

**IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE**

FILED
April 16, 1997
Cecil W. Crowson
Appellate Court Clerk

CARROL MAXINE LESTER KING,)
)
Plaintiff/Appellant,)
)
VS.)
)
ROBERT LINSEY KING, SR.,)
)
Defendant/Appellee.)

Rutherford Circuit
No. 33901
Appeal No.
01A01-9508-CV-00377

APPEAL FROM THE CIRCUIT COURT FOR RUTHERFORD COUNTY
AT MURFREESBORO, TENNESSEE

THE HONORABLE DON R. ASH, JUDGE

For the Plaintiff/Appellant:

Richard R. Clark
Nashville, Tennessee

For the Defendant/Appellee:

Daryl M. South
Murfreesboro, Tennessee

MODIFIED AND REMANDED

WILLIAM C. KOCH, JR., JUDGE

OPINION

This appeal involves the dissolution of a 37-year marriage. The wife filed for divorce in the Circuit Court for Rutherford County, and, following a bench trial, the trial court granted the wife a divorce on the stipulated grounds of inappropriate marital conduct. The trial court awarded each party essentially equal shares of the marital estate and awarded the wife alimony in solido and rehabilitative alimony for thirty months. On this appeal, the wife takes issue with the classification of a house purchased from her deceased mother's estate as marital property and with the amount and duration of rehabilitative alimony. We concur with the trial court's classification and distribution of the marital property; however, we have determined that the wife should receive temporary spousal support for a longer period.

I.

Robert Linsey King and Carrol Maxine Lester King first met when they were in high school in Wilson County. When they were married in 1958, Mr. King was nineteen years old, and Ms. King was a 20-year-old college sophomore. Ms. King left school, and their first child was born approximately one year later. Mr. King started a career in banking where he remains today. The parties later had two more children. All the children are now adults; however, two of them suffer from mental illness. Their youngest child's illness prevents her from functioning on her own, and so at the time of the divorce, she was living with Ms. King.

The parties had trouble and disagreements throughout the marriage, but their difficulties were exacerbated in 1992 when Mr. King suffered a significant and unexpected reduction in his salary due to a bank merger. Even though Mr. King was a branch manager, his base salary was approximately half of what it had been prior to the merger. This economic pressure was compounded by the parties' disagreement over their youngest child's ability to live on her own without their supervision and support. The parties finally came to the point where they could

no longer forgive, or at least overlook, each other's trespasses, and so Ms. King filed for divorce in September 1994. The trial court conducted a bench trial and filed a final decree in April 1995 awarding Ms. King a divorce on the stipulated grounds of inappropriate marital conduct. The trial court valued the marital property at \$260,950 and awarded \$133,248.50 (51% of the marital estate) to Ms. King and \$127,701.50 (49% of the marital estate) to Mr. King. The trial court then awarded Ms. King \$25,457 in alimony in solido and \$170/month in rehabilitative alimony for thirty months.

II.

Ms. King first takes issue with the trial court's classification of her mother's house as marital property. Even though the trial court awarded her the property and the accompanying debt, Ms. King asserts that the property should have been classified as separate property because she purchased it using separate inherited funds as a down payment and because Mr. King's name was not on the deed. We have determined that the trial court correctly classified this property.

Ms. King's mother lived in a house on Northfield Boulevard in Murfreesboro. The house became part of her estate when she died in 1989. Ms. King and her siblings first decided to sell the house and divide the proceeds; however, when the house did not bring the price Ms. King thought it was worth, Ms. King decided to buy out her siblings' interests in the house and to hold the house as an investment. Ms. King decided to use \$17,000 she had inherited from her mother as the down payment, but she was unable to obtain a mortgage loan on her own for the balance of the \$50,000 purchase price. She was only able to finance the purchase of the home after persuading Mr. King to obligate himself personally on the promissory note and deed of trust. Mr. King's name appeared on the note and deed of trust but not on the title to the house.

The classification of property as marital or separate under Tenn. Code Ann. § 36-4-121 (1996) depends largely upon its mode of acquisition and the manner in which the parties used the property during the marriage, *Mahaffey v. Mahaffey*, 775 S.W.2d 618, 624 (Tenn. Ct. App. 1989), rather than on the property's record

title. *See Jones v. Jones*, 597 S.W.2d 886, 887 (Tenn. 1979); *Langford v. Langford*, 220 Tenn. 600, 604, 421 S.W.2d 632, 634 (1967); *Mondelli v. Howard*, 780 S.W.2d 769, 774 (Tenn. Ct. App. 1989). While there is no question that only Ms. King's name appeared on the deed, the Kings viewed the property as a marital investment.

