IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Submitted on Briefs January 3, 2023

MEREDITH LEE TAYLOR v. CHRISTOPHER BRYAN TAYLOR

Appeal from the Circuit Court for Lincoln County
No. 20-CV-37 M. Wyatt Burk, Judge

No. M2022-00140-COA-R3-CV

This is a divorce action filed by Meredith Lee Taylor ("Mother") against Christopher Bryan Taylor ("Father"). The trial court divided the marital estate nearly equally and granted Mother primary residential custody of the parties' child. Father was granted 130 days per year of parenting time. Father appeals, arguing that the trial court erred in its valuation of several marital assets. He also asserts that the trial court should have awarded him more parenting time. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and ANDY D. BENNETT, J., joined.

Whitney H. Raque, Murfreesboro, Tennessee, for the appellant, Christopher Taylor.

Timothy P. Underwood, Pulaski, Tennessee, for the appellee, Meredith Lee Taylor.

OPINION

I. BACKGROUND

The parties were married on September 8, 2007. Their only child, Jack, was born in August of 2016. After Wife learned of Husband's extramarital affair, she filed this action for divorce on April 16, 2020. Each party submitted a proposed temporary parenting plan. The trial court entered an order establishing a temporary plan, stating as follows in pertinent part:

> The mother shall have the minor child except for the following times when the father will have visitation with the minor child:
>
> Week 1: The father shall have visitation Monday and Wednesday from 3:00 p.m. until 7:30 p.m. and Saturday from 9:00 a.m. to 5:00 p.m.
>
> Week 2: The father shall have visitation Monday and Wednesday from 3:00 p.m. until 7:30 p.m., Friday from 3:00 p.m. until 7:30 p.m. and Sunday from 9:00 a.m. until 5:00 p.m.
>
> The parties shall rotate this schedule every two (2) weeks.

The trial took place on October 6, 2021. Mother and Father were the only witnesses to testify. The trial court awarded the marital residence to Mother and one-half of the equity in the residence to Father. Mother received marital assets valued in total at $555,877, and Father received $336,292.24 in marital assets. The trial court divided the marital debt as follows: to Mother, $231,234.76 and to Father, $32,000. The net value of each party's share of the marital estate was $324,642.24 to Mother (51.6% of the net marital estate) and $304,292.24 to Father (48.4%).[1]

The permanent parenting plan ("PPP") approved by the trial court provides that Mother is the primary residential parent and grants her 235 days per year of parenting time. The trial court granted Father visitation every other week on Friday from 5:00 pm until Monday at 8:00 am, and every week from Tuesday at 5:00 pm until Wednesday at 8:00 am. The PPP establishes essentially an even split of vacation times between the parents, resulting in a total of 130 days per year for Father.

II. ISSUES

Father timely appealed and raises the following issues:

> 1. Whether the trial court erred in its classification, valuation, and division of the marital estate.
>
> 2. Whether the trial court erred in the classification, valuation, and division of [Father's] heirloom family diamond.

[1] These figures are taken from the appendix to Father's appellate brief. In her brief, Mother states that she "has no objection to the Appendix of [Father's] brief which allocates assets, liabilities and values."

3. Whether the trial court erred in denying Father's request for equal residential parenting time.[2]

III. ANALYSIS

A. Classification and Division of Assets

Father challenges the trial court's classification and division of assets. Our Supreme Court has defined the applicable standard of review of issues regarding property classification and division in divorce proceedings:

> The classification of particular property as either separate or marital is a question of fact to be determined in light of all relevant circumstances. *See Langford v. Langford*, 220 Tenn. 600, 421 S.W.2d 632, 634 (1967); *Cutsinger v. Cutsinger*, 917 S.W.2d 238, 241 (Tenn. Ct. App. 1995). This Court gives great weight to a trial court's decisions regarding the division of marital assets, and we will not disturb the trial court's ruling unless the distribution lacks proper evidentiary support, misapplies statutory requirements or procedures, or results in some error of law. *Keyt v. Keyt*, 244 S.W.3d 321, 327 (Tenn. 2007). As to the trial court's findings of fact, "we review the record de novo with a presumption of correctness, and we must honor those findings unless there is evidence which preponderates to the contrary." *Id.* However, we accord no presumption of correctness to the trial court's conclusions of law. *Id.*

Snodgrass v. Snodgrass, 295 S.W.3d 240, 245-46 (Tenn. 2009).

