

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT KNOXVILLE

FILED

December 23, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

MARY ELLA NEEDHAM,

Plaintiff/Appellant,

v.

AUBREY KOHLMIER NEEDHAM,

Defendant/Appellee.

Blount County
No. S-2569

C.A. No. 03A01-9706-GS-00221

APPEAL FROM THE GENERAL SESSIONS COURT OF BLOUNT COUNTY
AT MARYVILLE, TENNESSEE
DOMESTIC RELATIONS DIVISION
THE HONORABLE WILLIAM R. BREWER, JR., JUDGE

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AFFIRMED

WILLIAM H. WILLIAMS, SENIOR JUDGE

CONCUR:

ALAN E. HIGHERS, J.
DAVID R. FARMER, J.

This appeal arises from a bitterly contested divorce proceeding heard by the trial court

without a jury. At the conclusion of the trial, the trial court awarded the divorce to each party upon the ground of inappropriate marital conduct. Custody of the two minor children was awarded to the Husband. After first determining certain assets to be separate property of the Husband, the trial court equitably distributed the sizable marital estate between the parties, one-half to each. No spousal support was granted to the Wife due to the nature (size) of the marital property award she received. After a careful examination of the factual findings by the trial court and review of the law, we affirm the judgment of the lower court.

The Plaintiff/Appellant, Mary Ella Needham, will be designated herein as “Wife,” and the Defendant/Appellee, Aubrey Kohlmier Needham, will be designated as “Husband.”

STATEMENT OF THE CASE

Wife, on January 12, 1994, filed a Complaint for Divorce to which an Answer and Counter-Complaint were filed by the Husband. The trial of the cause lasted for four intermittent days, beginning on August 23, 1994 and continued thereafter to the dates of October 11, 1994, October 14, 1994, and December 2, 1994, at which time the trial court stated both parties had made out grounds for divorce of inappropriate marital conduct and took under advisement the matters with regard to the division of the marital property, the marital debts, and awarding of alimony, if any, as well as attorneys’ fees and other costs. The trial court directed the attorneys to submit briefs on the issues prior to December 22, 1994. On August 10, 1995, the trial court issued its Memorandum Opinion in reference to the issues reserved on December 2, 1994. The Final Decree of Divorce was entered on October 31, 1995. Subsequently, respective counsel filed motions pursuant to Rule 59 asking for alteration or amendment of the judgment or, in alternative, a new trial. On January 22, 1997, an order was entered overruling both motions. On February 12, 1997, notice of appeal was properly filed by Plaintiff/Appellant, Mary Ella Needham, and appeal was perfected to this Court.

STATEMENT OF THE FACTS

The parties do not dispute the trial court’s findings of fact and subsequent award of divorce to each upon the ground of inappropriate marital conduct. Therefore, for the sake of brevity, we will not dwell in detail upon the proof of the facts leading to the failure of the marriage and the subsequent divorce, except as is necessary in the consideration of the alimony issue raised by the

Wife pursuant to T.C.A. § 36-5-101(d)(1). This Court is required to review the facts found by the trial court *de novo* upon the record with a presumption of correctness unless the evidence preponderates otherwise. Rule 13(d), T.R.A.P. Suffice it to state that the record fully supports the findings of fact by the trial court and the award of divorce to each party. A short statement of the facts is in order. The parties were married May 12, 1972. They separated upon the filing of the divorce complaint on January 12, 1994. At the time of divorce, the Wife was 51 years old and the Husband was 57 years old. The Husband was the sole owner and stockholder of a business known as Ditch Witch Equipment Company, Inc. He remains employed in this capacity in this business. The parties had three children, two of which were minors at the time of the divorce hearing, ages 16 and 15. Custody of the two minor children was awarded to the Husband. Custody is not an issue.

