

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

**FILED**

October 23, 1996

Cecil Crowson, Jr.  
Appellate Court Clerk

CHARLES MCNARY BOLING, ) C/ A NO. 03A01-9605-CH-00169  
Plaintiff-Appellee, )  
v. ) SEVIER LAW  
NANCY CARR BOLING, )  
Defendant-Appellant. ) HON. CHESTER S. RAINWATER, JR.,  
 ) JUDGE  
 ) AFFIRMED AS MODIFIED  
 ) AND REMANDED

JERRY K. GALYON, Sevierville, for Plaintiff-Appellee.

WILLIAM A. REEVES, WISE & REEVES, P. C., Knoxville, for  
Defendant-Appellant.

O P I N I O N

Franks. J.

In this divorce action, both parties have appealed and their issues concern the Trial Court's classification and division of the marital estate.

The Trial Court filed a detailed memorandum opinion, from which we quote with approval:

The parties, now ages 53 and 52 respectively, were married October 7, 1984. The marriage was the second for each of them

Prior to the marriage, the Husband had experienced business failures and was in serious financial difficulties. This had resulted in his filing for bankruptcy and obtaining a subsequent discharge of his obligations in about the year 1982. Because of this, and other reasons, the Husband suggested the parties enter into an Antenuptial Contract. . . . This was agreeable, and the Husband, following consultations with his attorney, had him prepare such instrument. This was executed by the parties on October 5, 1984, two days prior to their marriage.

. . . .

Following the marriage, the Husband moved into the residence of the Wife. The Wife continued to manage her separately owned rental properties and continued to assist her father in the management of the Carr's Northside Cottages. The Husband did not engage in any employment outside the family. Rather, he remained at the home and was involved in the acquisition and maintenance of the parties' later acquired jointly owned properties and assets--especially the ?Lakehouse residence property?; the ?Shilling property?, which was committed to commercial usage as rental property through their M & N Partnership; and the litigation which resulted in the Chancery Court Judgment. In 1987 the Husband again filed for bankruptcy and received a discharge on or about February 3, 1988.

The Husband brought no substantial assets into the marriage and was able to contribute little from earned income. The acquisition of the jointly acquired properties was made possible by virtue of the separate assets of the Wife (her ability to obtain financing), her income, and her ability to manage and oversee the overall operation of the properties.

No children were born to this marriage.

. . . .

The Antenuptial Contract was entered into at the suggestion and request of the Husband. It was prepared at his direction by his attorney. The contents of the contract are those directed solely by the Husband, with the advice and counsel of his attorney. They are in keeping with his repeated public pronouncements, throughout the marriage, that he was not entitled to, and wanted none of his

Wife's property.

. . .

The record sustains the fact that the Antenuptial and Post Nuptial Agreements were freely and knowingly entered into and executed by the parties for the purposes expressed therein, for a valuable consideration. There was no evidence that the Wife failed to disclose any assets, or committed any fraud. Accordingly, the provisions of the agreements are valid and binding upon the parties.

The Trial Court then made an award of marital properties and allocations of indebtedness, and the husband, in his brief, concedes that the net equity to him under this division is \$470,000 and the net equity to the wife is \$423,200.00. The wife insists that this division is inequitable, and we agree. In this case, the record shows that the business acumen and the ability to procure loans for investment purposes were primarily the wife's contribution, and as the Trial Court noted, the husband made no financial contribution to the acquisition of the assets, and his income contributions were not substantial. The marriage was of relatively short duration, but the husband did make contributions to the preservation, acquisition and appreciation of their properties. However, the evidence does not warrant awarding the husband a greater share of the marital estate than the wife, under the facts of this case.

The largest single asset in the marital estate is the proceeds of a Chancery Court judgment awarded to the parties jointly in the case of Boling, et al., v. Tennessee State Bank, L. Tommy Bush and Billy Proffitt, now in the sum of \$688,000.00, which is presently on deposit in the registry of the Chancery Court. The Trial Court divided this judgment

equally between the parties, and we do disagree with this division. The Trial Court awarded the lake house to the husband as a residence, but ordered the wife to pay an indebtedness in the amount of \$24,950.00 attributed to the lake house, which secured another loan. We believe an equitable division would include requiring the husband to pay this indebtedness, and it should be paid from his share of the proceeds from the Chancery Court judgment, since the wife is obligated on the note which is secured, in part, by this property.

After the marriage, the parties entered into a partnership agreement, which partnership includes the ?Shilling Property? owned by the parties as tenants in the entirety. The Trial Court ruled that the parties would ?retain their respective rights and obligations in accordance with the partnership agreement?. The Trial Court concluded that the property was separate property of the parties, and was not for distribution in the divorce proceeding. We do not agree. Partnership interests fall within the definition of marital property, and the Court has authority to divide the parties' interests in the partnership estate as marital property which is to be treated as any other marital asset. *See* T. C. A. §36-4-121(b)(1)(A). The partnership property has an outstanding indebtedness of \$237,570.76, with an equity as agreed by the parties of \$122,429.44. We conclude that the equities of the case require that this property be awarded to the wife, and she will be responsible for the outstanding indebtedness, and the partnership will be terminated. We believe the foregoing adjustments will result in an equitable

distribution of the marital estate, and the divisions and awards by the Trial Court are otherwise affirmed.

Finally, the husband argues that the Court erred in determining the antenuptial and post-nuptial agreements were valid, and therefore enforceable. A valid antenuptial agreement requires a full and fair disclosure of the parties' assets, or that the party seeking to void the agreement had independent knowledge of the full nature, extent and value of the other spouse's property and holdings?. *Randolph v.*

*Randolph*, \_\_\_S.W2d\_\_\_, (Tenn. filed September 9, 1996, Knoxville).

During the trial, the husband testified that he did not know entirely? the extent of his wife's estate. The wife testified that he knew, and I knew the nature and extent? of her estate. The evidence does not preponderate against the Trial Court's finding that the agreements were valid and enforceable. T. R. A. P. Rule 13(d).

We affirm the judgment of the Trial Court, as modified, and the cause will be remanded for the entry of a decree reflecting the modifications outlined in this opinion.

The cost of the appeal is assessed to Charles McNary Boling.

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Herschel P. Franks, J.

CONCUR:

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Houston M Goddard, P. J.

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Don T. Murray, J.