The trial court must classify all of the assets possessed by the divorcing parties as either separate or marital before equitably dividing the marital estate. *Larson-Ball v. Ball*, 301 S.W.3d 228, 231 (Tenn. 2010). "Separate property is not part of the marital estate and is therefore not subject to division." *Id.*

After classifying and valuing marital property, a trial court must equitably divide it between the parties. *See* Tenn. Code Ann. § 36-4-121(a)(1); *Luplow v. Luplow*, 450 S.W.3d 105, 109 (Tenn. Ct. App. 2014) (citing *Miller v. Miller*, 81 S.W.3d 771, 775 (Tenn. Ct. App. 2001)). An equitable division of marital property does not require that the property be divided equally. *Id.* at 109-10 (citing *Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002)). Nor does it require that each party receive a share of every item

[2] Father also included the issue of whether the trial court erred in ordering a one-year no-contact paramour provision, but both parties agree that the issue is now moot.

classified as marital property. *Morton v. Morton*, 182 S.W.3d 821, 833-34 (Tenn. Ct. App. 2005) (quoting *King v. King*, 986 S.W.2d 216, 219 (Tenn. Ct. App. 1998)). According to Tenn. Code Ann. § 36-4-121(c),

> 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)(A) The contribution of each party to the acquisition, preservation, appreciation, depreciation 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 . . . ;
> (10) In determining the value of an interest in a closely held business or similar asset, all relevant evidence, ...
> (11) The amount of social security benefits available to each spouse; and
> (12) Such other factors as are necessary to consider the equities between the parties.[3]

The trial court has broad discretion in devising an equitable division of marital property. *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003). This Court will not overturn the trial court's determination unless "it is inconsistent with the statutory factors or lacks proper evidentiary support." *Trezevant v. Trezevant*, 568 S.W.3d 595, 607 (Tenn.

[3] In an amendment to this statute that became effective on March 31, 2022, our legislature added a thirteenth factor: "The total amount of attorney fees and expenses paid by each party in connection with the proceedings; whether the attorney fees and expenses were paid from marital property, separate property, or funds borrowed by a party; and the reasonableness, under the factors set forth in Rule 1.5 of the Tennessee Rules of Professional Conduct, and necessity of the attorney fees and expenses paid by each party." Tenn. Code Ann. § 36-1-121(c)(13).

Ct. App. 2018) (citing *Baggett v. Baggett*, 422 S.W.3d 537, 543 (Tenn. Ct. App. 2013)).

The trial court, in its oral ruling following trial, stated:

> The court finds that [Father] committed adultery and grants the [Mother] a divorce based upon such admitted during trial. He bases that on inappropriate marital conduct . . . Despite the grounds for divorce and despite fault, the court divides the property equitably. The court tried to achieve an equitable division of property based upon a 50/50 split and factors as outline[d] in the statute. Both parties have virtually equal incomes, equal education, and the same ability to earn income in the future and acquire additional assets. It is a 14-year marriage and the court places both parties on somewhat equal footing. [Mother] makes a little more than [Father] does, but at the end of the day, both have equal opportunities at work, somewhat in the same field.

At the time of the trial, both parties were 38 years old and in generally good health.

At trial, it came to light that Father had money in an account that he used for day trading of stocks. Mother had been unaware of this account, which Father valued at approximately $20,000. Father admitted he did not include the secret day trading account in his answers to interrogatories. His attempts at trial to explain this omission were evasive and contradictory. The trial court equally split the value of the account, holding that Father "shall be awarded his secret investment account," which it valued at $20,000. The court awarded Mother $10,000, half the account's value. Father argues that the trial court erred in its division of the secret day trading account.

At trial, Father admitted that the entire value of the account was accumulated and invested during the course of the marriage. He said that a portion of the money was given to him by his paramour, which he took and invested in the secret day trading account. When Father was asked how much money his girlfriend had given him to invest, he said he didn't know and would have to look, but estimated it as "more than $2,000." Father did not include this asset on his statement of assets and liabilities, nor did he reveal the account's existence in his discovery responses.

