132P/1065

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1983 SEP 20 PM 12:03
GEORGE L. BOOKER, CLERK
D.C.

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

MICHAEL F. NOLAN)
)
VS.) NO. 80D-2154
)
GERTRUDE G. NOLAN)

Map - 144-15 Par. 24
105-11 Par. 90-93-94

AMENDED FINAL DECREE OF DIVORCE

BOOK 6148 PAGE 541

This Court awarded Mrs. Gertrude G. Nolan an Absolute Divorce from Michael F. Nolan on the 13th day of July, 1981.

Mrs. Nolan was awarded, among other things, alimony in solido in the amount of $800.00 per month for a period of 37 years for a total award of $355,200.00.

Thereafter, the case was appealed to the Court of Appeals. That Court modified the award of alimony in solido from $800.00 per month for 37 years to $800.00 per month for ten (10) years making the total award of alimony in solido $96,000.00.

From this Decision, Mr. Nolan appealed this case to the Supreme Court of Tennessee. There, the Final Decree of Divorce was further modified as follows:

"Husband shall pay wife $800.00 per month for the next ten (10) years provided however, that in the event of wife's death, the payments shall terminate, and provided further that in the event husband predeceases wife prior to the expiration of the ten (10) year period of monthly payments, husband's estate shall be liable for 50 percent of the payments which husband, if living, would be required to pay over the following ten (10) year period. The estate's obligation to pay will be at the rate of $400.00 per month. Husband's estate shall also be liable for any delinquent payments owed by husband that have accrued on the date of his death."

Copies of the Opinions of the Court of Appeals and the Supreme Court are attached hereto and made a part hereof.

The Final Decree of Divorce rendered by this Court on July 13, 1981 is hereby modified as set forth in both the Opinion of the Court of Appeals and the Opinion of the Supreme

09/30/45.00- CHECK

1861

Court of Tennessee.

ENTER this 26th day of September, 1983. BOOK 6148 PAGE 542

MURIEL ROBINSON, JUDGE

APPROVED FOR ENTRY:

CHARLES ALEXANDER
Attorney for Michael F. Nolan
421 Charlotte Avenue
Nashville, Tennessee 37219
(615) 254-0554

ROY A. MILES, JR.
Attorney for Gertrude G. Nolan
707 Nashville City Bank Building
Nashville, Tennessee 37201
(615) 242-2525

80D 2154 Minute Book: 132B Page: 1065

STATE OF TENNESSEE

I, GEORGE L. ROOKER, *Clerk of the Circuit Court for the County of Davidson, in the State aforesaid, do certify that the foregoing is a* ~~correct manuscript~~ true copy *of the record and proceedings had in said Court in the case heretofore prosecuted and determined therein, between* Michael F. Nolan *Plaintiff, and* Gertrude G. Nolan *Defendant, as same remain of record in said Court.*

IN TESTIMONY WHEREOF, *I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the* 30th *day of* September *in the year one thousand nine hundred and* eighty-three *and in the* 208th *year of American Independence.*

GEORGE L. ROOKER, *Clerk.*

By _____, *D. C.*

Form #GR-117

80D-2154

JUDGMENT ENTERED THIS
SEP 6 1983
Ramsey Leathers, Clerk

BOOK 6148 PAGE 543

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

MICHAEL F. NOLAN,

Appellant

VS

GERTRUDE G. NOLAN,

Appellee

Not Designated for Publication

SEP 6 1983

Davidson Law

Honorable Benson Trimble

Judge

FILED
SEP 6 1983
RAMSEY LEATHERS
CLERK
SUPREME COURT

For Appellant:

Charles Alexander
Attorney-at-Law
Nashville, Tennessee

For Appellee:

Roy A. Miles, Jr.
Attorney-at-Law
Nashville, Tennessee

O P I N I O N

COURT OF APPEALS
AFFIRMED IN PART,
MODIFIED IN PART;
REMANDED TO TRIAL COURT

PER CURIAM

The trial court awarded wife a divorce on the grounds of cruel and inhuman treatment, terminating thirty-seven years of marriage. Wife was awarded the homes of the parties, the furnishings therein and a one-third interest in a business property. In addition the trial judge awarded wife eight hundred dollars per month for thirty-seven years as alimony in solido.

