IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

JEFFREY S. RUTLEDGE	)	HAWKINS COUNTY
	)	03A01-9410-CV-00360
Plaintiff-Appellant	)	
	)	
	)	
v.	)	HON. BEN K. WEXLER,
	)	JUDGE
	)	
JANICE L. RUTLEDGE	)	
	)	AFFIRMED AS MODIFIED
Defendant-Appellee	)	and REMANDED

JOHN S. ANDERSON OF ROGERSVILLE FOR APPELLANT

BURKETT C. McINTURFF OF KINGSPORT FOR APPELLEE

OPINION

Goddard, P.J.

Jeffrey S. Rutledge appeals a decree of the Circuit Court for Hawkins County which granted his wife a divorce and divided their marital property. His appeal questions the Court's division insisting, first, that the Court erred in finding that certain assets were his wife's separate property and, second, in failing to find certain property was his separate property. As an alternative to the foregoing issues, he contends that the

Trial Court should have determined all properties owned by either of them during the marriage was marital property.

The parties were married on May 29, 1985, and were divorced some eight years later, on May 5, 1994.[1] At the time of the divorce the husband was 34 years of age and the wife 42. The husband brought practically no assets into the marriage. The wife, however owned her home situated on 4.82 acres of land. She also had inherited some $100,000 which she had invested in certificates of deposit. During the years of the marriage both worked and earned substantial wages. An exhibit was introduced which showed the husband's total income during the marriage was $150,981.75 and the wife's $258,777.30, all of which was placed in a joint account.

The parties' lifestyle, which perhaps could not be characterized as luxurious, certainly was not modest. During the course of their marriage they took a number of vacations,[2] paid for out of their joint checking account, not including a honeymoon trip to Hawaii financed by the wife. Various improvements and conveniences, hereinafter set out, were acquired

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[1] No children were born to this union.

[2] The brief of Mr. Rutledge details the various trips as follows:

> The couple took a honeymoon trip to Hawaii. Mrs. Rutledge/Appellee testified that on two occasions they had taken the three children [Mrs. Rutledge's children by a previous marriage] with them and had gone to Florida for a week each time, going to Disney World. There had been a trip to Myrtle Beach with the children, a trip to New Orleans, two trips to Amish Country, a trip to Canada, a trip to Virginia Beach and a trip to Branson Missouri.

in connection with the residence which, as already noted, was owned by the wife.

As also already noted, prior to the parties' marriage the wife had inherited approximately $100,000, which was reduced to $17,000 during their marriage and the money used in the main to purchase the items of personal property. The procedure generally was for the wife alone to borrow the funds to purchase the items, pledge her certificates of deposit as security for the loans, and upon the CD's maturing, deposit the funds in their joint checking account and then repay the loans.

After completion of the testimony, the Trial Court rendered a bench opinion as follows:

> THE COURT: She had a house that was worth about $86,000 in '85. The house is worth about $100,000. They've added a lot to it -- a shop and a shed; and some yard work; a heat pump; rug -- carpeting in the basement; some new appliances; a pool liner and so forth during that time, but he was also living there during that time. And he did some work on the yard. I don't know how just how much, but it's kind of hard to estimate somebody else's work, filling up a hole and doing some yard work; built these two buildings. Anyway... Of course, it's her house. She gets the house. Her $39,000 bought the boat and the van; and, of course, she gets the shop. Now, $39,000 is part of that 80 that got gone. I'm valuing this shop at $6,000. I'm valuing the shed at $1400. I'm valuing his yard work and other work that he did around there at $1500; the heat pump at $3200; the TV system at $2,000 and the TV; the pool liner at $1,000; and the marital assets in the TRW pension fund is -- and apparently, from '85 to '94, the pension fund went up -- I had that worked out here a minute ago -- $6315.62. Of course, if that was marital assets, he wouldn't have any more interest than 1/2, which would be $3657.81. The stock fund, or that savings account, or whatever it

was: Last year, she paid nine hundred and some dollars in it. They've been married eight years. I took... Eight years at that would be $7200, and half of that $7200 would be $3600. That doesn't quite make up the whole $80,000, but there was some carpet, a stove, and some dryers and so forth that was in the house, and nobody knows the value of those, and they go with the house.

Now, as far as Mr. Rutledge is concerned, he gets this truck, wherever it is; and he gets the half interest in the hay bine that his daddy's got the other half interest in. And he gets a half interest in the cattle trailer that his daddy's got the other half interest in. He gets this tool box, which was a gift to him.

All the rest of these tractors, tools, combines, thrashing machines, cattle, signs, disk, tobacco setter -- well, wait a minute, the tobacco setter belongs to somebody else -- but the 4 bottom plow, the tractor weights, and all that stuff that's listed here on this, the Court holds that that's marital property. And if these people can't divide it, it's to be sold and the money divided between them.

