

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION AT KNOXVILLE

FILED
October 20, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

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|---------------------|---|--------------------------|
| LINDA A. GREER, |) | BRADLEY GENERAL SESSIONS |
| |) | |
| Plaintiff/Appellee |) | |
| v. |) | NO. 03A01-9507-GS-00217 |
| |) | |
| ROGER D. GREER, |) | |
| |) | |
| Defendant/Appellant |) | AFFIRMED. |

Roger E. Jenne, Cleveland, For the Appellant.

B. Prince Miller, Jr., Cleveland, For the Appellee.

OPINION

_____ INMAN, Senior Judge

This is a domestic relations case. The issue is whether the marital property was equitably distributed as required by TENN. CODE ANN. § 36-4-121. Our standard of review is *de novo* on the record accompanied by a presumption that the judgment is correct unless the evidence otherwise preponderates. TENN. R. APP. P., RULE 13(d).

The parties were married January 6, 1984, he for the second time, she for the fifth. Each is 44 years old, and each has a college degree. No children were born to them. Both were gainfully employed prior to and during their marriage, she as a USDA-approved microbiologist, he as an engineer with the Tennessee Valley Authority.

The marital residence was ordered sold with the proceeds being divided equally after the wife was reimbursed \$15,272.00 for repayment of separate funds she invested in the acquisition of the residence. A Florida condominium, which the Chancellor found had a negative value, was awarded to wife. A time-share having a value of \$4,500.00 was awarded to husband, together with a boat, a Yamaha PTO,

and 1989 Pontiac, having an aggregate value of \$17,500.00. Husband was also awarded his TVA annuity and pension, valued at \$31,757.00, together with household goods valued at \$8,700.00, and a one-sixth interest in Industrial Microbiological Lab, Inc., valued at \$26,245.00.

Exclusive of the residence, wife was awarded a SEPP account valued at \$20,864.00, household goods valued at \$4,245.00, and a five-sixths interest in the Industrial Microbiological Lab valued at \$131,225.00.

We note at the outset that an equitable property division is not necessarily an equal one. *Batson v. Batson*, 769 S.W.2d 849 (Tenn. App. 1988). The trial court's distribution will be given great weight on appeal and will be presumed correct unless we find the preponderance of the evidence is otherwise. *Barnhill v. Barnhill*, 826 S.W.2d 443 (Tenn. App. 1991). On the face of it, the amounts awarded to the husband were valued at about \$84,000.00 while those awarded to the wife were valued at about \$156,000.00. The seeming inequality is, of course, found in the apportionment of the shares of the corporation, which was incorporated in 1986 with wife as sole stockholder, and for the most part the sole employee. The laboratory performs microbiological testing of food products; it has no established, permanent contracts, and no guaranteed, or assured, income. In 1992 Con-Agra, a poultry processor, *inter alia*, contracted with Industrial Microbiological Lab to test certain of its food products. Other than the skills of wife, this contract is the principal asset of the laboratory. It is not seriously disputed that the laboratory business would not be marketable without the services of a USDA-approved microbiologist and the continued business of Con-Agra.¹

The trial judge found that the laboratory was started by the wife, and that the husband's contributions were nominal only; this fact does not relieve the laboratory of its status as a marital asset, but we agree with the trial judge that the proof indicates that husband profited from the business, which permitted him to maintain his standard of living and pay substantial alimony to a prior wife together with child

¹Since the trial Con-Agra apparently has ceased doing business with the laboratory.

support. Husband counters this conclusion with the argument that since the marriage he earned \$585,000.00 while wife earned about half that amount. The husband's testimony concerning his income since the marriage and the manner in which he spent his income very nearly required the Chancellor to take and state an accounting of the financial affairs of these parties; and this pattern is repeated on appeal, since husband insists that based upon his earnings vis-a-vis those of his wife, the marital division was *per se* inequitable.

Suffice to say that husband brought few assets into this marriage. Moreover, he was obligated for alimony and child support, and for several years his net disposable monthly income was less than \$1,000.00 after misfortunes befell husband, including the loss of his job with TVA, which we deem unnecessary to dwell upon. Suffice to state that we cannot find that the evidence preponderates against the judgment, which is affirmed at the costs of the appellant. The case is remanded for all purposes.

William H. Inman, Senior Judge

CONCUR:

Don T. McMurray, Judge

Charles D. Susano, Jr., Judge