

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 19, 2014 Session

BRENDA J. HUTCHERSON v. WALLACE JACKSON HUTCHERSON

**Direct Appeal from the Circuit Court for Davidson County
No. 05D-599 Phillip R. Robinson, Judge**

No. M2013-01658-COA-R3-CV - Filed April 22, 2014

This is a contract interpretation case involving the proper apportionment of proceeds from the sale of several properties owned by the parties as tenants in common. When Husband and Wife divorced in 2005, a marital dissolution agreement was incorporated into their Final Decree of Divorce. In pertinent part, the agreement required the parties to sell six properties and split the proceeds therefrom. The agreement listed each of the properties with a dollar amount beside it. The agreement provided that Wife could be compelled to accept an offer for a particular property so long as her share of the proceeds equaled the dollar amount listed with that property in the agreement. The sum of the amounts listed with the properties at issue was \$565,800. Real estate values declined substantially after the agreement was entered, and the properties were finally sold together for \$322,287.71 in 2012. Following the sale Husband filed a motion seeking an equal division of the sale proceeds. Wife answered, insisting that the agreement entitled her to \$565,800 and that she was therefore entitled to all of the sale proceeds, less Husband's expenses related to the properties. During a bench trial, the court found the agreement ambiguous and therefore considered parol evidence to determine the intent of the parties. Based on its findings, the trial court determined that the parties intended to split the sale proceeds equally. Additionally, the trial court concluded that the agreement entitled Husband to reimbursement for one-half of his expenses on the properties, which the parties stipulated to be \$156,270.48. In its final accounting, the trial court awarded \$234,834.09 to Husband and \$87,453.62 to Wife. We affirm.

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

DAVID R. FARMER, J., delivered the opinion of the Court, in which HOLLY M. KIRBY, J., and J. STEVEN STAFFORD, J., joined.

Christopher Brett Jaeger and Gregory Dye Smith, Nashville, Tennessee, for the appellant, Brenda J. Hutcherson.

Robert E. Kolarich, Jr., Nashville, Tennessee, for the appellee, Wallace Jackson Hutcherson.

OPINION

I. BACKGROUND

In 2005, Brenda Hutcherson (“Wife”) and Wallace Hutcherson (“Husband”) were divorced in the Circuit Court of Davidson County after thirty-six years of marriage. The parties agreed to the terms of a Marital Dissolution Agreement (“MDA”), which was incorporated into the court’s Final Decree of Divorce. In addition to their marital home, the parties owned six properties in Davidson County at the time of their divorce. One of the properties is located 5040 Olivia Drive (the “Olivia Drive Property”); the other five properties consists of approximately 8.2 acres located on or near Antioch Pike (the “Antioch Pike Properties”). Paragraph 7 of the MDA provided for the disposition of the six properties as follows:

The parties agree that the following properties shall be re-titled to them as tenants in common as soon as possible from and after entry of a Final Decree of Divorce and shall be sold. Mr. Hutcherson shall be responsible for listing the properties for sale, selecting the realtor or realtors, and negotiating a sales price as he deems appropriate. Mrs. Hutcherson shall accept any offer which nets her the amount stated below in the column adjacent to each property. If Mr. Hutcherson desires for Mrs. Hutcherson to accept an offer for a particular property which nets her an amount less than the amount set forth below, Mrs. Hutcherson shall be obligated to accept said offer provided Mr. Hutcherson makes up the deficiency at the closing of the sale. Should Mr. Hutcherson desire for Mrs. Hutcherson to accept an offer for a particular property which would net her an amount less than the amount set forth below and be unwilling to make up the deficiency at the closing of the sale, Mr. Hutcherson shall have the right to file a motion with the Court to seek an order to compel Mrs. Hutcherson to accept the lesser offer should the Court determine that Mrs. Hutcherson’s consent is being unreasonably withheld.

