

IN THE COURT OF APPEALS OF TENNESSEE

CONNIE L. HAMMOND,
Plaintiff-Appellee,

v.

JOHN FREDRICK HAMMOND,
Defendant-Appellant.

) C/A NO. 03A01-9503-CH-00110
) HAMILTON COUNTY CHANCERY COURT
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)
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)
) HONORABLE HOWELL N. APPEALS COURT CLERK
) CHANCELLOR
)
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)
) AFFIRMED IN PART
) VACATED IN PART
) REMANDED

FILED
December 19, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

KEVIN B. WILSON of WILSON & WILSON, Chattanooga, for Appellant

RONALD J. BERKE of BERKE, BERKE & BERKE, Chattanooga, for Appellee

O P I N I O N

Susano, J.

This is a divorce case. Following a four-day non-jury trial, the plaintiff Connie L. Hammond (Wife) was granted an absolute divorce by final judgment entered August 9, 1994. The judgment included a finding that Wife "did not contribute to the failure of [the] marriage." The defendant John Fredrick Hammond (Husband) appeals, raising issues that present the following questions:

1. Does the evidence preponderate against the trial court's determination as to the value of Husband's stock ownership in East Tennessee Communications of Chattanooga, Inc., (ETC)?

2. Does the evidence preponderate against the trial court's holding that Husband should pay Wife \$125,000 alimony *in solido*?

3. Does the evidence preponderate against the feasibility of the plan established by the trial court for payment of the \$125,000?

4. Does the evidence preponderate against the trial court's award of periodic alimony *in futuro* of \$175 per week?

5. Does the evidence preponderate against the trial court's decree that Husband should pay \$8,000 toward the Wife's attorney fees?

Wife in her brief seeks a determination that she is entitled to her attorney fees on this appeal. She also seeks a holding that Husband's appeal is frivolous.

This is the second marriage between the parties. Their first marriage of some 17 years duration ended in September, 1984. At Husband's entreaties, the parties remarried the

following May. The parties' second marriage lasted just over nine years.

Husband's first three issues are directed at the following decree in the final judgment:

ORDERED that the defendant shall pay to plaintiff the sum of \$125,000.00 as lump sum alimony. Said sum is granted to provide support and maintenance to the plaintiff. A judgment is therefore rendered in favor of Connie L. Hammond against the defendant, John Fredrick Hammond, in the amount of \$125,000.00. Said amount is to be paid at the rate of \$25,000.00 every three months from June 24, 1994. The unpaid balance shall bear interest at the rate of six (6%) percent per annum beginning on June 24, 1994. Plaintiff shall hold a lien on defendant's East Tennessee Communication stock on the \$125,000.00 obligation for alimony until said amount is paid in full.

Husband assumes that the trial court found that his 50% stock ownership in ETC was properly valued at \$250,000. While there is no such explicit finding in the record before us¹, his assumption is a logical one. The trial court awarded Husband his interest in ETC; however, he burdened that interest with a lien in favor of Wife to secure her alimony *in solido* award of \$125,000. Wife testified that Husband and the owner of the other 50% interest both stated in her presence that they would not take less than \$500,000 for ETC. Since the \$125,000 award is exactly half of Husband's 50% interest based on this testimony, and since Husband was awarded all of his interest in this corporation

¹If the trial judge orally announced his decision or filed a memorandum opinion, his remarks are not in the record transmitted to us by the clerk of the trial court. There is also no explicit finding regarding the value of ETC in the final judgment.

subject to Wife's lien, it is logical to assume that there is a correlation between the alimony *in solido* award and a finding that the corporation was properly valued at \$500,000.

A trial court is vested with discretion to value marital assets within the range of evidence of value submitted to it. **Wallace v. Wallace**, 733 S.W.2d 102, 107 (Tenn. App. 1987). In this case, the testimony as to the full value of ETC, in addition to Wife's testimony alluded to earlier in this opinion, ranged from a low of \$125,000 to a high of \$834,000. We find no abuse of discretion in the trial court's implicit finding that ETC was properly valued at \$500,000. Certainly, we cannot say that the evidence preponderates against such a finding.