Of equal significance is the fact that Mr. King contributed significantly to Ms. King's ability to acquire the property. Had he not agreed to sign the note and deed of trust, Ms. King would not have obtained the financing needed to purchase her siblings' interest in the house. Mr. King's personal financial exposure was real and substantial because not even a divorce would undermine his personal liability on the note. *Blake v. Amoco Fed. Credit Union*, 900 S.W.2d 108, 111 (Tex. App. 1995). Accordingly, other courts have recognized that both the husband and the wife contribute substantially to the acquisition of real property when they jointly obligate themselves on the promissory note. *See Cuda v. Cuda*, 906 S.W.2d 757, 759 (Mo. Ct. App. 1995) and *Barth v. Barth*, 790 S.W.2d 246, 250-51 (Mo. Ct. App. 1990).

It is plain in this case that the parties contributed jointly to the purchase of the Northfield property in January 1991. Mr. King's role was real and substantial. Accordingly, the trial court properly classified the Northfield property as marital property and then gave permissible weight to the wife's contribution to its acquisition by awarding the property to her as part of the division of property.

III.

Ms. King's second issue on appeal concerns the amount and duration of her spousal support. She asserts that the trial court should have awarded her a larger amount of spousal support for a longer period. We have determined that Ms. King is entitled to receive spousal support for a longer period of time.

Determining the amount and duration of spousal support requires the courts to consider and weigh many factors, including those in Tenn. Code Ann. § 36-5-101(d)(1) (1996). *Hawkins v. Hawkins*, 883 S.W.2d 622, 625 (Tenn. Ct. App.

1994); *Loyd v. Loyd*, 860 S.W.2d 409, 412 (Tenn. Ct. App. 1993). One of the goals of spousal support is to mitigate the financial impact of divorce on the innocent spouse; however, divorcing parties rarely have sufficient assets or income to enable both, or even one, spouse to maintain their pre-divorce standard of living. *Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995) (awarding spousal support to enable a spouse “to more closely approach her former economic position”); *Brown v. Brown*, 913 S.W.2d 163, 169 (Tenn. Ct. App. 1994).

The divorce statutes state a preference for rehabilitative spousal support. Tenn. Code Ann. § 36-5-101(d)(1); *Wilson v. Moore*, 929 S.W.2d 367, 375 (Tenn. Ct. App. 1996). This preference does not, however, displace awarding other types of spousal support when warranted by the facts. *Aaron v. Aaron*, 909 S.W.2d at 411 (awarding permanent alimony); *Isbell v. Isbell*, 816 S.W.2d 735, 739 (Tenn. 1991) (authorizing long-term support). A trial court retains broad discretion to determine the nature, duration, and amount of spousal support. *Wilson v. Moore*, 929 S.W.2d at 375. As a general matter, appellate courts are disinclined to alter a trial court’s decision with regard to support. *Brown v. Brown*, 913 S.W.2d at 169; *Gilliam v. Gilliam*, 776 S.W.2d 81, 86 (Tenn. Ct. App. 1988).

Ms. King is currently fifty-nine years old. While she attended college for two years almost forty years ago, she has essentially been a housewife during most of the 37-year marriage. When she worked outside the home, she performed mostly clerical jobs at modest rates of compensation. She is also taking responsibility for the supervision and care of the parties’ youngest daughter whose mental illness prevents her from being self-sufficient. Based on Mr. King’s income, we agree with the trial court’s determination that he is able to pay Ms. King \$170 per month in spousal support. However, in light of the duration of the marriage, Ms. King’s age, the length of time Ms. King has been out of the workforce, Mr. King’s superior ability to earn income, and Ms. King’s need, we have determined that Mr. King should continue to pay Ms. King \$170 per month in spousal support until she reaches sixty-five years of age or until she remarries, whichever occurs first. We have also determined that the trial court should retain jurisdiction over the proceeding for the duration of the award in order to be able

to modify the award at the request of either party upon a satisfactory showing of changed circumstances. Tenn. Code Ann. § 36-5-101(d)(2).

IV.

We affirm the judgment as modified herein and remand the case to the trial court for further proceedings consistent with this opinion. We tax the costs of this appeal to Robert Linsey King, Sr., for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., JUDGE

CONCUR:

HENRY F. TODD, P.J., M.S.

BEN H. CANTRELL, JUDGE