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| (a) | 5040 Olivia Drive, Nashville, Tennessee | \$ 62,500.00 |
| (b) | 1321 Antioch Pike, Nashville, Tennessee | \$ 22,000.00 |
| (c) | 0 Jansing Drive, Nashville, Tennessee | \$ 17,550.00 |
| (d) | 1327 Jansing Drive, Nashville, Tennessee | \$228,050.00 |

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| (e) | 1331 Jansing Drive, Nashville, Tennessee | \$216,300.00 |
| (f) | 0 Antioch Pike, Nashville, Tennessee | \$ 81,900.00 |

In the event one or more of the foregoing properties is sold for an amount which results in Mr. Hutcherson being required to make up the deficiency in order for Mrs. Hutcherson to receive the amount stated above, Mr. Hutcherson shall be entitled to recoup such deficiency or deficiencies from any proceeds of sale of the foregoing properties which net an amount in excess of the foregoing amount(s) to be paid to Mrs. Hutcherson. The parties acknowledge that the [Olivia Drive Property] is a rental house which is currently rented. From and after the date of execution of this Marital Dissolution Agreement, all rents collected which relate to said property shall be deposited by Mr. Hutcherson to a separate rental account. From that account, Mr. Hutcherson shall pay all expenses relating to the Olivia Drive [P]roperty, and the [Antioch Pike Properties], including the cost of property taxes, maintenance, repairs and insurance. In the event that at the time of the closing of the sale of the last of the foregoing properties to sell, there is a balance in said account, the account shall be closed and the balance shall be divided equally between the parties. In the event the expenses relating to the foregoing properties exceed the rents collected on the Olivia Drive [P]roperty, the deficiency shall be paid one-half by each party at the time of the closing of the sale of the last of the foregoing properties to sell. In the event that it is necessary for Mr. Hutcherson to fund the account in order to meet expenses relating to the foregoing properties, Mr. Hutcherson shall be reimbursed by Mrs. Hutcherson in an amount equal to one-half of the deposits made by Mr. Hutcherson to said account in order to fund the expenses relating to the foregoing properties prior to the closing of the last of the properties to sell. Mr. Hutcherson shall be responsible for collecting the rents pertaining to the property. Mrs. Hutcherson shall have a lien on all of the foregoing real properties to secure Mr. Hutcherson's obligations under the terms of this Marital Dissolution Agreement.

Shortly after the divorce, the parties sold the Olivia Drive Property. The sale resulted in net proceeds of \$133,490. Husband paid \$62,500 to Wife from the sale's proceeds and kept the remaining \$70,990 for himself.

Selling the Antioch Pike Properties proved to be more difficult. According to the Davidson County Property Assessor's Office, the Antioch Pike Properties had a total tax assessed value of \$1,131,600 in 2005. Shortly after the divorce, the parties listed the Antioch Pike Properties for sale at \$1,500,000, but they were unable to solicit buyers for them at that

price. In May 2006, the parties listed the properties for sale by public auction and received a bid of \$1,000,000 for them. After both Husband and Wife had signed the sales contract, Husband prepared an agreement providing that an equal division of the sale's net proceeds would satisfy Paragraph 7 of the MDA. Because she felt that Paragraph 7 of the MDA entitled her to a larger portion of the sale's proceeds, Wife was unwilling to sign the agreement. Husband refused to close on the properties without Wife's consent to equally divide the proceeds, and the sale was lost. Real estate values subsequently plummeted in the recession, and the parties were unable to sell the properties.

By January 2012, Husband was struggling to pay the insurance, taxes, and other expenses required to maintain the Antioch Pike Properties. On January 26, 2012, Husband filed a petition in the Circuit Court alleging that Wife's refusal to auction the Antioch Pike Properties was in bad faith and requesting the court compel their sale by public auction. By Agreed Order in April 2012, the parties agreed to list Antioch Pike Properties for sale by public auction with a minimum bid of \$400,000. The auction took place, but the minimum bid was not reached. Thereafter, the parties agreed to sell the properties at an absolute auction with no minimum bid. On September 20, 2012, the Antioch Pike Properties were sold for \$362,000. After the deduction of expenses, the net proceeds of the sale were paid into the office of the Circuit Court Clerk in the amount of \$322,287.71. It is the distribution of those proceeds that is in controversy in this case.

