPUBLISHED

December 22, 1998

No. 203548

Wayne Circuit Court

LC No. 95-534959 DM

Before: Doctoroff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right a judgment of divorce, challenging only the division of the marital property. We affirm in part and remand.

The division of marital property is within the sound discretion of the trial judge. *Demmon v Demmon*, 195 Mich App 109, 113; 489 NW2d 161 (1992). In distributing marital property, the goal of the court should be an equitable distribution, taken in light of all the surrounding circumstances, and not merely mathematical equality. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The court, when reaching its conclusion, should take into consideration the duration of the marriage, the contribution of each party to the marital estate, each party's station in life and earning ability, each party's needs, fault or misconduct of the parties, and any other equitable circumstances. *Byington, supra* at 115.

Here, the trial court determined that it would be in the best interests of the parties' minor child for plaintiff to take immediate possession of the marital house because plaintiff was the child's primary caregiver. However, the court awarded defendant one-half interest in the equity of the home. The court also decided that defendant was solely responsible for his city tax arrearage because the evidence showed that the parties maintained separate finances and only defendant benefited from the liability. In addition, the court awarded plaintiff her entire pension because defendant's financial contribution to the household was minimal. Finally, the court allowed each party to keep their own belongings. These decisions of the court were supported by evidence that the parties maintained entirely separate finances and that plaintiff provided primary financial support for the child. The property distribution was fair and

equitable in light of the facts presented at trial. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

Although we find the property division to be equitable, we find that the provision of the judgment with respect to plaintiff's unconditional possession of the marital house is inequitable in light of the representations of the parties at oral argument before this Court that plaintiff and the minor child may not be residing in the marital house. Thus, we remand this case to the trial court for the limited purpose of amending the judgment of divorce to provide the following additional¹ occurrences that will require plaintiff to pay defendant his equity in the house: (1) plaintiff fails to make three consecutive mortgage payments, or (2) plaintiff no longer uses the marital house as the primary residence for herself and the minor child.

Affirmed in part and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Martin M. Doctoroff

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald

¹ The judgment of divorce already provides that "plaintiff shall pay defendant [his equity in the marital house] upon the first occurrence of any of the following: (1) the marital house is sold; (2) the plaintiff remarries; (3) an unrelated male moves into the marital house; or (4) the minor child attains the age of eighteen years.