The Wife testified that over the span of 22 years from 1972 to 1994 that the Husband began calling her vile names and using abusive language to her almost from the beginning of the marriage and such conduct by the Husband was committed before dinner guests, the children, and others on many different occasions. At other times, Husband would use abusive language to her in public and, particularly, on two occasions at dances that they were attending. On one occasion at a dance, he grabbed her and bodily pulled her from the dance floor and took her home at which time a physical abuse was administered to the Wife by slapping her. As the years progressed, the abusive conduct and language by the Husband became progressively worse until finally Wife was forced to withdraw from the house and take refuge in a condominium owned by the Husband. She did return, however, to the house and continued to live in the house although the parties had not had a conjugal relationship for the last six years of the marriage. She stated that the relationship grew so bad between herself, her husband, and the children whom the Husband had taught to also abuse her by the use of inappropriate language that she was compelled to file the Complaint for Divorce.

The Husband testified that he did not use the language as charged by the Wife except on a couple of occasions when she verbally and even physically attacked him in a drunken rage. The Husband testified that the marriage was a good marriage for the first 10 or 12 years and that each party would drink sociably, particularly at night when he would return home after working hard all day and would cook on the grill on the patio, or they would have guests over. The drinking at that time was acceptable and moderate. However, as time progressed, Wife began drinking more and more. Husband stated that he remonstrated with his Wife, telling her that her glass of alcohol looked

like it was a glass of iced tea it was so dark in color; that she must control herself and control the drinking. The Wife refused to listen to his entreaty. As the years progressed, by 1990, she had reached the point of total alcoholism. The Husband testified that:

She's a Jekyll and a Hyde. She's the nicest lady, the funnest [sic] person, the best friend, lover, wife you could ever have. That alcohol turns her a three-sixty. Boom. And all of a sudden in an hour and a half she's a different person.

This change began between 1982 and 1984 and continued to grow progressively more serious until 1994. The Husband stated that by 1990 the relationship had developed into a fight every night until the Complaint for Divorce was filed by the Wife.

Interestingly, the trial court, at the conclusion of the trial on December 2, 1994, stated:

. . . And with regard to the granting of this divorce, we've spent four days in this trial and we've got assets running around here of 3,000,000 dollars worth. I can't remember now. We've spent three days out of these four days talking about grounds, and frankly, each party has made a proper case to be granted today on the grounds of inappropriate marital conduct to both the parties. And quite frankly, you both deserve what is getting ready to happen to you.

On June 1, 1992, the net assets of the Husband were \$3,477,380. The total liabilities amounted to \$454,272,000. The liabilities were the personal debts of the Husband. The net worth was \$3,023,000. The property, personal and real, consisted of four parcels located on Topside Road at the intersection of Alcoa Highway. The parcels were as follows:

- Parcel 1: Purchased in 1968 in the name of Aubrey Needham in fee simple consisting of 1.177 acres, value \$320,000;
- Parcel 2: Purchased in 1985 in the joint names of Aubrey and Mary Needham located on Topside Road adjoining Parcel 1, consisting of .484 acres, value \$56,000;
- Parcel 3: Purchased in 1986 in the joint names of Aubrey and Mary Needham located on Topside Road adjoining Parcel 2, consisting of 0.927 acres, value \$86,000;
- Parcel 4: Purchased in 1982 by the Ditch Witch Equipment Company, Inc. located immediately behind the Ditch Witch Company Parcel 1, value \$107,000;

Other Real Property:

3510 Crown Point Drive, the home place, value \$175,000;

Stewart Lane property located between Topside and Wrights Ferry Road, consisting of 20.091 acres, purchased by Aubrey Needham in 1970, and 13.76 acres purchased

jointly by Aubrey and Mary Needham in 1973, total value \$173,000 at \$5,000 per acre;

A condominium located in Townsend, Tennessee owned by the Ditch Witch Company, value \$85,000; and

Kentucky coal land purchased jointly by Aubrey and Mary Needham, value \$60,000.

Personal Property:

Furniture and furnishings, no value stated;

Boats and boating equipment, no value stated;

Cash, First Tennessee Bank, no value stated; and

IRA, value \$72,000.