Following the sale of the Antioch Pike Properties and the deposit of its net proceeds with the Circuit Court Clerk, each party submitted motions regarding the proper distribution of the funds. Husband petitioned the trial court to disburse the funds in equal amounts to each party and to order Wife to reimburse one-half of his expenses relating to the properties, which he stated totaled \$156,270.66 for maintenance, property taxes, and insurance since 2005. After accounting for Wife's one-half contribution of \$78,135.33 to his expenses, Husband moved for the trial court to distribute the sale proceeds \$236,779.19 to him and \$85,508.52 to Wife.¹ Wife responded by filing a petition in which she contended that Paragraph 7 of the parties' MDA guaranteed her a total of \$565,800 from the sale of the Antioch Pike Properties. Wife insisted that the court enforce the terms of Paragraph 7 by awarding her an amount as close to \$565,800 as possible, or entering a judgment against Husband for the difference between \$565,800 and the amount of her award.

On June 20, 2013, the Circuit Court ordered that the sale proceeds from the Antioch Pike Properties should be disbursed equally to the parties. The court reached its conclusion

¹Though it is not stated in Husband's petition, his calculation of the amounts due to each party apparently includes \$2,500 credit to Wife for additional proceeds due to her from the 2005 sale of the Olivia Drive Property.

by looking beyond the four corners of the MDA to the circumstances surrounding it. The court found that Paragraph 7 was ambiguous because it failed to define the term “net” when used in regards to Wife’s interest in the properties. The court found that it was unclear whether the amount due to Wife from the sale of the properties was the full amount of proceeds remaining after deducting the cost of the sale or one-half of the proceeds remaining after deducting the cost of the sale. Finding ambiguity in Paragraph 7 allowed the court to consider parol evidence to determine its meaning.

The court made several significant findings that led to its conclusion that the parties intended to divide the Antioch Pike Property sale proceeds equally. First, after reviewing the MDA as a whole, the court found that the parties’ overall intent was to divide the marital estate substantially equally. Second, the court found that the dollar amounts listed with each parcel of real estate in Paragraph 7 was equal to one-half of the tax assessor’s 2005 appraised value for the parcel.² Third, the court found it significant in determining the parties’ intent that their first act under the MDA was to retitle the properties as tenants in common, giving each party a one-half undivided interest in the property. Conversely, the court did not find any language in Paragraph 7 suggesting that the amounts listed with the properties were guaranteed to Wife by Husband. Rather, the court found that it appeared that the listed amounts were a triggering mechanism to require Wife to close on the properties without judicial intervention. Based on the foregoing, the trial court found that the parties intended to divide the sale proceeds of each of the properties listed in Paragraph 7 equally. The trial court did acknowledge that the parties failed to equally divide the sale proceeds of the Olivia Drive Property in 2005, when Husband paid Wife \$62,500, the amount listed in Paragraph 7, and kept \$70,990 for himself. However, the court found that the parties’ failure to follow the terms of the MDA with regard to that sale did not invalidate or reform it.

In light of its findings, the court concluded that each of the parties was entitled to one-half of the \$322,287.71 in sale proceeds from the Antioch Pike Properties. Thus, each party would be entitled to the sum of \$161,143.86. However, pursuant to Paragraph 7, Wife was liable to Husband for one-half of his total expenses related to the properties, which the parties stipulated to be \$156,270.48; thus, the court ordered Wife to reimburse Husband \$78,135.24 from her share. Additionally, the court found that Husband was liable to Wife for her additional share of the sale proceeds from the Olivia Pike Property, which the trial court found to be \$4,445. After accounting for the amounts owed between the parties, the Circuit Court concluded that Husband was entitled to a sum of \$234,834.09, and Wife was entitled to a sum of \$87,453.62. Wife timely filed a Notice of Appeal to this Court.