At the outset, we conclude that, except for one item, a Highboy tractor having a value of $500 which will be hereinafter addressed, the evidence does not preponderate against the Trial Court's findings as to the value or the identity of the separate and marital property.

The Trial Court found that the appreciation of $14,000 as to the real estate, which was separate property of the wife at the time of their marriage, became marital property.

We presume this appreciation included the improvements mentioned in the Trial Court's opinion. The items of marital property, which were not ordered sold and the proceeds divided, were awarded to the parties as follows:

WIFE

Appreciation--Real Estate	$14,000.00
TV System	2,000.00
Pool Liner	1,000.00
Appreciation--Wife's Pension	6,300.00
Appreciation--Wife's Stock Fund	7,200.00
Van, Boat and Boat Trailer	39,000.00
	$69,500.00

HUSBAND

Truck	$ 9,500.00
One-half Hay Baler	750.00
One-half cattle trailer	750.00
	$11,000.00

The first point made by the husband is that because all of the deposits to purchase the various items of personal property were first deposited in the parties' joint account, there was a transmutation and any personal property acquired was marital property and, as such, subject to an equitable division. He then asserts that the wife's award of marital property was considerably larger than his and the division was therefore inequitable.

The doctrine of transmutation has been adopted by our case law and is articulated in Batson v. Batson, 769 S.W.2d 849 (Tenn. App. 1988), quoting from Professor Clark (at page 858), as follows:

> Another panel of this Court recognized recently that separate property may become part of the marital estate if its owner treats it as if it were marital property. Professor Clark describes the doctrine of transmutation as follows:
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> > [Transmutation] occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property. One method of causing transmutation is to purchase property with separate funds but to take title in joint tenancy. This may also be done by placing separate property in the names of both spouses. The rationale underlying both these doctrines is that dealing with property in these ways creates a rebuttable presumption of a gift to the marital estate. This presumption is based also upon the provision in many marital property statutes that property acquired during the marriage is presumed marital. The presumption can be rebutted by evidence of circumstances or communications clearly indicating an intent that the property remain separate.
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> 2 H. Clark, The Law of Domestic Relations in the United States § 16.2, at 185 (1987).

While it is arguable that a transmutation did not in fact occur and Ms. Rutledge did not intend that all monies borrowed by her alone and deposited in the parties' joint account was intended to become marital property, we will assume this to be the case. Having done so, it appears, as above noted, that the wife was awarded $58,500 more than the husband in marital property.

As will be seen from the Trial Court's bench opinion, it was his intent that the wife recoup in part her inheritance which was used for the purchase of various items during their marriage.

Given the fact that T.C.A. 36-4-121 mandates an equitable division, not an equal one, we are convinced that the action of the Trial Court was equitable under the facts of this case.

In summary, we conclude that the Trial Court's disposition of marital property was in accordance with the dictates of Batson v. Batson, supra, where Judge Koch, speaking for this Court, observed the following (769 S.W.2d at page 859):

> Tenn. Code Ann. § 36-4-121(a) provides that marital property should be divided equitably without regard to fault. It gives a trial court wide discretion in adjusting and adjudicating the parties' rights and interests in all jointly owned property. Fisher v. Fisher, 648 S.W.2d 244, 246 (Tenn. 1983). Accordingly, a trial court's division of the marital estate is entitled to great weight on appeal, Edwards v. Edwards, 501 S.W.2d 283, 288 (Tenn. Ct. App. 1973), and should be presumed to be proper unless the evidence preponderates otherwise. Lancaster v. Lancaster, 671 S.W.2d 501, 502 (Tenn. Ct. App. 1984); Hardin v. Hardin, 689 S.W.2d 152, 154 (Tenn. Ct. App. 1983).
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> A trial court's division of marital property is to be guided by the factors contained in Tenn. Code Ann. § 36-4-121(c). However, an equitable property division is not necessarily an equal one. It is not achieved by a mechanical application of the statutory factors, but rather by considering and weighing the most relevant factors in light of the unique facts of the case.
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> Tenn. Code Ann. § 36-4-121(c)(1) permits trial courts to consider the duration of the marriage. In

> cases involving a marriage of relatively short duration, it is appropriate to divide the property in a way that, as nearly as possible, places the parties in the same position they would have been in had the marriage never taken place. In re Marriage of McInnis, 62 Or. App. 524, 661 P.2d 942, 943 (1983).

As to the Highboy tractor, having a value of $500, it appears that the wife herself admitted that it was a gift to her husband and it should be awarded to him as his separate property. In the event it has been sold under the order of the Court, appropriate adjustment should be made when dividing the proceeds so that his interest in this tractor might be preserved.

For the foregoing reasons the judgment of the Trial Court, as modified, is affirmed and the cause remanded for such further proceedings, if any, as may be necessary and collection of costs below. Costs of appeal are adjudged against the husband and his surety.

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Houston M. Goddard, P.J.

CONCUR:

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Herschel P. Franks, J.

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Clifford E. Sanders, Sr.J.