The Court of Appeals affirmed the decree of the trial court in all respects except that the monthly award of eight hundred dollars for thirty-seven years made by the trial judge was changed to an award of alimony in solido in the sum of ninety-six thousand dollars, payable in monthly installments of eight hundred dollars for a period of ten years.

After consideration of the entire record and the age and circumstances of the parties we are of the opinion that the in solido award of ninety-six thousand dollars requires further modification. Husband shall pay wife eight hundred dollars per month for the next ten years; provided however that in the event of wife's death the payments shall terminate, and provided further that in the event husband predeceases wife prior to the expiration of the ten year period of monthly payments, husband's estate shall be liable for fifty percent of the payments which husband, if living, would be required to pay over the following ten year period. The estate's obligation to pay will be at the rate of four hundred dollars per month. Husband's estate shall also be liable for any delinquent

payments owed by husband that have accrued on the date of his death.

The opinion and judgment of the Court of Appeals is in all other respects affirmed. This case is remanded to the trial court for the entry and enforcement of an appropriate decree. Costs of this appeal are adjudged against husband.

PER CURIAM

JUDGMENT ENTERED THIS

DATE: OCT 14 1982

Ramsey Leathers, Clerk

FILED

OCT 14 1982

RAMSEY LEATHERS
CLERK
COURT OF APPEALS

BOOK 6148 PAGE 546

MICHAEL F. NOLAN

APPELLANT

VS.

GERTRUDE G. NOLAN

APPELLEE

NO. 81-419-II
DAVIDSON LAW

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE FOURTH CIRCUIT COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

THE HONORABLE BENSON TRIMBLE, JUDGE

FILED: OCT 14 1982

CHARLES ALEXANDER
421 Charlotte Avenue
Nashville, Tennessee 37219
ATTORNEY FOR APPELLANT

ROY A. MILES, JR.
707 Nashville City Bank Building
Nashville, Tennessee 37201
ATTORNEY FOR APPELLEE

BEN H. CANTRELL
JUDGE

AFFIRMED AS MODIFIED
and REMANDED

MICHAEL F. NOLAN)
)
APPELLANT)
)
)
)
VS.) NO. 81-419-11
) DAVIDSON LAW
)
)
GERTRUDE G. NOLAN)
)
APPELLEE)

O P I N I O N

In this action for divorce the issues raised by the appellant involved the award of alimony in solido and the division of jointly owned property.

Mr. Nolan, a man seventy-one years of age at the time of the trial, filed a complaint on June 12, 1980, asking for a divorce from his wife to whom he had been married for thirty-seven years. Mrs. Nolan, sixty-six years of age, answered and counterclaimed for divorce on the ground of cruel and inhuman treatment, abandonment, desertion, and adultery. At the trial, Mr. Nolan withdrew his complaint for divorce and the hearing proceeded on the counterclaim. After the hearing, the trial judge filed a memorandum opinion finding Mr. Nolan guilty of cruel and inhuman treatment and awarding a divorce to Mrs. Nolan. In addition the trial judge awarded Mrs. Nolan the home of the parties, along with the furnishings therein, divided a jointly-owned market by giving one-third to Mrs. Nolan and two-thirds to Mr. Nolan, and awarded Mrs. Nolan $800.00 per month for the next thirty-seven years as alimony in solido.

The first issue raised by the appellent is:

> Whether the trial court erred or abused its discretion in awarding defendant alimony in solido in the amount of $800.00 per month for a period of thirty-seven years.

With respect to the amount of the monthly payment of alimony, we are satisfied that it is not too high. The statement of the evidence shows that Mr. Nolan had an income of $3,000.00 a month plus an additional $581.00 from Social Security. He listed his monthly living expenses as $2,391.00. Mrs. Nolan testified her primary income was $498.00 from Social Security and that she needed a minimum of $800.00 in addition to what she drew from Social Security to provide for her needs.