The court first found that the Ditch Witch Equipment Company, Inc. was currently valued at \$1,000,000 and in 1972 at the time of the marriage was valued at \$200,000. The court found the \$200,000 to be separate property of the Husband and also the 20.091 acres purchased by the Husband in 1970 to be separate property. The marital property was determined by the court as follows:

Increase in the Ditch Witch Equipment Company, Inc.	\$800,000
Kentucky coal land	60,000
Stewart Lane property (13 acres only)	65,000
Marital home	180,000
IRA	72,000
Remaining land at Alcoa Highway and Topside Road not titled to Ditch Witch Equipment Company, Inc.	<u>500,000</u>
	<hr/> \$1,677,000

Additionally, the court found that the parties owned personal property that was grouped into two main areas, (1) furniture and furnishings and (2) boats and boating equipment. The trial court found the two groups of personal property to be similar and equal in value. The liability of the parties was found to be \$400,000. Excluding the furniture and furnishings, the boating equipment, and the cash in First Tennessee Bank, the trial court found the parties' net marital estate to be \$1,277,000. This figure was reached by deducting the liabilities owed by the parties of \$400,000 from the figure of \$1,677,000. The 1,277,000 was divided equally, \$638,500 for each party. Trial courts have the authority to apportion marital debts in the same way they divide marital assets. Cutsinger v. Cutsinger, 917 S.W.2d 238, 243 (Tenn. Ct. App. 1995).

The trial court held that an equitable division of the parties' marital assets should be an equal one. The Husband was awarded the Ditch Witch Equipment Company,

Inc., the Kentucky land, the Stewart Lane property, the marital residence, the Alcoa Highway/Topside Road property, and the IRA. The court further awarded to the Husband the boats and boating equipment. The Wife was awarded the furniture and furnishings, with the exception of 18 items of personal property given to the Husband. The remaining money in the First Tennessee Bank account was divided equally between the parties. The Husband was ordered to pay for and be responsible for all the marital debts in the amount of \$400,000, the Wife to be held harmless therefrom. The court further found that in order to equalize the division of the parties' marital assets, the court awarded to the Wife the sum of \$638,500. The Husband was ordered to pay this amount to the Wife in 10 equal yearly installments, the first payment to be made within 30 days of entry of the Final Decree of Divorce. The unpaid balance of this amount is to draw interest at the rate of six percent per year.

The trial court further found regarding the issues of alimony and stated as follows:

Considering the factors set out in the Code, the court has determined that with the exception of the payment of a supplemental attorney fee to the plaintiff's attorney, that this is not a proper case for the award of alimony. The primary reason the court feels that this is not a proper case for the award of alimony is because of the nature of the award of the marital assets to the plaintiff.

The Husband, however, was required to pay the Wife's attorney fee of \$10,000 as alimony and additionally to pay the sum of \$1,500 to the Wife for trial preparation expenses.

A table listing the distribution of the marital property appears as follows:

ASSETS - MARITAL PROPERTY

Increase in value of Ditch Witch Equipment Co., Inc.	\$800,000
Kentucky coal land	\$60,000
Wrights Ferry Road land - 13 acres	\$65,000
Marital home	\$180,000
IRA	\$72,000
Remaining land at Alcoa Highway and Topside Road	\$500,000

<u>WIFE</u>	<u>HUSBAND</u>
Ditch Witch increase \$400,000	Ditch Witch increase \$400,000
Kentucky coal land 30,000	Kentucky coal land 30,000
Wrights Ferry Road land 32,500	Wrights Ferry Road land 32,500
Marital home 90,000	Marital home 90,000
IRA 36,000	IRA 36,000
Alcoa & Topside property <u>250,000</u>	Alcoa & Topside property <u>250,000</u>
\$838,500	\$838,500
Liabilities <u>- 200,000</u>	Liabilities <u>-200,000</u>
Total \$638,500	Total \$638,500
Attorney's Fee Alimony 10,000	Boats, Boating Equip. No Value Stated
Trial Preparation Expense 1,500	½ Cash, First Tenn. Bank No Value Stated
Furniture & Furnishings No Value Stated	
½ Cash, First Tenn. Bank No Value Stated	

WIFE'S ISSUES

1. The trial court erred in designating the 20.091 acres on Wrights Ferry Road (Stewart Lane) as separate property (to the Husband).
2. The trial court erred in failing to award to the Wife periodic alimony.