We also find no abuse of discretion in the trial court's award of \$125,000 alimony *in solido* or his determination that this award should be paid in quarterly increments of \$25,000. In matters pertaining to alimony and division of property, trial courts have wide discretion. **Wallace** at 106; **Ingram v. Ingram**, 721 S.W.2d 262, 264 (Tenn. App. 1986). We will not disturb that discretion unless it has been abused. *Id.* It has not been abused in this case.

Husband's first three issues are found to be without merit.

Husband next argues that the trial court erred in awarding Wife periodic alimony *in futuro* of \$175 per week. We disagree. As previously indicated, a trial court has wide

discretion regarding the establishment of alimony. *Ingram* at 264. Here, there was a significant disparity in the parties' income. Wife presented an affidavit of expenses reflecting monthly bills of \$3,015.21. Her net monthly income was \$1,338.29. She was a few days shy of her 47th birthday when the final judgment was entered. She had cancer surgery in 1992, suffered from dyslexia, had pain in her right hand, for which she received injections from an orthopedic specialist, and had been treated for migraine headaches.

Husband's budget claimed net monthly income of \$3,268.29 and monthly expenses of \$2,469.17. There was testimony that payments for work done by ETC were sometimes paid directly to Husband and not reflected on the corporation's books. The office manager of ETC admitted as much. While Husband "denied that he engaged in barter with his customers," he did "admit[] he had received goods in exchange for services."

Husband acknowledged "reported" income from ETC of over \$70,000 for 1992. He "stated [that] 1993 was [ETC's] best year ever, as business was better each year." While claiming that business in 1994 was not as good as 1993, he testified that his business "might actually increase" because his biggest customer had significantly increased its business by acquiring another company.

There was abundant proof to justify the trial court's finding that Husband was guilty of inappropriate marital conduct.

There was no proof that Wife contributed to the breakup of the marriage.

T.C.A. § 36-5-101(d)(1)(A)-(L) sets forth the factors to be considered in an alimony evaluation. The three major factors are the demonstrated need of the requesting spouse, ability of the obligor spouse, and the relative fault of the parties. **Bull v. Bull**, 729 S.W.2d 673, 675 (Tenn. App. 1987). When all of the statutory factors are considered, we cannot say that the trial court abused its discretion in setting periodic alimony *in futuro* at \$175 per week. The evidence does not preponderate against this determination.

The trial court ordered Husband to pay \$8,000 as an allowance on Wife's attorney fees. In general, a trial court has wide discretion in setting attorney fees. **Storey v. Storey**, 835 S.W.2d 593, 597 (Tenn. App. 1992). In this case, however, we believe the trial court abused its discretion. Wife was awarded \$125,000 of lump sum alimony. These funds were not earmarked for some specific purpose. In this respect, this case is different from one where a party receives the proceeds from the sale of a residence, but will have to use those funds for new habitation; or a case in which a party receives non-taxed funds set aside during the marriage for retirement purposes; or other cases in which a party is awarded non-liquid assets. *Cf.* **Shenouda v. Shenouda**, C/A No. 03A01-9505-CV-00151, 20 TAM 50-17, Court of Appeals at Knoxville (November 20, 1995). While the court awarded Wife \$125,000 "to provide support and maintenance" to her, this was actually an award to offset the court's decree that

Husband was awarded all of his stock interest in ETC. In any event, the award to Wife is not restricted or designated for some special purpose.

When Wife receives the monies due her from Husband, she will have the funds out of which she can pay her attorney. The trial court erred in ordering Husband to pay Wife's attorney \$8,000.

We do not find that Wife is entitled to an award of attorney fees against Husband for services rendered on this appeal. Furthermore, we do not find that Husband's appeal is frivolous.

The trial court's award of \$8,000 attorney fees is vacated. The remainder of the final judgment is affirmed. Exercising our discretion, we tax the costs on appeal half to each party. This case is remanded for collection of costs assessed below pursuant to applicable law.

Charles D. Susano, Jr., J.

CONCUR:

(Not Participating)
Houston M. Goddard, P.J.

Don T. McMurray, J.