On appeal, Father argues that the trial court should have considered him to "only have a 50% interest in this account that would be subject to division." Apparently he is asserting that the trial court should have found his girlfriend to have owned half the account. The evidence presented does not support such a finding. Father's testimony on this point was vague and imprecise, and the trial court stated that it "would give that the weight it is due." The trial court was able to see Father's testimony and assess his

credibility. We find no error in its decision to classify Father's secret day trading account as entirely marital and to evenly divide it between the parties.

Father also argues that the trial court erred in its valuation of his vehicle, a Jeep Wrangler. He points to his statement of assets and liabilities filed with the trial court roughly six months before trial. It states that the value of the Jeep is $43,150 and the debt owed on it is $34,980, leaving equity in the amount of $8,170. He makes the following argument, as quoted from his brief:

> The court valued Father's Jeep at $43,150.00, as based upon Father's value, minus the $32,000.00 debt, giving a net residual of $11,150.00. *During the trial of this matter, Father stated that it was roughly $32,000.00 that was owed on the Jeep*. However, [Father's attorney] asked Father whether he would like to see his asset and liability sheet that was filed back in March of this year. He stated yes and then she asked if this is, in fact, information that he provided to her. Father stated it was and upon further questioning stated that it is correct. Therefore, the amount that the Jeep would be encumbered is $34,980.00 and not $32,000.00.

(Emphasis added; "Husband" in original replaced with "Father" throughout; citations to record omitted). The statement of the evidence reveals that, as admitted in his brief, Father did testify that the outstanding debt on the Jeep was then "roughly $32,000." Thus, Father's argument as quoted above appears to be that the trial court should have ignored Father's own trial testimony and applied the higher six-month-old debt figure in his earlier statement. Even if this argument had merit, it would not materially change the division of marital property, because the trial court awarded the Jeep to Father and assigned him all of the attendant debt. We find no error in the trial court's valuation of Father's vehicle.

Father appeals the disposition of a diamond ring once belonging to his great-grandmother. The parties agreed that Father inherited it upon his mother's death in 2018. Mother testified that she handled all of his mother's hospice care, her helpers outside of hospice, the sale of her house, and dealing with her estate. Mother stated that Father "wanted me to have [the ring] in a new setting that I would wear as a gift, a thank you for helping take care of his mother when she was dying, and the estate, and all that." The cost of the new setting was $1,230.18, which was paid with marital funds.

In the final decree of divorce, the trial court stated only that "the Wife shall be awarded . . . the diamond ring." In its oral ruling after trial, which was not incorporated into the court's final judgment, the trial court said: "[a]s for the diamond ring, the Court determines that this diamond was a gift, the setting was a marital asset. The setting is valued at $1,200–basically $2,400, $1,200 per side. Each person gets that[.]" Father argues that "[w]hen that diamond was placed into a ring setting purchased by marital funds, after

the parties had been married for 9 years, [it] was transmuted into marital property wherein the full value of the ring should have been considered for an equitable division of the marital estate." Father asserts that the trial court erred in its valuation of the setting, establishing it at roughly twice what Mother showed it cost by producing a receipt. But because the trial court divided the value of the setting equally, any math error in the valuation would equally affect the parties. Perhaps more significantly, the evidence does not preponderate against the finding that the ring was a gift from Father to Mother during the marriage. We find no error in the trial court's decision to award Mother the ring. If there was any mistake in the valuation of the ring, it was de minimis in light of the size of the overall marital estate and did not significantly impact the division of marital property.

B. Permanent Parenting Plan

Father argues that the trial court erred by not awarding him more parenting time. A trial court's decision regarding a parenting schedule is subject to review under the deferential abuse of discretion standard. *C.W.H. v. L.A.S.*, 538 S.W.3d 488, 495 (Tenn. 2017). As the Supreme Court instructed in *C.W.H.*,

> This Court has previously emphasized the *limited* scope of review to be employed by an appellate court in reviewing a trial court's factual determinations in matters involving child custody and parenting plan developments. *Armbrister* [*v. Armbrister*], 414 S.W.3d [685], 692-93 [(Tenn. 2013]. . . . Indeed, trial courts are in a better position to observe the witnesses and assess their credibility; therefore, trial courts enjoy broad discretion in formulating parenting plans. *Id*. at 693 (citing *Massey-Holt v. Holt*, 255 S.W.3d 603, 607 (Tenn. Ct. App. 2007)). "Thus, determining the details of parenting plans is 'peculiarly within the broad discretion of the trial judge.' " *Id*. (quoting *Suttles v. Suttles*, 748 S.W.2d 427, 429 (Tenn. 1988)). Appellate courts should not overturn a trial court's decision merely because reasonable minds could reach a different conclusion. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001).