To determine the amount of alimony in any case, the trial court should primarily weigh the needs of the spouse obtaining the divorce, along with the ability of the other spouse to pay. Aleshire v. Aleshire, Tenn.App. (filed December 29, 1981 at Nashville); W. Garrett, Tennessee Divorce Alimony and Child Support, § 12-4 (1978). Contrary to the situation found in most cases, here the husband is well able to pay the amount needed by the wife to provide for her needs. Therefore, we find the amount of monthly payments to be reasonable.

However, we are convinced that the form of the award, as alimony in solido to be paid for the next thirty-seven years, is not supported by the proof and is an abuse of the trial judge's discretion. The extent of the award of alimony in solido is limited by the assets or property held by the parties at the time of the decree. Aleshire v. Aleshire, Tenn.App. (filed December 19, 1981 at Nashville). The expectation of future earnings is, in the ordinary case, not an asset and therefore should not be considered when determining the award of alimony in solido. Id.

(Although Aleshire recognizes that in an "exceptional case" future earnings may be considered in the award of alimony in solido, we do not find any such circumstances in this case. In this case the trial court awarded Mr. Nolan property worth $128,115.00 consisting of two-thirds of the real estate on which the market is located, the value of the business as a going concern, the inventory, and the equipment involved in the business. The present value of an award of $800.00 per month for the next thirty-seven years, even at today's inflated interest rates, is nearly equal to the value of all the property awarded by the cour to Mr. Nolan. In addition the thirty-seven year period far excee the life expectancy of either of the parties.

We, therefore, conclude that the form of the alimony awar to Mrs. Nolan should be changed to an award of alimony in solido of $96,000.00 payable in monthly installments of $800.00 for the next ten (10) years. We think this is more in line with the realistic needs of Mrs. Nolan and the ability of Mr. Nolan to pay.

The final issue raised by the appellant is:

> Whether the Trial Court erred or abused its discretion in awarding Defendant a one-third (1/3) undivided interest in a drive-in food market owned by Plaintiff.

The authority of the trial court to adjust interest in jointly owned property is found in T.C.A. § 36-825 which seeks to "preserve for each or either party, that portion of such jointly owned property as may be just and reasonable under the facts and circumstances, . . ." We have held in prior cases that the trial courts in an attempt to meet the intent of the statute are governed only by general rules and the matter is largely within the discretion of the trial court. Shackleford v. Shackleford, 611 S.W. 2d 598, 600 (Tenn.App. 1980); see Walden v. Walden, 13 Tenn.App. 337, 344 (1930).

In this case there was ample evidence to support the decision of the trial court with respect to the division of the real estate. Mrs. Nolan was a joint owner of the property as a tenant by the entireties and assisted at least in part in the operation of the market and the adjoining liquor store when it was owned by the parties. Taking these factors into account along with the division of the other property, we are not convinced that the trial judge abused his discretion. Therefore, the division of the property should be affirmed.

The decision of the trial court is modified as indicated herein and as modified is affirmed. The cause is remanded to the trial court for any further necessary proceedings. Tax the costs on appeal to the appellant.

Ben H. Cantrell

BEN H. CANTRELL, JUDGE

CONCUR:

Henry F. Todd

HENRY F. TODD, P.J., M.S.

Samuel L. Lewis

SAMUEL L. LEWIS, JUDGE

1228/1401

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1981 JUL 15 PM 2:43
GEORGE L. ROOKER, CLERK
K. Loxley D.C.

IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

MICHAEL F. NOLAN *

vs. * NO. 80D-2154

GERTRUDE G. NOLAN *

BOOK 6148 PAGE 551

FINAL JUDGMENT

This cause came on to be heard before the Honorable Benson Trimble, Judge of the Fourth Circuit Court for Davidson County, Tennessee, this 13th day of July, 1981, upon the counter-complaint filed for divorce and answer thereto, counsel for original Plaintiff, Michael F. Nolan, stating in open Court that Plaintiff would withdraw his original complaint and allow the cause to proceed on Counter-Plaintiff's counter-suit. The Court heard testimony of the Counter-Plaintiff, the Counter-Defendant and the witnesses heard in open Court, and statement of counsel, and thereupon took the matter under advisement pending submission of additional evidence by Counter-Defendant. The cause thereupon came on for final argument on August 13th, 1981, and the Court has rendered its Memorandum Opinion in written form as follows:

MEMORANDUM

This cause came on to be heard upon the pleadings, upon the able argument of the solicitors and the entire record herein. From all of which the Court is of the opinion and finds as follows:

The Court feels that an absolute divorce on the statutorily alleged ground of cruel and inhuman treatment should be awarded to the cross-plaintiff and the resulting order will so reflect.

Further the Court is of the opinion that the homeplace of the parties as well as all of the furnishings therein should be and become the property of the cross-plaintiff with no resulting claim thereto insofar as the cross-defendant is concerned.

The amount of alimony shall be in the amount of $800.00 and this shall continue for the next 37 years and shall be treated

as alimony in solido. In regard to the market of the parties one-third of this amount shall be and become the sole property of the cross-plaintiff with two-thirds becoming the sole property of the cross-defendant. A lien will be placed upon said market until some determination has been made by and between the parties as to a buy and sell agreement. The Court does not feel that it would be wise at all for this property to be sold as it is the income now of the cross-defendant.

A $1,000.00 fee shall be awarded the solicitor representing the cross-plaintiff and this shall be a lien upon the property of the cross-defendant until paid in toto.

Also the cross-defendant shall pay the costs in the cause.

The solicitor representing the cross-plaintiff will prepare a final judgment accordingly.

/s/ Benson Trimble
BENSON TRIMBLE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the original action brought by Michael F. Nolan against Gertrude G. Nolan be, and the same is hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Gertrude G. Nolan be awarded an absolute divorce from the bonds of matrimony presently subsisting between her and the Counter-Defendant, Michael F. Nolan, on the grounds of cruel and inhuman treatment, and she is restored to all of the rights and privileges of an unmarried person.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that all right, title and interest in and to the real property owned by the parties as tenants by the entireties, and located at 6109 Montcrest Drive, Nashville, Tennessee 37215 be, and the same is hereby divested out of the Counter-Defendant Michael F. Nolan and vested in fee simple in the Counter-Plaintiff Gertrude G. Nolan. A legal description of this property is as follows:

Land in Davidson County, Tennessee, being Lot No. 46 on the Plan of Hillsboro Park, Section II, of record in Book 2331, pages 61 and 62, Register's Office for said County. Said Lot 46 fronts 154.4 feet on the north side of Montcrest Drive and runs back between lines, 423.8 feet on the east line and 508.9 feet on the west line to a dead line in the rear which is a broken line on which it measures 330.4 feet.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that all of the household furniture and furnishings contained in the residence above described shall be and become the property of Counter-Plaintiff, and all right, title and interest in this property shall be divested out of Counter-Defendant Michael F. Nolan and vested into Counter-Plaintiff, Gertrude G. Nolan, with no resulting claim thereto insofar as the Counter-Defendant is concerned.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that any interest which the Counter-Defendant may have in and to a liquor store business known as The Service Store, Inc., located at 901 12th Avenue, South, Nashville, Tennessee 37203, be divested out of Counter-Defendant, Michael F. Nolan and vested into Counter-Plaintiff, Gertrude G. Nolan.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that alimony in solido be awarded to Counter-Plaintiff, Gertrude G. Nolan and against Counter-Defendant, Michael F. Nolan in the amount of $800.00 per month for a period of 37 years, the first payment to be made on September 1st, 1981 and like payments to be made on the first day of each succeeding month thereafter until paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the real estate which is presently being used as The Service Drive-In Market, which is presently located at 909 12th Avenue, South, Nashville, Tennessee be hereafter owned by the parties as tenants in common, Counter-Plaintiff Gertrude G. Nolan owning a one-third (1/3) undivided interest in the whole and Counter-Defendant, Michael F. Nolan owning a two-thirds (2/3) undivided interest in the whole. Counter-Defendant shall be allowed to

