



1993. Mary Evelyn White ("Wife") counterclaimed, alleging that she was entitled to a divorce on grounds of Husband's cruel and inhuman treatment and inappropriate marital conduct. Following a bench trial, a final decree of divorce was entered that granted the parties a divorce on grounds of irreconcilable differences. The final decree also ordered the parties' property to be distributed in accordance with the terms that the parties agreed upon in court. The trial court later amended the final decree to award Wife a divorce on grounds of Husband's inappropriate marital conduct because Wife did not sign a written marital dissolution agreement. Wife has appealed from the amended final decree and has presented two issues to this Court for consideration: (1) Whether the trial court erred in granting the parties a divorce on grounds of irreconcilable differences when there was a dispute regarding the property settlement and when no written marital dissolution agreement had been signed by Wife; and (2) Whether the trial court erred in amending the final decree to award Wife a divorce on grounds of Husband's inappropriate marital conduct when there was no agreement between the parties regarding property settlement, no proof taken at trial as to Husband's inappropriate marital conduct, and Wife had no notice that the court might award a divorce on grounds of inappropriate marital conduct. For the reasons stated herein, we affirm the judgment of the trial court.

This case was originally tried on May 9, 1994. At the outset of the trial, Wife's counsel sought a continuance in order to discover the value of a corporation owned by Husband. The trial judge denied this motion, stating that valuation of the corporation could be made at a later time.

The trial judge then inquired of both parties whether a settlement was possible and offered the parties some time in which to attempt to reach an agreement. Following a four-hour recess, Husband's counsel announced to the trial judge that the parties had reached an agreement with respect to the division of property. Husband's counsel recited the terms of the oral agreement to the court, which were as follows:

Okay. Your Honor, my client has agreed to pay the defendant Ms. Mary White the sum of 5,950, twenty-seven of it which is \$300 per month for payments made to HUD on the residence which the defendant will provide proof that she had paid the entire \$2700 or it will be reduced by any amount

not paid from September through May.

The plaintiff will pay to Ms. Mary White \$2,250 of that 5,950 as one-half of the value of the cooperation [sic]. The defendant Mary White will receive all of the furnishings in the house presently and will assume any debt should there be any. The defendant will receive a fur coat that my client had previously pawned and a wedding ring that will be returned to her. The defendant will quit claim [sic] all right, title and interest in the residence and will be allowed 90 days to find a new place to reside and move or no later than two weeks prior to the beginning of the next school year.

The defendant will assume all of her debts and hold Mr. White harmless and Mr. White will assume all of the balance of his debts and hold her harmless. He will also assume a debt at Germantown--Community Bank of Germantown that was originally approximately \$10,000 and he will assume that and hold her harmless on that. He will pay a debt to Ms. White's mother at whatever value that is. It's somewhere between 1,2000 and \$1,600. But he will pay the full balance of that.

They will split one-half of any judgment that was taken on a condominium down in Florida or any judgment that's taken they will both split that debt fifty-fifty. And both parties agree that should there be any misrepresentations on the other parties' part that the agreement will be null and void if there have been any misrepresentations on either side. And both parties agree not to interfere in each other's [sic] business life or their personal lives hereafter. Each will pay their own attorneys fees, and the Court costs will be divided fifty-fifty.

She is going to give up the furniture on the Royal furniture, Jolly Royal furniture, and my client will assume the debt on that.

Wife's counsel then stated:

With regard to the fur and the wedding ring, I would like to add that Mr. White will agree to compensate my client for any damage that has occurred to those items while they are in his possession. Also, for the record, we do agree with the agreement as stated by Mr. Hodges.

The trial judge orally approved the stipulated agreement.

After trial, Wife refused to sign the marital dissolution agreement prepared by Husband's counsel. Nevertheless, the trial court entered a final decree of divorce, which granted the parties a divorce on grounds of irreconcilable differences. The final decree also provided:

That the court finds that the parties have a stipulated agreement on the record as to the division of property and the division is fair and reasonable and provides for the equitable settlement of any and all property rights as set forth above between the parties, and

That each of the parties are hereby ordered to abide by and obey all terms of the Stipulated Agreement which is on record in this cause and incorporated into this Order as if it appears verbatim herein...