HUSBAND'S ISSUES

1. Whether the trial court erred in designating the increase in the value of the Ditch Witch Equipment Company, Inc. as marital property.
2. Whether the trial court erred in denying the Wife an award of alimony.
3. Whether the trial court erred in designating the 20.091 acres on Wrights Ferry Road (Stewart Lane) as separate property.
4. Whether the trial court erred in designating the 1.177 acres on Alcoa Highway as marital property.

***Did the trial court err in designating the 20.091 acres on
Wrights Ferry Road (Stewart Lane) as separate property?***

Tennessee is a dual property state distinguishing between marital and separate property. T.C.A. § 36-4-121(a) only provides for division of marital property. Batson v. Batson, 769 S.W.2d 849, 857 (Tenn. Ct. App. 1988). T.C.A. § 36-4-121(a) provides that marital property should be equitably divided without regard to fault. An equitable division, however, is not necessarily an equal one. Trial courts are afforded wide discretion in dividing the interests of the parties in jointly owned property. Harrington v. Harrington, 798 S.W.2d 244 (Tenn. Ct. App. 1990); Fisher v. Fisher, 648 S.W.2d 244-46 (Tenn. 1983). Accordingly, the trial court's distribution will be given great weight on appeal, Edwards v. Edwards, 501 S.W.2d 283, 288 (Tenn. Ct. App. 1973), and will be presumed to be correct unless we find the preponderance of the evidence otherwise. Lancaster v. Lancaster, 671 S.W.2d 501, 502 (Tenn. Ct. App. 1984).

The record shows that the Husband purchased the 20.091 acres in fee simple solely in his name in 1970. The marriage occurred May 12, 1972, two years later. The trial court declared the property to be separate property of the Husband. The Wife concedes that the property was conveyed to the Husband prior to marriage, but contends she should be entitled to one-half of the value as marital property because at least half of the purchase price was paid from marital assets following the marriage. She relies upon T.C.A. § 36-4-121(b)(1)(A) which defines the meaning of marital property as:

all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce (emphasis added)

Wife's reliance upon the above statute is a *non sequitur*. The property in question was acquired by the Husband before the marriage. Plainly, this code section is inapplicable. More to the point, T.C.A. § 36-4-121(b)(2)(A) defines separate property to mean "all real and personal property owned by a spouse before marriage." It is clear that the intent of the above quoted section is based squarely upon the proposition of ownership by a spouse before the marriage and such is determined by title to the property. Ownership may be determined by possession, legal title, or ability to transfer. Black's Law Dictionary, p. 1106 (6th ed. 1990).

Husband takes issue with Wife's insistence that approximately one-half of the purchase price

for this property was paid from marital assets. Husband points to the record that shows Husband purchased the land for \$25,000. He paid \$10,000 down and paid the \$15,000 balance from the funds of the Ditch Witch Equipment Company, Inc. over a period of four or five years. Husband acquired the Ditch Witch Company in 1966, which company was valued at \$200,000 at the time of the marriage in 1972. There is no evidence that the payment from the Ditch Witch funds to pay the \$15,000 balance came from the increased portion of the value of the company assets after the marriage. It is equally possible that the payment could have come from the \$200,000 portion. Further, this is unimproved property with the exception of a valueless farmhouse built on the land Circa 1823. Wife's insistence that she contributed to the appreciation of the property under T.C.A. § 36-4-121(c)(5) and (10) as a homemaker and parent is without merit. There is no proof by Wife regarding this specific parcel of unimproved property as distinguished from the marital home and the Ditch Witch Equipment Company that she performed any services at all that contributed substantially to the increased value of this land. We hold the trial court's ruling was proper and affirm the ruling. Wife's Issue 1 is denied.