continue to operate the business located on this property and to retain the income derived therefrom. Each of the parties shall be enjoined from disposing, selling, encumbering or seeking to partition their interests in this property without further orders of this Court. A lien is impressed upon the property to protect the interests of each party, pending agreement and final determination between the parties concerning disposition of their interests therein. That portion of this judgment which relates to the disposition of the interest in the property on which the market is located is specifically retained in Court until final determination is made between the parties, and either party may apply to the Court by motion if agreement is not reached within a reasonable period of time.

A legal description of the property is as follows:

Land in Davidson County, Tennessee being Lots nos. 12, 13, 18 and 19, and the northerly 31 feet 3 inches of Lot 24 on the Plan of Boyd Ament Tract as of record in Book 21, page 83, Register's Office of Davidson County, Tennessee. Said Lots 12, 13, 18 and 19 and the northerly 31 feet 3 inches of Lot 24 front together 224 feet 3 inches on the westerly side of 12th Avenue South and run back between parallel lines 166-1/2 feet on the northerly line and 160-1/2 feet, more or less on the southerly line to an alley in the rear on which it measures 224 feet 3 inches, more or less.

Being the same property conveyed to Mike Nolan by deed from Margaret L. Hamm of record in Book 4074, page 161; to Michael F. Nolan and wife, Gertrude G. Nolan by deed from Marion Brown Lucas and I. Bubis of record in Book 3710, page 219; to Michael F. Nolan and wife, Gertrude G. Nolan by deed from L. A. Fisher and wife, Ida D. Fisher of record in Book 3710, page 213, and to Michael F. Nolan and Gertrude Nolan by deed from Rose Helen J. Lefkovitz of record in Book 3938, page 360, all in the Register's Office of Davidson County, Tennessee.

IT IS FURTHER ORDERED that the Counter-Defendant Michael F. Nolan shall pay to Roy A. Miles, Jr., Attorney, the sum of $1,000.00 which is declared to be a reasonable fee for his services in representing the Counter-Plaintiff. A lien for the payment of this fee is impressed upon the property decreed to the Counter-Defendant Michael F. Nolan herein described until paid in toto.

The Counter-Defendant, Michael F. Nolan, shall pay the costs of this cause for which execution may issue if necessary.

ENTER this _____ day of _____, 1981

BOOK 6148 PAGE 555

BENSON TRIMBLE, JUDGE

APPROVED FOR ENTRY:

9-1-81

ROY A. MILES, JR.,
Attorney for Gertrude G. Nolan
13th Floor, Nashville City Bank Bldg.
Nashville, Tennessee 37201

CERTIFICATE

I hereby certify that a true copy of the foregoing order has been served on the Counter-Defendant, Michael F. Nolan, by placing a copy of same in the U. S. Mail, postage prepaid, to his attorney of record, Mr. Douglass Love, 1712 Parkway Towers, Nashville, Tennessee 37219, this 21st day of August, 1981.

ROY A. MILES, JR., ATTORNEY

take out one document

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IDENTIF. REFERENCE

SEP 30 2 37 PM '83

FELIX DAVIDSON, CLERK, DAVIDSON COUNTY, TN

RUSH

80D 2154 Minute Book: 122 B Page: 1401

STATE OF TENNESSEE

I, GEORGE L. ROOKER, *Clerk of the Circuit Court for the County of Davidson, in the State aforesaid, do certify that the foregoing is a* ~~correct transcript~~ true copy *of the record and proceedings had in said Court in the case heretofore prosecuted and determined therein, between* Michael F. Nolan *Plaintiff, and* Gertrude G. Nolan *Defendant, as same remain of record in said Court.*

IN TESTIMONY WHEREOF, *I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the* 30th *day of* September *in the year one thousand nine hundred and* eighty-three *and in the* 208th *year of American Independence.*

GEORGE L. ROOKER, *Clerk.*

By _____, *D. C.*

Form #GR-117