Both parties signed the final decree through their respective counsel.

Wife's counsel then filed a motion to Alter or Amend the Judgment, arguing in

support of such motion that no written marital dissolution agreement had been signed and, therefore, the trial court could not properly grant a divorce on grounds of irreconcilable differences. At the hearing on this motion, Husband's counsel stated that Husband agreed to Wife's being granted a divorce on grounds of his inappropriate marital conduct or cruel and inhuman treatment. Wife's counsel argued against the entry of such a decree on the basis that there was a dispute between the parties as to the property settlement and no written marital dissolution agreement had been signed. The trial court, however, entered an order amending the final decree to grant Wife an absolute divorce based on Husband's inappropriate marital conduct. With respect to property settlement, the amended decree provided as follows:

That the parties' stipulated agreement on the record and in the Decree as to the division of property is fair and reasonable and provides for the equitable settlement of any and all property rights between the parties, and said equitable division remains in effect as part of the Amended Final Decree.

That each of the parties are hereby ordered to abide by and obey all terms of the Stipulated Agreement which is on record in this cause and incorporated into the Amended Final Decree...

It is from this decree that Wife appeals.

Wife's first contention on appeal is that the trial court erred in granting to the parties a divorce on grounds of irreconcilable differences when there existed no written, signed marital dissolution agreement, as required by T.C.A. § 36-4-103(b).<sup>1</sup>

This issue is without merit. Although the trial court was initially in error in entering a final decree on grounds of irreconcilable differences in the absence of a written agreement, the trial court amended the decree to alter the grounds for divorce. Generally, appeals may only be taken from final judgments. T.R.A.P. 3(a). The final judgment in the present case is the Order Amending Final Decree of Divorce, which grants to Wife an absolute divorce on grounds of Husband's inappropriate marital conduct. Consequently,

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<sup>1</sup>Tennessee Code Annotated § 36-4-103(b) provides:

No divorce shall be granted on the ground of irreconcilable differences unless the court shall affirmatively find in its decree that the parties have made adequate and sufficient provision by written agreement for the custody and maintenance of any children of that marriage and for the equitable settlement of any property rights between the parties.

on appeal, we will consider only this decree and issues relating thereto.

Wife has challenged the amended decree of divorce on several grounds. First, she argues that the entry of the decree was improper because she repudiated the stipulated property agreement prior to entry of the amended final decree.

It is undisputed that Wife did not repudiate the stipulated agreement regarding property settlement at any time prior to the entry of the original final decree of divorce. Wife's counsel agreed to the terms of the agreement as stated by Husband's counsel at trial and, through the signature of her attorney, agreed to the final decree of divorce that ordered the parties to abide by that agreement. Both parties, through their counsel, also signed the Order Amending Final Decree of Divorce, which ordered the parties to comply with the stipulated agreement of record. Wife argues that she repudiated the agreement prior to entry of the amended final decree, which operates to negate the efficacy of the agreement.

With respect to this issue, the Tennessee Supreme Court stated the law in Harbour v. Brown, 732 S.W. 2d 598 (Tenn. 1987), as follows:

A valid consent decree cannot be rendered by a court when the consent of one of the parties thereto is wanting. It is not sufficient to support the judgment that a party's consent thereto may at one time have been given; consent must exist at the very moment the court undertakes to make the agreement the judgment of the court. Id. at 599 (quoting Burnaman v. Heaton, 240 S.W. 2d 288 (Tex. 1951)).

The facts at bar in Harbour, however, are distinguishable from those with which we are presented. In Harbour, the parties announced to the court that they had reached an agreement, but the terms of that agreement were not recited to the court. Id. at 599. Instead, the parties stated that they would submit an order of compromise to the court at a later date. Id. The court, however, proceeded to enter an order dismissing the case. Id. The Tennessee Supreme Court held that the trial judge erred in dismissing the case because the defendant's repudiation of the compromise agreement was communicated to the court prior to entry of judgment. Id. at 600.