Did the trial court err in failing to award to the Wife periodic alimony?

We think not. The trial court stated in its Memorandum Opinion that an award of alimony with the exception of the attorneys' fee was not proper in this case because of the nature of the award of the marital assets to the Wife.

We take that to mean that the court was pointing out that considering all the factors under T.C.A. § 36-5-101(d)(1) and the court's finding of the necessity to make an equal division of the marital assets and in light of all the facts and circumstances in the case, alimony was not proper. In considering this question, we have carefully examined the various factors set out in T.C.A. § 36-5-101(d)(1) and agree with the court first that the Wife was not qualified to be awarded rehabilitative temporary support and maintenance. She had a twelfth grade education and had not worked since 1976 when the parties adopted their eldest daughter. Subsequently, two more daughters were born of the marriage by natural birth and the parties agreed that she should remain home as a homemaker and mother for the children. Taking into consideration her age at 51 years of age, the fact that she has no college degree or formal education for purposes of rehabilitation, and her physical condition brought about by the excessive consumption of alcohol, it is clear that the Wife was not qualified

to receive rehabilitative temporary support and maintenance. As found by the trial court, considering the provisions made with regard to the marital property pursuant to T.C.A. § 36-4-121, the size and nature of the award to the Wife, and the factors leading to the deterioration and ultimate divorce of the parties, we agree with the court that the award to the Wife was most equitable. The word “equity” is defined by Webster’s New Universal Unabridged Dictionary (2nd ed.) as: “anything that is fair and equitable. In law, (a) resort to general principles of fairness and justice whenever existing law is inadequate.” In making the award to the Wife and denying alimony or any type of spousal support, the court stated that it considered all applicable factors -- the relative earning capacity of the Husband and the Wife, the fact that the Wife has not worked since 1976, the need of the Wife, and the ability of the Husband to pay. Campanali v. Campanali, 695 S.W.2d 193 (Tenn. Ct. App. 1985). The age of the Wife is 51 years of age, the contribution by the Wife as mother and homemaker, the luxurious standard of living enjoyed by the Wife during the marriage, especially the latter part. All of these factors have been considered. The Wife, of course, desires that the luxurious standard of living during the marriage be continued, but this must be tempered by the ultimate fact that the Wife is not an innocent party.¹ Much of the fault of the dissolution of this marriage lies with her conduct. All in all, we are of the opinion and agree with the trial court that the provisions made with regard to the marital property between the parties being co-equal, neither party obtaining more than the other, together with all of the factors considered by the trial court, the determination that the Wife was not entitled to spousal support was proper.

Finally, the Wife cites the unreported case of Turner v. Turner, 1996 WL 136448 *10 (Tenn. App. 1997) as authority to support her position that she is entitled to spousal support. In that case, the trial court ordered rehabilitative temporary maintenance and support to be paid by the Husband and the Husband objected. The unique facts in Turner are totally dissimilar to this case regarding the age, educational background, health, and potential of rehabilitation. Ms. Turner was 43 years old, had a college degree, and was in good health. These factors, along with the relative factors listed by T.C.A. § 36-5-101(d)(1), convinced the trial court to award rehabilitative alimony, but these factors are not present in the case *sub judice*. We have previously stated why the Wife in this case, Mrs. Needham, was not entitled to rehabilitative temporary maintenance and support. Whether

¹See T.C.A. § 36-5-101(d)(K). “The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so.”

a trial court, based upon the evidence and considering the relative factors, awards or denies spousal support, the appellate courts are disinclined to alter a trial court's decision regarding spousal support unless there is a clear showing of abuse of discretion. Brown v. Brown, 913 S.W.2d 162, 169 (Tenn. Ct. App. 1994). We hold that the trial court did not abuse its discretion in denying Mrs. Needham spousal support and affirm its ruling. Wife's Issue No. 2 is denied.