²The total tax assessed value of the Antioch Pike Properties in 2005 was \$1,131,600. The sum of the amounts listed beside each of the Antioch Pike Properties in Paragraph 7 was \$565,800.

II. ISSUES PRESENTED

Wife raises the following issue on appeal, slightly restated:

1. Whether the trial court erred in its interpretation of Paragraph 7 of the parties' MDA and in its division of proceeds from the sale of the Antioch Pike Properties pursuant thereto.
2. Whether the trial court erred by ordering Wife to reimburse Husband for unnecessary expenses related to the properties.

III. STANDARD OF REVIEW

We review the judgment of the lower court in a bench trial *de novo* upon the record, according a presumption to its factual findings. Tenn. R. App. P. 13(d); *Wright v. City of Knoxville*, 898 S.W.2d 177, 181 (Tenn. 1995). This Court will not disturb the trial court's findings of fact unless the evidence preponderates against its finding. *Berryhill v. Rhodes*, 21 S.W.3d 188, 190 (Tenn. 2000) (citation omitted). We review the trial court's resolution of legal questions *de novo* with no presumption of correctness. *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000) (citation omitted). The interpretation of a contract is a matter of law, which we review *de novo* on appeal. *Crye-Leike, Inc. v. Carver*, 415 S.W.3d 808, 815 (Tenn. Ct. App. 2011) (citation omitted).

IV. ANALYSIS

The first issue before this Court is whether the trial court erred in its interpretation of Paragraph 7 of the parties' MDA as it relates to allocating proceeds from the sale of the Antioch Pike Properties. Wife contends that Paragraph 7 is not ambiguous, and that its language unmistakably provides that the amounts listed with each property constitute the minimum amount she is entitled to receive from that property's sale. Wife notes that there is no language in Paragraph 7 to indicate that the parties intended to split the proceeds equally. Thus, Wife contends that she is entitled to an allocation of the sale proceeds as close to \$565,800 as possible, with a deduction for Husband's necessary expenses related to the properties. Husband contends, as the trial court found, that Paragraph 7 is ambiguous because it fails to define the term "net" with regard to Wife's interest in the properties. He therefore argues that the trial court correctly considered parol evidence to determine that the parties intended to split the sale proceeds equally. After carefully considering the matter, we agree with Husband and affirm the judgment of the trial court.

Once a trial court approves the marital dissolution agreement of divorcing parties, the

agreements in it become legally binding obligations on the parties.³ *Long v. McAllister-Long*, 221 S.W.3d 1, 8-9 (Tenn. Ct. App. 2006). Thus, to the extent that the duties in the marital dissolution agreement are enforceable contract obligations, they are to be construed and enforced like other contracts. *Barnes v. Barnes*, 193 S.W.3d 495, 498 (Tenn. 2006). “A cardinal rule of contractual interpretation is to ascertain and give effect to the intent of the parties.” *Allmand v. Pavletic*, 292 S.W.3d 618, 630 (Tenn. 2009) (citations omitted). In interpreting the contractual language, courts begin by looking to the plain meaning of the words in the document to ascertain the parties’ intent. *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 889-90 (Tenn. 2002). “When the language of the contract is plain and unambiguous, courts determine the intentions of the parties from the four corners of the contract, interpreting and enforcing it as written.” *Union Realty Co., Ltd. v. Family Dollar Stores of Tenn., Inc.*, 255 S.W.3d 586, 591 (Tenn. Ct. App. 2007). However, if the words of the contract are susceptible to more than one reasonable interpretation, the court cannot determine the parties’ intent by a literal interpretation of the language. *Planters Gin Co.*, 78 S.W.3d at 890.

