IN THE FOURTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

FILED 1986 NOV 13 PM 3:53 GEORGE L. ROOKER, CLERK

JESSE HOUSTON HARE)
)
v.) No. 85D-2921
)
VALLEAN M. HARE)

ORDER BOOK 7769 PAGE 810

This cause came on to be heard before the Honorable Muriel Robinson, Judge of the Fourth Circuit Court for Davidson County, Tennessee, beginning on the 18th day of March, 1986 and heard on other days where witnesses and exhibits were offered in open court and argument of counsel and the case was thereafter taken under advisement and the Court issued a memorandum which has been included herein and made a part hereof as follows:

> This cause came for hearing before this Court March 18, 1986 and other days thereafter being July 21, 1986 through July 24, 1986. Said matter was heard upon the original complaint for divorce filed by Jesse Houston Hare, proper service of process upon the defendant, Vallean M. Hare, answer and counter-claim filed, answer filed in response thereto, thereafter an amended and supplemental counter-complaint filed by Vallean M. Hare, charging the ground of cruel and inhuman treatment, and answer filed thereto by original complainant, Jesse Houston Hare. The cause was further heard upon testimony of the principals and other witnesses in open court, argument of counsel heard on the 18th day of August, 1986 and the entire record herein including briefs submitted to the Court. From all of which the Court finds as follows:
>
> Neither party in this cause have properly conducted themselves in this marital relationship. Both have been verbally abusive to the other. Further, both have provoked each other into serious altercations during this marriage of rather short duration.
>
> There is a serious question raised in the proof of this cause as to Mrs. Hare's credibility and this Court finds that because of inconsistencies in her testimony, she was obviously not truthful in her testimony to this Court. Her excuses were not sufficient in re-establishing her credibility in the Court's eyes.
>
> With respect to Mr. Hare's alleged cruel and inhuman treatment, we do find several significant incidents that occurred prior

to the separation. Due to the serious questions of Mrs. Hare's credibility, the allegations as admitted by Mr. Hare have been considered by the Court.

Therefore, based on his admissions of misconduct, Mrs. Vallean Hare is hereby awarded an absolute divorce upon the grounds of cruel and inhuman treatment. The complaint of Mr. Hare seeking an absolute divorce is denied as to that issue.

This Court has read most carefully the briefs and cases cited by all counsel and has in addition researched this matter as to a fair and equitable division of marital property.

The Court notes that when the businesses of Mr. Hare were incorporated giving Mrs. Hare 50% of the stock in both companies, there had already been much marital discord between the parties both in the home and at the business. This Court cannot find from the testimony and evidence presented that Mr. Hare intended to give Mrs. Hare as a "gift" 50% of his business. It seemed they were more concerned about protecting assets from lawsuits as both were concerned about judgments and back taxes.

There is no clear evidence as to the net worth of these corporations. They mainly depend on the fact that Mr. Hare has been able to maintain a metro license for over twenty-five (25) years to operate his wrecker service in a particular designated zone. This license is owned solely by him. There is ample evidence that Mr. Hare has a particular interest in running these corporations which were his solely, until incorporation on November 28, 1984. The parties separated in October, 1985. This is sufficient to overcome the presumption of equal ownership and the "gift" thereof. Mr. Hare and his father started this business and it remained viable primarily through his efforts. When Mrs. Hare worked in this business there was continuous friction and quarreling. To allow her continuing involvement would be a detriment to the business.

The vesting of the stocks of the corporation to Mr. Hare is offset by allowing a property division to Mrs. Hare of one-half (1/2) the equity in the homeplace valued at approximately $200,000.00 of which $134,000.00 was contributed by Mr. Hare. (Wallace v.

Wallace, 10 TAM 2-7 (Middle Section, December 13, 1984), Reed v. Reed. 11 TAM 37-10 (Western Section, July 16, 1986).

Insofar as a division of the assets is concerned, the Court makes the following division, after considering all the proof and after considering the requirements of division as set forth by T.C.A. 36-4-121:

1. The wife is awarded any household furniture and furnishings owned by her prior to the marriage as well as the household furniture and furnishings accumulated by the parties after the marriage noted on Exhibit #12 with exception of items 1, 2, 6, 7, 10, 16, 17, 18, 19, 29, 30, 34.

The wife will receive one-half (1/2) of the lawn and pool furniture.

2. The wife is awarded her jewelry bought after the marriage and she shall retain the Cadillac automobile now in her possession.

3. The homeplace of the parties shall be sold and after payment of the first mortgage thereon and the expenses of sale, the equity shall be divided equally between the parties. The property shall be listed for sale immediately. The wife shall maintain possession thereof until the sale of said property. She shall be responsible for all utilities thereon until said sale. The husband shall pay the mortgage note until said sale. The attorneys shall select a reputable real estate agent and present to the Court a listing contract within thirty (30) days of this resulting decree.

4. The husband shall pay to the wife the sum of $800.00 per month as alimony until the homeplace is sold and the equity divided. The $800.00 per month payment until the home is sold includes the $500.00 payment below. If homeplace is not sold within six (6) months said property shall be sold through court. Each party is ordered to cooperate with the agent in selling homeplace.