Did the trial court err in designating the increase in the value of the Ditch Witch Equipment Company, Inc. as marital property?

As previously discussed, the trial court made a factual determination that there was an increase in the value of the stock of the Ditch Witch Company in the amount of \$800,000 during the course of the 22-year marriage from 1972 until 1994. The court declared the increase to be marital property because T.C.A. § 36-4-121(b)(1)(B) and (C) provide that marital property:

includes income from, and any increase in value during the marriage of, property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation. . . .

(C) As used in this subsection, "substantial contribution" may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine.

The trial court, in its Memorandum and Findings of Fact, stated:

The next focus for the court is whether or not the plaintiff's contribution as a parent and homemaker was a substantial contribution to the preservation and appreciation of the stock of the Ditch Witch Equipment Company, Inc. without question, the plaintiff's (wife's) contribution in this regard diminished as this marriage deteriorated. However, the court finds that prior to this time, the wife did make a substantial contribution as a homemaker and parent and that this should make the increase in the value of the stock marital property. Further, the court does not feel that an equitable distribution of assets could be made otherwise.

We agree with the court that the first 12 years of the marriage were the substantial years during which the Ditch Witch Company was stabilizing and reaching its potential as an income-producing agent for the family. The Wife's contributions to the children by giving birth to two of the children, as well as caring for the needs of all three as a mother and homemaker for the Husband, in addition to which the Wife also entertained friends and customers of the Husband in the home during those

years and otherwise made the home place a hospitable and attractive place for the Husband to bring his customers. We affirm the trial court's factual findings that the Wife, during those years, did substantially contribute to the preservation and appreciation of the value of the stock in the Ditch Witch Equipment Company, Inc.

Husband cites the case of Sherrill v. Sherrill, 831 S.W.2d 293 (Tenn. Ct. App. 1992) as authority to argue that the increase in value is not marital property. We are not so persuaded. The Husband's argument is meritless. In Sherrill, at the time of the marriage, the Husband inherited 150,000 shares of Krystal Company stock from his father. In 1988, the Husband sold the stock. The Wife insisted that the increase in the value of the separately owned stock should be marital property. The trial judge found the fact to be that the record was absolutely void of any proof that either party took any action whatsoever to aid in the increase in the value of the Krystal Company stock, that the Wife failed to show that while she made a contribution as a homemaker and parent she failed to prove any direct or indirect connection to the preservation and appreciation of the Husband's Krystal Company stock holdings. The appellate court affirmed the trial court's denial of the Wife's claim. In contrast, the trial court in the case *sub judice* found the following facts that negated Sherrill: The Husband owned 100 percent of the Ditch Witch Equipment Company, Inc. stock prior to the marriage. Conversely, the Krystal Company stock was on the open market and easily valued. The Ditch Witch stock is closely held and cannot be valued as easily as the Sherrill stock. The retained earnings of Ditch Witch substantially increased during the marriage. The Husband drew a relatively small salary and the corporation paid no dividends. Had a larger salary and dividends been taken, such would have been marital property. Unlike Sherrill, the trial court in this case found that the Wife did make a substantial contribution to the preservation and appreciation of the stock in the Ditch Witch Company and did show that during the first 10 years of the marriage her contributions were directly and indirectly connected to the preservation and appreciation of the Husband's stock in Ditch Witch. This was testified to by the Husband in his testimony that during those early years she was a good wife. We find the facts of Sherrill to be inapposite to the case at bar.

We affirm the trial court's determination that the increase in the stock value of the Ditch Witch Company was marital property.

Did the trial court err in designating the 1.177 acres

on Alcoa Highway as marital property?