The terms of a contract are ambiguous when one of its provisions is susceptible to more than one reasonable interpretation. *Id.* The disputed language in Paragraph 7 states:

Mrs. Hutcherson shall accept any offer which nets her the amount stated below in the column adjacent to each property. If Mr. Hutcherson desires for Mrs. Hutcherson to accept an offer for a particular property which nets her an amount less than the amount set forth below, Mrs. Hutcherson shall be obligated to accept said offer provided Mr. Hutcherson makes up the deficiency at the closing of the sale. Should Mr. Hutcherson desire for Mrs. Hutcherson to accept an offer for a particular property which would net her an amount less than the amount set forth below and be unwilling to make up the deficiency at the closing of the sale, Mr. Hutcherson shall have the right to file a motion with the Court to seek an order to compel Mrs. Hutcherson to accept the lesser offer should the Court determine that Mrs. Hutcherson’s consent is being unreasonably withheld.

The quoted language provides three scenarios in which Wife’s obligation to consent to the sale of the properties will be triggered. In the first scenario, Wife must accept any offer that “nets” her the amount listed with the property being sold. In the second scenario, Wife must accept an offer that “nets” her an amount lower than the amount listed with the property being sold, provided that Husband pays her the deficiency. In the third scenario, if Husband wishes

³There are notable exceptions for agreements involving child support and alimony, which remain modifiable by the courts, however neither exception is relevant in this case. *See Long*, 221 S.W.3d at 9 n.7.

for Wife to accept an offer that “nets” her an amount lower than the amount listed with the property, and he refuses to pay her the deficiency, he can seek a court order to compel Wife to accept the offer should the court find that Wife’s consent is being unreasonably withheld. This litigation was initiated when Husband petitioned the Circuit Court to compel Wife to accept a sale of the Antioch Pike Properties by public auction, stating that the Wife’s refusal to sell was made in bad faith and that the poor real estate market made a sale at a higher price unlikely. The trial court granted Husband’s motion, and after a second public auction with no minimum bid, the Antioch Pike Properties were sold for \$362,000. Thus, it appears that if any of the three triggering scenarios of Paragraph 7 is applicable to this matter, it is the third. The problem, as the trial court pointed out, is that Paragraph 7 does not provide any explicit instructions on how to divide the sale proceeds. Paragraph 7 only states that the sales should “net” Wife some amount of the proceeds without providing a definition for the term “net.” Given the fact that Paragraph 7 also instructs the parties to retitle the Antioch Pike Properties jointly, a reasonable person could conclude that the parties intended to divide the proceeds equally. However, because the parties listed specific amounts Wife was guaranteed to receive under the first and second triggering scenarios of Paragraph 7, a reasonable person could also conclude that Wife is to receive as close to those amounts as possible under the third triggering scenario. We therefore conclude that Paragraph 7 is ambiguous.

Where contractual language is found to be ambiguous, the court will apply the established rules of construction to determine the parties’ intent. *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611-12 (Tenn. 2006). The court will analyze the ambiguous language in light of the contract as a whole to ascertain and give effect to the parties’ intention. *Gray v. Estate of Gray*, 993 S.W.2d 59, 64 (Tenn. Ct. App. 1998). Additionally, where a contract provision is ambiguous, the court is permitted to use parol or extrinsic evidence to guide it in construing and enforcing the contract. *Allstate Ins. Co.*, 195 S.W.3d at 612.

As we have already established, Paragraph 7 itself does not explicitly instruct the parties on how to divide the proceeds from the sales of the properties it governs. However, we note that it instructs the parties to retitle each of the properties to themselves as tenants in common. As tenants in common, the parties shared an undivided one-half interest in each of the properties and, in the absence of some agreement to the contrary, would each be entitled to one-half of the proceeds. Wife contends that because the decision to retitle the properties as a tenancy in common had other legal significance, such as requiring Wife’s approval for a sale and giving Wife’s heirs an interest in the properties, it should not be considered proof of the parties’ intent to split the proceeds equally. While we acknowledge the other purposes of owning the properties as tenants in common, we find that such ownership creates a presumption that the parties intended to split the proceeds equally. Starting with that presumption in mind, we examine the other evidence of the parties’ intent.