Id. As this Court has often observed, "[c]ustody issues often hinge on subtle factors, including the parents' demeanor and credibility during proceedings; therefore, appellate courts are reluctant to second-guess a trial court's decisions." *Powers v. Powers*, No. M2019-01512-COA-R3-CV, 2021 WL 1292425, at *4 (Tenn. Ct. App. Apr. 7, 2021) (quoting *Rountree v. Rountree*, 369 S.W.3d 122, 129 (Tenn. Ct. App. 2012); internal quotation marks and ellipses in original omitted).

A trial court making a custody determination must apply the following analysis provided by Tenn. Code Ann. § 36-6-106:

(a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, the determination shall be made on the basis of the best interest of the child. In taking into account the child's best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors set out in this subsection (a), the location of the residences of the parents, the child's need for stability and all other relevant factors. The court shall consider all relevant factors, including the following, where applicable:

(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;

(2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;

(3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;

(4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(6) The love, affection, and emotional ties existing between each parent and the child;

(7) The emotional needs and developmental level of the child;

(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. . . .

(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;

(12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and

(15) Any other factors deemed relevant by the court.[4]

The trial court made specific findings regarding each of the pertinent statutory factors in its final decree. It found that factors (1), (2), (4), (5), (8), (9), (10), (11), and (12) favor Mother. The trial court held that factors (3), (7), and (14) favor neither parent, and factor (6) favor both parents equally because "[e]ach parent has a loving relationship with the child." Specifically, the trial court found that Mother "performed the majority of the parenting responsibilities [and] attended the majority of the doctor and dentist appointments as well as the educational needs to date." The evidence does not preponderate against the trial court's findings that Mother shouldered the bulk of the load of parenting and other domestic duties.

[4] Effective March 18, 2022, the General Assembly amended Tennessee Code Annotated § 36-6-106(a) by adding a sixteenth factor – "Whether a parent has failed to pay court-ordered child support for a period of three (3) years or more." *See* 2022 Tenn. Pub. Acts, Ch. 671 § 1 (H.B. 1866).

Father argues that the trial court improperly punished him for having an affair, which he admitted, and which appears to be a primary cause of the demise of the marriage. It is true that much of the focus of the testimony elicited by both parties' attorneys at trial was on the affair. For instance, Mother testified that beginning in November of 2019, Father started going in to work quite early in the morning and returning after Jack had gone to sleep, stating, "I was pretty much a single mom the entire month." Mother further testified,

> [Father] was leaving early, coming home late, talking about this project, and in fact we got into a couple of disagreements about it because I brought up that it was unusual for him to be working this much because usually he didn't work overtime. He kept promising me it was just this project, it wasn't going to be like this forever, he was sorry and you know there were days that he wouldn't see Jack. It was multiple days, pretty much majority of November.

Mother argued at trial that the proper inference from Father's absences from the household was that he was choosing to spend time with his paramour instead of family. Father insisted that he was very busy with a big project and had to put in long hours at work. Regardless of whether one party or the other's narrative is true, or if the truth is somewhere in between, Father's choices as to where he spent his time and attention have some relevance to the bigger question of what is in the child's best interest going forward. The trial court made no statement suggesting that it gave the fact of Father's extramarital affair undue weight or that it intended to punish Father.

The trial court appropriately applied the factors of Tenn. Code Ann. § 36-6-106. The evidence does not preponderate against its determination that a parenting schedule allowing Mother 235 days and Father 130 days per year is in Jack's best interest. We find no abuse of discretion in the trial court's order approving and establishing the PPP in this case.

IV. CONCLUSION

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant, Christopher Bryan Taylor, for which execution may enter if necessary.

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KRISTI M. DAVIS, JUDGE