In the present case, however, the terms of the agreement were recited in open court, approved by the trial judge, and incorporated into a final decree of divorce before Wife attempted to repudiate. This case is thus similar to the case of Callison v. Callison, Obion Equity No. 1, 1988 WL 10 0 050 (Tenn. App. Sept. 29, 1988), in which the wife recited the terms of an oral property agreement reached by the parties at the divorce hearing. The trial judge granted a divorce to the wife and approved the property settlement as recited to the court. Id. at \*1. Prior to entry of the final divorce decree, however, the husband repudiated the agreement. Notwithstanding such repudiation, the trial court entered a final decree that contained the property settlement outlined by the parties at trial. Id. The Court of Appeals in Callison distinguished the Harbour decision because, unlike Harbour, the trial court in Callison heard the terms of the oral agreement and approved those terms on the record in open court. The Court held that the husband's attempted repudiation was ineffective and that the parties were bound by their stipulated property settlement. Id.

In accordance with the Callison decision, we hold that Wife's attempt to repudiate the property agreement was ineffectual and that the parties must comply with their stipulated agreement of record.

Wife next asserts that the trial court erred in granting to Wife a divorce on grounds of Husband's inappropriate marital conduct when she did not agree to a divorce on that basis, no proof was taken, and she had no notice.

Wife, in her Answer and Cross-Complaint, prayed for a divorce from Husband on grounds of inappropriate marital conduct. At the hearing on Wife's Motion to Amend or Alter the Judgment, Husband stipulated that he was guilty of inappropriate marital conduct, and the trial court amended the final decree to grant to Wife a divorce on that basis. Wife argues that she did not agree to a divorce on grounds of inappropriate marital conduct and that the trial court should have heard proof on the matter.

Factual statements contained in pleadings are generally considered to be admissions and are conclusive against the pleader in the case until they have been either withdrawn or amended. Pankow v. Mitchell, 737 S.W.2d 293, 296 (Tenn. App. 1987); First Tennessee Bank, N.A. v. Mungan, 779 S.W.2d 798, 801 (Tenn. App. 1989). As this court previously stated, "A statement of fact in a party's pleading is an admission that the fact exists as stated." Blackmon v. Estate of Wilson, 709 S.W.2d 596, 602 (Tenn. App. 1986) (quoting Moore v. Drennan, 523 P.2d 1250, 1252-53 (Or. 1974)).

Wife alleged in her complaint that Husband was guilty of inappropriate marital conduct. Husband admitted and stipulated to that fact. Wife cannot now complain that she is not entitled to a divorce on the very grounds that she alleged in her complaint.

Furthermore, it was not necessary for the trial court to take proof on the grounds for divorce because T.C.A. § 36-4-129 allows parties to stipulate as to grounds for divorce and empowers the court to grant a divorce based on either stipulations or proof. T.C.A. § 36-4-129(b).

Wife's final contention is that she had no notice concerning the award of divorce to her on the basis of inappropriate marital conduct because she was not present at the hearing and had no notice to be present on that date.

This argument borders on frivolity. Wife's counter-complaint alleged that she was entitled to a divorce based on inappropriate marital conduct. Consequently, she may hardly claim surprise when the trial judge grants her the very relief for which she prayed. Wife's counsel filed the Motion to Alter or Amend the Judgment and set the date for the hearing on the motion. Clients are charged with the notice and knowledge of facts transmitted to their attorneys. Batchelor v. Heiskell, Donelson, Bearman, Adams, Williams & Kirsch, 828 S.W. 2d 388 (Tenn. App. 1992).

Accordingly, the judgment of the trial court is affirmed *in toto*. Costs on appeal are

taxed to the appellant.

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HIGHERS, J.

CONCURS:

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CRAWFORD, P.J., W.S.

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FARMER, J.