A review of the MDA as a whole reveals that the parties divided the other assets of the marital estate substantially equally. As the trial court noted, the MDA divided many of the parties' other assets exactly equally. Wife contends that the fact that other provisions of the MDA provided for an equal split of other assets shows that the parties knew how to explicitly provide for such a split in Paragraph 7 had they so intended. Conversely, Husband argues that in light of the MDA's overall preference for equal division, if the parties had intended special treatment for the assets governed by Paragraph 7, they would have known to clearly communicate it. Given the language of Paragraph 7 and the surrounding circumstances, it is clear to us that parties intended to split the sale proceeds equally. The most notable evidence of that intention is the fact that the amounts listed with each property in Paragraph 7 are exactly one-half of the tax assessor's 2005 appraised value for that property. In light of the circumstances at the time the MDA was entered, we agree with the trial court that it appears that the amounts listed in Paragraph 7 were intended as triggering mechanisms by which Husband could force a sale of a property so long as Wife's one-half share of the net proceeds equaled at least one-half of its appraised value.

The parties' preference for equal division is evident in other parts of Paragraph 7 as well. Paragraph 7 provided that Husband deposit rents on the Olivia Drive Property, which was being rented by the parties at the time of the divorce, into a separate account. Husband was to use the funds in that account to pay expenses on the Olivia Drive Property and the Antioch Pike Properties. If a balance remained in the account upon the sale of the last of the properties, Paragraph 7 provided that it "be divided equally between the parties." Additionally, in the event that expenses on the properties exceeded the rents collected from the Olivia Drive Property, Paragraph 7 provided that the "the deficiency shall be paid one-half by each party." The parties' clear intent to equally divide other funds and costs related to the properties is indicative of their intention to divide the sale proceeds equally.

Wife contends that the parties' treatment of the proceeds from the sale of the Olivia Drive Property shows their intent to guarantee Wife the amounts listed with each property. In 2006, the parties sold the Olivia Drive Property for \$133,490. Following the sale, Husband paid Wife \$62,500, the amount listed adjacent to the Olivia Drive Property in Paragraph 7. Husband kept the remaining \$70,990. Wife contends that the parties' actions show that their intent in disposing the property under Paragraph 7 was not to split the proceeds equally, but to guarantee Wife the amount listed beside each property and allow Husband to keep any proceeds above that amount. The trial court disagreed, and found that although the parties failed to follow the terms of the MDA in splitting the Olivia Drive Property sale proceeds, their actions did not invalidate or reform it. The trial court therefore ruled that Wife was entitled to recoup \$4,445 from Husband's share of the proceeds currently in dispute. Though we agree with the trial court's ruling, we do not think that Husband necessarily failed to follow the MDA by retaining the excess proceeds. At trial, Husband testified that he retained

the excess proceeds to help offset expenses on the Antioch Pike Properties. At the time the Olivia Drive Property was sold, Husband was paying approximately \$20,000 per year in maintenance, taxes, and insurance for all of the Paragraph 7 properties. Though Husband paid the expenses himself, Paragraph 7 provided that upon the sale of all of the properties, Wife would reimburse him for one-half of them. Thus, at the time of the Olivia Drive Property sale, Wife was already in debt to Husband for her share of the expenses. Rather than pay Wife the excess proceeds from the sale, Husband contributed them to her debt. Indeed, in Husband's initial petition to disburse the Antioch Pike Property proceeds, Husband specifically acknowledged the reduction in Wife's debt to him from the Olivia Drive Property, though he misstated that the debt was reduced by 2,500 rather than \$4,445. Based on the foregoing, we find that although Husband did not pay Wife a full one-half share of the Olivia Drive Property sale proceeds, because Wife was already in debt to him for his expenditures on the properties, his failure to do so was not credible evidence of the parties' overall intent.

