

IN THE COURT OF APPEALS
AT KNOXVILLE

FILED
December 17, 1998
Cecil Crowson, Jr.
Appellate Court
Clerk

TOMMALISA L. MIFFLIN,) KNOX CIRCUIT
9804-CV-00118) C.A. NO. 03A01-
Plaintiff-Appellee)
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)
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)
)
vs.) HON. BILL SWANN
) JUDGE
)
)
)
)
RANDOLPH L. MIFFLIN,) AFFIRMED AND REMANDED
)
Defendant-Appellant)

DARRYL W. HUMPHREY, Knoxville, for Appellant.

DONNY M. YOUNG, Louisville, for Appellee.

O P I N I O N

McMurray, J.

This is an appeal from a final decree granting a divorce to the appellee, granting joint custody of the parties' minor child with the appellee to be the custodial parent, awarding child support, and making other provisions, none material to this appeal. We affirm the judgment of the trial court.

The appellant (husband) has challenged the judgment of the trial court on several grounds. His issues stated verbatim are as follows:

1. Whether the trial court erred by allowing appellee's counsel to unilaterally set a second trial management conference pursuant to local Rule 23 after the matter had been set for trial on the contested issues?
2. Whether the trial court erred by allowing appellee to proceed with her divorce action pursuant to Rules 16 and 37.02 of the Tennessee Rules of Civil Procedure when defendant had previously complied with the court's order pursuant to Local Rule 23?
3. Whether the trial court erred by allowing appellee to proceed with her divorce action when she failed to produce two (2) knowledgeable witnesses to attest to her reputation for truth and veracity?
4. Whether the trial court erred when it ordered appellant to assume all indebtedness associated with the parties' marital residence when the mortgage company had obtained a valid judgment against the appellee in New York State, which it was enforcing via a garnishment in Tennessee?

No transcript of the evidence has been filed in this appeal. There is, however, a "statement of proceedings" which is signed by counsel for the appellant and contains some evidence. (We will hereinafter discuss the "statement of the proceedings.") Insofar as the procedural proceedings are concerned, we choose to take our information from the technical record.

A complaint was filed by the appellee (wife) on March 22, 1996. The husband filed an answer, pro se, on July 18, 1996. On April 18, 1997, an order was entered by the court setting the case for "a trial management/settlement conference" to be held on May 13, 1997, and ordered counsel and the parties to be present. The conference was apparently heard on May 16, 1997. The next order in the record reflects that the case was heard on May 16, 1997, and an order was entered referring the case for a "triage" evaluation. Apparently a "triage" evaluation is a psychological examination of the parties and their child. The next entry in the record is an order compelling the husband to respond to interrogatories and requests for production of documents. This entry is followed by a petition for contempt for failure to pay child support. (No order providing for child support pendente lite appears in the record.)

On October 2, 1997, the court entered an order setting the case as a contested case for trial on January 5, 1998. The order further provided for a "trial management conference" to be held on October 27, 1997, and ordered both counsel and the parties to be present. Plaintiff's counsel appeared; however, the defendant did not. Thereafter the trial court entered an order finding that the appellant's failure to appear at the trial management conference "was not substantially justified." The order further effectively placed the appellant in a default position as a sanction for

failure to appear. Thereafter the judgment was entered which gave rise to this appeal.

It is clear that, for proper review, all issues raised by the appellant require a transcript of the evidence or a statement of the evidence as provided by Rule 24, Tennessee Rules of Appellate Procedure. This we do not have. Rather, we have a document designated "Statement of Proceedings" unapproved by the trial court and objected to by the appellee. There is nothing in the record to demonstrate that the trial court reviewed the statement of the proceedings or ruled on the appellant's objections. We, therefore, have no reviewable evidence. It is well-settled that absent a transcript of the evidence or statement of the evidence filed in accordance with Rule 24, T.R.A.P., there is a conclusive presumption that the evidence was sufficient to support the judgment of the trial court. See McDonald v. Onoh, 772 S.W.2d 913 (Tenn. App. 1989). See also Trane Co. v. Morrison, 566 S.W.2d 849 (Tenn. 1978) and Daniel v. Metropolitan Government, 696 S.W.2d 8 (Tenn. App. 1985). Thus, we would be justified in indulging in a conclusive presumption that the evidence presented at the trial supports the judgment of the trial court. In the interests of judicial economy, however, we have reviewed the appellant's "statement of the proceedings" and find nothing which would warrant or justify relief to the appellant based upon the evidentiary matters contained in the statement even if the statement had been approved by the trial

court. A remand, under these circumstances, for a ruling of the trial court would be fruitless.

We affirm the judgment of the trial court in all respects. Costs are assessed to the appellant and this case is remanded to the trial court.

Don T. McMurray, Judge

CONCUR:

Houston M. Goddard, Presiding Judge

Charles D. Susano, Jr., Judge

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JUDGMENT

This appeal came on to be heard upon the record from the Circuit Court of Knox County and briefs filed on behalf of the respective parties. Upon consideration thereof, this Court is of the opinion that there was no reversible error in the trial court.

We affirm the judgment of the trial court in all respects. Costs are assessed to the appellant and this case is remanded to the trial court.

PER CURIAM