

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 8, 2023 Session

FILED
10/27/2023
Clerk of the
Appellate Courts

THOMAS JOSEPH NEDUMTHOTTATHIL v. SIBY JOHN THOMAS

**Appeal from the Chancery Court for Rutherford County
No. 18CV-1672 Barry R. Tidwell, Judge**

No. M2020-00473-COA-R3-CV

In this divorce action, the court limited Wife’s proof at trial as a sanction for her failure to respond to pre-trial discovery. After the trial, the court granted the parties an absolute divorce, equitably divided the marital estate, adopted a permanent parenting plan for their minor children, and declined to award Wife spousal support. Wife argues that the court erred in limiting her proof at trial, dividing the marital estate, and denying her request for spousal support. Discerning no abuse of discretion in these decisions, we affirm.

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

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which FRANK G. CLEMENT JR., P.J., M.S., and KRISTI M. DAVIS, J., joined.

Jeremy W. Parham, Nashville, Tennessee, for the appellant, Siby John Thomas.

Brad W. Hornsby, Murfreesboro, Tennessee, for the appellee, Thomas Joseph Nedumthottathil.

MEMORANDUM OPINION¹

I.

Thomas Joseph Nedumthottathil (“Husband”) sought a divorce from Siby John Thomas (“Wife”) after a thirteen-year marriage. The couple had three minor children. Wife counterclaimed for divorce and requested spousal support.

¹ Under the rules of this Court, as a memorandum opinion, this opinion may not be published, “cited[,] or relied on for any reason in any unrelated case.” TENN. CT. APP. R. 10.

Husband sent Wife a set of written discovery requests in May 2019. After months passed without a response from Wife, Husband filed a motion to compel. Wife agreed at the hearing on this motion to respond to discovery by September 10, and the court entered an order reflecting that agreement. But Wife did not meet the deadline.

Husband then moved for sanctions, and Wife moved to continue the pending trial, which was scheduled for September 18. The court reset the trial dates to September 23 and 30. It postponed the hearing on Husband's motion until September 20, giving Wife another week to respond to the discovery. But Wife still did not respond.

Based on these facts, the court determined that sanctions were appropriate. It prohibited Wife from introducing proof at trial to support her alimony claim or to oppose Husband's proposed parenting plan and proposed division of marital property. But the court allowed Wife to submit evidence on the grounds for divorce and the children's best interests.

After the trial, the court granted the parties an absolute divorce, equitably divided the marital estate, and adopted a permanent parenting plan. The court denied Wife's request for alimony.

II.

On appeal, Wife challenges the court's discovery sanctions, the division of the marital estate, and the denial of her alimony request. We review these decisions for an abuse of discretion. *Mercer v. Vanderbilt Univ., Inc.*, 134 S.W.3d 121, 133 (Tenn. 2004) (discovery sanctions); *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003) (property division); *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011) (spousal support). A court abuses its discretion when it applies the wrong legal standard, reaches "an illogical or unreasonable decision," or bases its decision "on a clearly erroneous assessment of the evidence." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010).

We discern no abuse of discretion in the court's decision to limit Wife's proof at trial. Given her failure to answer or object to Husband's discovery requests, the court was authorized to "make such orders in regard to the failure as are just." TENN. R. CIV. P. 37.04. Our rules specifically permit entry of an order "refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence." *See id.* 37.02(B). Wife had ample opportunity to respond to Husband's discovery requests before trial. She never objected to the discovery requests or moved for a protective order. The court even postponed the trial to allow her additional time to respond. Yet she took no action. She offered no excuse or explanation.

On appeal, Wife proffers two reasons why this Court should set aside the trial court's decision. First, she suggests that her former attorney was primarily at fault. She

maintains that she gave her discovery responses to her attorney by the September 10 deadline, but her attorney did not have the final version ready for her signature until September 26. Second, she contends that Husband was not prejudiced by her delay because he received her signed discovery before the last day of trial.

We do not find these arguments persuasive. Neither Wife's proffered excuse nor her last-minute response undercuts the factual basis for the court's decision. The court applied the correct law, the evidence does not preponderate against its factual findings, and its decision is within the range of acceptable alternative dispositions. *See Lee Med., Inc.*, 312 S.W.3d at 524.

Wife also complains that the court's division of marital property was inequitable. When this issue is raised, Rule 7 of this Court requires "the brief of the party raising the issue" to include, either in the body of the brief or as an appendix, a table of properties and debts and valuations of each. TENN. CT. APP. R. 7(a). Wife did not comply with this rule. So we deem this issue waived. *See Blount v. Blount*, No. E2017-00243-COA-R3-CV, 2018 WL 1433198, at *3 (Tenn. Ct. App. Mar. 22, 2018); *see also Forbess v. Forbess*, 370 S.W.3d 347, 354 (Tenn. Ct. App. 2011).

Finally, Wife asserts that the proof at trial, limited as it was, supported an award of long-term alimony. Alimony decisions are factually driven and "involve[] the careful balancing of many factors." *Gonsewski*, 350 S.W.3d at 105. The two most important factors are the disadvantaged spouse's need and the obligor spouse's ability to pay. *Id.* at 110.

We cannot say that the court abused its discretion when it declined to award Wife spousal support. Simply put, this record contains insufficient proof of Wife's need for long-term support. Wife is highly educated. Before the marriage, she worked as a "license-pending nurse." While she only worked sporadically after the children were born, she admitted that she was capable of full-time employment. She was just one class short of meeting the prerequisites for a Tennessee nursing license. And she disclosed at trial that two potential employers had offered her full-time employment at \$15 per hour. She was also awarded the marital home, a valuable asset, in the property division. Even accounting for the mortgage debt, the home had a significant amount of equity.

For his part, Husband seeks an award of attorney's fees for a frivolous appeal. *See* Tenn. Code Ann. § 27-1-122 (2017). The statute authorizing an award of damages for a frivolous appeal "must be interpreted and applied strictly so as not to discourage legitimate appeals." *Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977). A frivolous appeal is one "utterly devoid of merit." *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978).

This appeal was not totally devoid of merit. Wife “made legitimate arguments and cited to relevant law and facts.” *See Coolidge v. Keene*, 614 S.W.3d 106, 120 (Tenn. Ct. App. 2020). In our view, her appeal was unsuccessful, not frivolous. *See id.* So we do not award Husband attorney’s fees incurred in this appeal.

III.

We discern no abuse of discretion in the court’s decision to impose discovery sanctions or its refusal to award Wife long-term spousal support. Because Wife failed to comply with the rules of this Court, she waived her challenge to the equitable division of the marital estate. So we affirm.

s/ W. Neal McBrayer

W. NEAL McBRAYER, JUDGE