5. After the parties homeplace has been sold, the husband shall pay to the wife the sum of $500.00 per month as rehabilitative alimony for a period of three years from the date of this decree at which time said obligation shall cease.

6. The wife shall retain the assets she owned prior to the marriage inclusive of the one-half (1/2) interest in thirty-six (36) acres in North Carolina and her one-half (1/2) interest in nine (9) acres in North Carolina, as exhibited on Exhibit No. 13.

7. The wife shall retain all policies of insurance she owns and she shall be responsible for premium payments thereon.

The husband shall receive the following:

1. All shares of stock in the Houston's Wrecker Service and Repair, Inc., all shares of stock in the Houston's Boat Transporting and Brokerage Company, as well as, all interest in and to the newly formed Houston's Body Shop Partnership, all free and clear of any interest claimed by the wife. The 50% share listed in tne name of Vallene Hare in the Houston's Wrecker Service and Repair, Inc., and the 500 shares listed in the name of Vallean Hare in Houston's Boat Transporting and Brokerage Company are divested from her and reinvested in the husband, Houston Hare.

2. Tne husband shall further receive all assets of the above corporations including the real estate located at 2727 Murfreesboro Road, Nashville, Tennessee as well as all equipment thereto, inclusive of those items listed on Exhibits Nos. 1 and No. 15, incidental to the Houston Wrecker Service and Houston's Boat Transporting Company.

3. The proceeds of sale on the Murfreesboro Road property owned by Mr. Hare prior to the marriage shall remain his sole and separate property free and clear of any claim of Mrs. Hare as this Court finds no sufficient evidence that Mrs. Hare ever contributed to the preservation or appreciation of this partnership property owned by Mr. Hare.

4. The husband shall retain all his personal property inclusive of guns and jewelry as reflected by Exhibit #16. The wife shall be ordered to return all guns and jewelry to Mr. Hare that she has in her possession or held by others at her direction.

5. The husband shall be awarded a item of personalty he had prior to the marriage and in addition thereto the following items listed on Exhibit #12 being items 1, 2, 6, 10, 16, 17, 18, 19, 29, 30 and 34 and one-half (1/2) of lawn and pool furniture.

6. The husband shall retain all insurance policies he owns as his sole property and he shall pay the insurance premiums due thereon.

7. The husband shall be liable for all debts, mortgages, unpaid taxes, and judgments pertaining to the businesses herein and the wife shall be held harmless thereon.

The wife shall be enjoined and restrained from allowing any other persons to reside in the homeplace pending the sale thereof.

The bag of coins from the lockbox shall be divided equally between the parties. The attorneys for the parties shall make the division and shall promptly retrieve said coins from the Court and sign a receipt for same.

The husband shall pay the sum of $10,000.00 as further alimony to be applied to the attorney's fee for the wife, any balance due and owing thereon shall be the responsibility of the wife. The fees herein may be assessed as liens against the property of the parties as to their respective obligation hereunder.

It is hereby ORDERED, ADJUDGED and DECREED, that all provisions of the Court's memorandum as set forth above are hereby made the judgment of the Court.

The final costs of this cause shall be paid by the defendant, Jesse Houston Hare, for which execution may issue if necessary.

The current addresses for the parties are as follows: Vallean M. Hare, 5762 Cane Ridge, Antioch, Tennessee 37213; Jesse Houston Hare, 2727 Murfreesboro Road, Antioch, Tennessee 37013.

ENTERED, this 12th day of Nov., 1986.

Muriel Robinson,
Judge

APPROVED FOR ENTRY:

Rose T. Palermo
43 Music Square West
Nashville, TN 37203

John R. Cheadle, Sr.
Suite 515
129 Second Avenue North
Nashville, TN 37201
Atty. for Jesse Houston Hare by permission
Attorneys for Jesse Houston Hare

TRABUE, STURDIVANT & DEWITT

By: Thomas C. Binkley
Thomas C. Binkley

By: Gerald G. Patterson
Gerald G. Patterson
27th Floor, L & C Tower
Nashville, TN 37219
615-244-9270
Attorneys for Vallean M. Hare

6039 02/09 0101 03CHECK 18.00

07994

FEB 9 12 34 PM '89

STATE OF TENNESSEE

I, **GEORGE L. ROOKER,** *Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Order heretofore entered in the* Fourth *Circuit Court for Davidson County, Tennessee, on the* 13th *day of* November, *19* 86, *in Case Number* 85D-2921 *between* Jesse Houston Hare *Plaintiff, and* Vallean M. Hare *Defendant, as same remains of record in Book* 157A, *Page* 744 *of the Minutes of said Court.*

IN TESTIMONY WHEREOF, *I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the* 9th *day of* February *in the year one thousand nine hundred and* eighty-nine *and in the* 213th *year of American Independence.*

GEORGE L. ROOKER, *Clerk,*

By K Langford *D.C.*

Form #GR-117