

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
December 31, 1998
Cecil Crowson, Jr.
Appellate Court
Clerk

VELDA M. CARTEE,) C/A NO. 03A01-
9801-CV-00030)
)
Plaintiff-Appellant,)
)
)
)
v.) APPEAL AS OF RIGHT FROM THE
) HAMILTON COUNTY CIRCUIT COURT
)
)
)
)
RODNEY CARTEE,)
)
Defendant-Appellee.) HONORABLE L. MARIE WILLIAMS,
) JUDGE

For Appellant

FIELDING H. ATCHLEY, JR.
Dietzen & Atchley
Chattanooga, Tennessee

For Appellee

ERSKINE P. MABEE
Carter, Mabee & Paris
Chattanooga, Tennessee

MEMORANDUM OPINION

AFFIRMED, AS MODIFIED

REMANDED

Susano, J.

This is a divorce case. The plaintiff, Velda M. Cartee, appeals, arguing (1) that the trial court's division of marital property is inequitable; (2) that the alimony award of \$700 per month is not adequate; and (3) that she is entitled to an award of attorney's fees on this appeal.

Our review of the record does not persuade us that the evidence preponderates against the trial court's division of marital property and debts. See Rule 13(d), T.R.A.P. That portion of the trial court's judgment is affirmed. However, we do find that the evidence preponderates against the trial court's award of periodic alimony *in futuro*. Ms. Cartee is unemployed, in poor health, and living on a Social Security disability payment of \$513 per month plus her alimony award. On the other hand, Mr. Cartee is employed by the Tennessee Valley Authority at a gross annual salary of \$63,450, plus some small amount of overtime pay. In addition, he receives a military retirement check of \$1,579.91 per month. Ms. Cartee is 54 years old; Mr. Cartee is 47. The parties were married almost 18 years.

Mr. Cartee is presently paying child support of \$1,588.99 per month for two children. The younger of these children will be 18 on March 30, 2000. At the present time, he does not have sufficient income to pay the additional alimony that Ms. Cartee needs; but he will be in a position to pay additional alimony when he no longer has a child support obligation. The trial court's award of periodic alimony *in futuro* is modified to provide that Mr. Cartee's alimony obligation will increase from \$700 to \$1,300 per month, effective

on the first day of the month immediately following the last month for which Mr. Cartee has a child support obligation for either of his children. By that time, Mr. Cartee ought to have satisfied most, if not all, of the debts that he is required to pay under the trial court's judgment. As provided in that judgment, Mr. Cartee's alimony obligation will terminate upon Ms. Cartee's death or remarriage.

Ms. Cartee's request for attorney's fees on this appeal is denied. Mr. Cartee presently does not have the resources to pay such fees.

The judgment¹ of the trial court is affirmed, as modified. We take this action pursuant to the provisions of Rule 10(b), Rules of the Court of Appeals.² Costs on appeal are taxed to the appellee. This case is remanded to the trial court for the entry of an order consistent with this opinion, and for collection of costs assessed below.

Charles D. Susano, Jr., J.

¹The appellee's motion to consider what he refers to as post-judgment facts is denied. The alleged facts are not of the type contemplated by Rule 14, T.R.A.P.

²Rule 10(b), Rules of the Court of Appeals, provides as follows:

The Court, with the 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.

CONCUR:

Houston M. Goddard, P.J.

William H. Inman, Sr.J.