

IN THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION
AT JACKSON

**CHERYL PATRICIA NORQUIST
CHAPPELL,**

Plaintiff/Appellant.

VS.

SIDNEY WARREN CHAPPELL,

Defendant/Appellee.

) Obion County Chancery Court
) No. 18,903
)

) App. No. 02A01-9606-CH-00144
)

) HON. WILLIAM MICHAEL MALOAN
) CHANCELLOR

) **AFFIRMED AND REMANDED**
)

) OPINION FILED:
)

FILED March 11, 1997 Cecil Crowson, Jr. Appellate Court Clerk

Mary Ellen Stevens, Union City, for Plaintiff/Appellant.

Damon E. Campbell, CONLEY, CAMPBELL, MOSS & SMITH, Union City, for
Defendant/Appellee.

MEMORANDUM OPINION¹

Farmer, J.

Cheryl Patricia Norquist Chappell (Wife) was awarded a divorce from Sidney Warren Chappell (Husband). Wife appeals from the trial court's distribution of marital property, specifically the value placed on Chappell Construction Company, a sole proprietorship which was awarded to Husband.

She contends that the trial court erred in disregarding expert testimony relative to the value of the business and failing to include goodwill. She further contends that Husband should be bound by the value he placed on the business in a financial statement given to a bank.

The trial court valued the business at \$37,785. This resulted in Wife receiving approximately 54% and Husband 46% of the marital estate. Wife presented the testimony of Jim

¹**Rule 10 (Court of Appeals). Memorandum Opinion.** -- (b) The Court, with concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

Dunn, a CPA who, through the use of computer software he had purchased, computed low values, high values, averages and a weighted average. He then interpreted this data to give an opinion that the value of the business was slightly in excess of \$134,000. He opined that the net equity of the business was \$37,785. He then multiplied this by a 2.5 factor for goodwill of \$96,232 to arrive at a total value of \$134,017.

Contrary to Wife's assertion, the trial court did not disregard the testimony of Mr. Dunn because the value placed by the chancellor on the business was the exact figure of Mr. Dunn's opinion of the net equity. We do not find the chancellor to have erred in failing to include the figure of goodwill as this Court has held that the goodwill of a sole proprietorship is not a marital asset to be accounted for in making an equal distribution of the marital estate. *Koch v. Koch*, 874 S.W.2d 571 (Tenn. App. 1993); *Hitt v. Hitt*, No. 02A01-9310-CV-00218 (Tenn. App. Nov. 9, 1994).

Wife estimated the value of the business to be \$125,000. Also contained in the record is an appraisal of the business done by Freeman Machinery Co., which valued the assets at \$46,300, and an appraisal by Agri-Equipment Co. with a value of \$47,300. The company does right-of-way maintenance for Shell Pipeline which represents 99% of its business and does not have a contract with Shell, therefore that business could be terminated at any time.

Wife contends that Husband should be bound by the net worth of the business which he represented on a financial statement to the Bank of Troy in the amount of \$95,551. Husband testified that he arrived at the value he placed on the machinery and tools as his best estimate at the time. However, since that time, he had two appraisals made which resulted in the appraisals heretofore mentioned. He had never had it appraised prior to that time. An admission of a party is competent evidence against him. However, an evidentiary admission of a party may be explained by the party, and a satisfactory explanation may justify the disregard of the admission. *Patterson v. Stratton*, No. 88-268-II (Tenn. App. Jan. 27, 1989), *perm. app. denied*.

Our review of this matter is *de novo* on the record with a presumption that the findings of the trial court are correct. Rule 13(d) T.R.A.P. The findings of the trier of fact depend upon the credibility of the witness and are accorded great weight by the appellate court as the trial

court has the opportunity to observe the appearance and demeanor of the witnesses. *Town of Alamo v. Forcum-James Co.*, 327 S.W.2d 47 (Tenn. 1959); *Sisk v. Valley Forge Ins. Co.*, 640 S.W.2d 844 (Tenn. App. 1982). Upon reviewing this record, we do not find the evidence to preponderate against the trial court's finding as to the value placed on the business and do not find the distribution of marital property to be inequitable.

The judgment of the trial court is affirmed and the costs of this appeal are taxed to the appellant, for which execution may issue if necessary.

FARMER, J.

HIGHERS, J. (Concurs)

LILLARD, J. (Concurs)