

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION AT KNOXVILLE

FILED

August 22, 1996

GENERAL SESSIONS
Cecil Crowson, Jr.
Appellate Court Clerk

KENNETH ATCHLEY WATSON,)
)
Plaintiff/Appellee)

BLOUNT)
)
)

No. 03A01-9601-GS-00039

v.)

SANDRA GAYLE MALLARD WATSON)
)
Defendant/Appellant)

AFFIRMED

M. Jeffrey Whitt, Knoxville, For the Appellant

Perry P. Paine, Jr., Maryville, For the Appellee

OPINION

INMAN, Senior Judge

In this domestic relations case the appellant, hereafter "wife," complains of the distribution of marital assets and allocation of liabilities. Specifically, she argues: (1) that a residence was overvalued, (2) that property described as the Chapman Highway property was undervalued, and (3) that the debts allocated to her were understated.

Appellee, hereafter "husband," filed a complaint for divorce on May 27, 1993. A salient factor is that on November 24, 1993 wife filed a motion seeking the continued exclusive use of the marital residence pending final judgment. The motion was granted, and she continued her exclusive occupancy of the residence until an indefinite date in 1995. In the interim, on July 22, 1994, the case was heard on its merits and taken under advisement until January 1995 when the trial judge filed an opinion allocating marital assets in this manner:

ITEM	COURT'S VALUE	HUSBAND	WIFE
Tarklin Valley property and improvements	\$120,000.00		\$120,000.00
11.5 acres Chapman Hwy. property	40,000.00	\$40,000.00	
Warwick Industries	20,000.00		20,000.00
Tractor	1,000.00		1,000.00
Husband's retirement	12,000.00	12,000.00	
Husband's stock	5,600.00	5,600.00	
Boat	6,000.00	6,000.00	
Tools	3,000.00	3,000.00	
Joint bank account	2,000.00		2,000.00
Furniture	800.00		800.00
Total Assets Awarded	\$210,400.00	\$66,600.00	\$143,800.00
Debts to wife's minor children; Warwick Industries, and for electrical work on the residence at Tarklin Valley	- \$25,000.00		- 25,000.00
Wife to pay to Husband to equalize division of property		26,100.00	- 26,100.00
Subtotal		\$ 26,100.00	- \$ 51,100.00
TOTAL DISTRIBUTION		\$92,700.00	\$ 92,700.00

The Residence

_____ A value of \$120,000.00 was assigned to the residence. At the trial in July 1994 wife apparently concedes that this valuation was reasonable; but she argues that the trial judge neglected to decide the case for 6 months, during which the residence deteriorated on account of a leaking roof, decay of wood siding, bursting water pipes, sagging sheetrock, and so on. The residence was occupied by wife during the time of its determination, and she took no corrective action. If it was reasonably worth only \$108,000.00 when judgment was entered, the decrease may reasonably be attributed to the fault of the wife, and she therefore has no real right to complain.

The Chapman Highway Property

_____ This property was assigned a value of \$40,000.00. Wife says it is reasonably worth \$57,000.00. As we have stated, the case was tried in July 1994 and asset valuations were derived from evidence offered at the trial. Judgment was delayed and, in July 1995, wife made an offer of proof that the property was reasonably worth \$57,000.00. Wife says the trial judge did not consider this proof, which was more accurate than the "hesitant" testimony offered at the trials. The offer of proof came pursuant to a motion filed on May 10, 1995 to alter or amend. The husband argues that the trial judge could not consider the proffered testimony "one year later at the motion for a new trial." As to this, we observe that wife's motion was to alter or amend; moreover, we do not agree that the trial judge "could not" consider the proffered testimony.

Each party filed a Statement of Assets and Liabilities. Wife estimated the value of the Chapman Highway property to be \$40,000.00, while husband thought it was worth \$34,500.00. Neither testified as firmly about valuation as did the expert called by wife upon the hearing of the motion. But the prerogative to gauge the testimony and determine values of assets is reposed in the trial judge, and we see no abuse of discretion.

The Debts

_____ Wife argues that the trial judge "totaled the marital debts to a figure of \$25,000.00 and holds the appellant responsible, instead, for \$39,750.00.

Husband agrees that the Court "erred in placing the value of the debts to be \$25,000.00 inasmuch as such an amount is in excess of the proof presented at trial." He does not elaborate the point in a meaningful way.

Wife argues that the parties were indebted for materials purchased for the residence and other real property to the extent of \$17,095.82; but these debts were apparently owed -- if, indeed, they were not paid -- to Warwick Industries, a small entrepreneurial company wholly owned by wife and a son by a former marriage, and as we read the record were considered by the trial judge in his allocation of assets.

The trial judge noted the unusual difficulties presented by this case, an observation with which we readily concur. The parties presented their proof as

though expecting the trial judge to take and state an accounting of every expenditure either of them made during their marriage, an impossible task.

We have reviewed the record *de novo* with a presumption of the correction of the judgment and cannot find that the evidence preponderates against the judgment. TENN. R. APP. P., RULE 13(d).

Judgment of the trial court is affirmed with costs assessed to the appellant.

William H. Inman, Senior Judge

Concur:

Don T. McMurray, Judge

Herschel P. Franks, Judge