Husband asserts that the trial court erred in designating the 1.177 acres on Alcoa Highway as marital property because the Husband owned the property before the marriage. The trial court included the 1.177 acre tract on Alcoa Highway in its “remaining land at Alcoa Highway and Topside Road” designation in its Memorandum. Husband asserts that assets owned by a spouse prior to marriage are to be considered the separate property of that spouse. The evidence shows that Husband purchased the property in 1967. As a general rule, the Husband is correct, but there are exceptions. See, e.g., T.C.A. § 36-4-121(c), *infra*.

The Ditch Witch Equipment Company, Inc. is located upon this property. The trial court previously held that the value of the business was currently \$1,000,000 and that there had been an increase of \$800,000 over the duration of the marriage from 1972 to 1994. The trial court held for the reasons already stated that the \$800,000 was marital property. That same reasoning of the trial court would follow concerning the land upon which the Ditch Witch Company is located. This was an equitable distribution as required by law pursuant to T.C.A. § 36-4-121, the distribution to be effectuated without fault attributed to either party. Under all the facts and circumstances, it was the reasoning of the trial court that in order to do justice the increase in the value of the stock of the Ditch Witch Company, as well as the land upon which the Ditch Witch Company is located, should be held to be marital property as a matter of equity. T.C.A. § 36-4-121(c) states as follows:

In making equitable division of marital property the court shall consider all relevant factors including:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) The contribution of each party to the acquisition, preservation, appreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner, or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
- (6) The value of the separate property of each party;

- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party; and
- (10) Such other factors as are necessary to consider the equities between the parties. (emphasis added)

In other words, this was the method employed by the trial court to ensure an equitable distribution of the marital assets between the parties. Title to this land was not disturbed. It still belongs to the Husband in fee simple. He may sell or trade the land as he sees fit. The determination to list the property as marital property by the trial court was in order to effectuate a fair and equitable formula of distribution for the Wife who is economically disadvantaged and who brought no property into the marriage whatsoever. But, as previously held, the Wife, during the first half of the marriage, did make a substantial contribution to the preservation and appreciation of this property, along with the increase in value of the Ditch Witch Company itself. We agree with the trial court's reasoning and with its findings of fact in this regard and affirm the trial court.

CONCLUSION

We affirm the decision of the trial court in determining the 20.091 acres on Wrights Ferry Road (Stewart Lane) as separate property. We agree that the court correctly ruled in determining that the Wife was not entitled to periodic alimony. We concur with the trial court in its finding that the increase in the value of the Ditch Witch Equipment Company, Inc. of \$800,000 was marital property. We affirm the trial court's reasoning and determination that the 1.177 acres located on Alcoa Highway, upon which the Ditch Witch Equipment Company, Inc. is located, was designated as marital property as an equitable method in effectuating a fair and impartial distribution of the marital assets between the parties.

The judgment of the trial court is affirmed. The costs are taxed equally between the Appellant and Appellee.

WILLIAM H. WILLIAMS, SENIOR JUDGE

CONCUR:

ALAN E. HIGHERS, J.

DAVID R. FARMER, J.

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT KNOXVILLE

MARY ELLA NEEDHAM,

Plaintiff/Appellant,

v.

AUBREY KOHLMIER NEEDHAM,

Defendant/Appellee.

Blount County

No. S-2569

C.A. No. 03A01-9706-GS-00221

JUDGMENT

This cause came on to be regularly considered by the Court on the record and for the reasons stated in the opinion of this Court filed this date, IT IS ORDERED that:

1. The judgment of the trial court is affirmed and remanded to the trial court for enforcement of the divorce decree.
2. The costs of the appeal are taxed in equal proportions to Mary Ella Needham, Appellant, and Aubrey Kohlmier Needham, Appellee, and their sureties, for which let execution issue if necessary.

WILLIAM H. WILLIAMS, SENIOR JUDGE

ALAN E. HIGHERS, J.

DAVID R. FARMER, J.