Next, Wife contends that Husband's actions during the parties' attempt to sell the Antioch Pike Properties in May 2006 shows his understanding that Wife was guaranteed the amounts listed in Paragraph 7. In May 2006, both Husband and Wife signed a contract to sell the Antioch Pike Properties for \$1,000,000. Prior to closing, Husband asked Wife to sign an agreement providing that an equal split of the sale proceeds would satisfy Paragraph 7. Believing that Paragraph 7 entitled her to \$565,800, rather than the \$500,000 minus expenses that Husband's agreement proposed, Wife refused to sign and the sale fell through. Wife contends that if the parties had intended an equal division of proceeds in Paragraph 7, Husband would not have felt the need to enter the same agreement prior to selling in 2006. At trial, Husband testified that he believed the agreement he proposed in May 2006 was consistent with Paragraph 7, but that because of the ambiguity in Paragraph 7 he wanted Wife to expressly agree to an equal division to avoid the possibility of future litigation. The trial court did not make any express findings regarding Husband's motive for insisting on the agreement. Though we acknowledge the possibility that Husband's insistence on the agreement was an attempt to modify Paragraph 7, it is equally plausible that he only meant to clarify what he perceived, and we have acknowledged, was ambiguous contractual language. In any event, to the extent that Husband's action during the May 2006 failed sale indicate that he intended Paragraph 7 to guarantee Wife certain amounts from each sale, we find that it is outweighed by substantial evidence to the contrary.

Based on the foregoing evidence, we conclude that it was the intent of the parties in Paragraph 7 to split the sale proceeds from the properties listed therein equally and affirm the judgment of the trial court in that regard. However, Paragraph 7 also provides for the equal division of expenses relating to the properties. Wife's second primary contention on appeal is that the trial court erred in calculating the amount Wife's contribution to those expenses.

Paragraph 7 provides that “[i]n the event that it is necessary” for Husband to pay expenses relating to the listed properties, Wife will reimburse him in an amount equal to one-half of such expenses. Despite the parties’ stipulation prior to trial that Husband spent \$156,270.48 in expenses relating to the Antioch Pike Properties prior to their sale, Wife contends that only \$25,290.83 constitutes “necessary” expenditures for which Husband is entitled to one-half reimbursement. Wife arrives at that conclusion by arguing that Husband unreasonably refused to sell the Antioch Pike Properties in May 2006 and therefore all expenses incurred on the properties after that date were unnecessary. Unfortunately, Paragraph 7 provides Husband with complete control over the sale of all of the properties listed therein. We therefore must agree with the sentiment of the trial court that although in hindsight it is unfortunate for both parties that Husband did not close on the May 2006 sale, he acted within his rights in doing so. We therefore affirm the trial court’s apportionment of the \$156,270.48 in expenses on the Antioch Pike Properties one-half, or \$78,135.24, to each party.

V. HOLDING

In light of the foregoing, we affirm the judgment of the circuit court. Of the \$322,287.71 held by the Office of the Davidson County Circuit Court Clerk, each party is entitled to one-half of that amount, adjusted by the other amounts owed between the parties. Husband is entitled to a contribution from Wife’s proceeds in the amount of \$78,135.24, representing reimbursement for his expenses on the properties prior to their sale. Wife is entitled to a contribution from Husband’s proceeds in the amount of \$4,445.00, representing reimbursement for her additional share of the Olivia Drive Property sale proceeds. Accounting for the various amounts owed between the parties, Husband is entitled to the sum of \$234,834.09, and Wife is entitled to the sum of \$87,453.62. The costs of this appeal are taxed to Brenda J. Hutcherson and her surety, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE