94B 1955
1991 OCT 31 PM 4:01
K. Statton

IN THE PROBATE COURT OF DAVIDSON COUNTY, TENNESSEE

ERNEST GLENDON OVERSTREET]
VS.] NO. 90D-2982
BARBARA ANN BARNES OVERSTREET]

D E C R E E

This cause came on to be heard before the Honorable James R. Everett, Jr., Judge, Probate Court of Davidson County, Tennessee, on the 12th day of August, 1991, and upon all of the pleadings heretofore filed. At the conclusion of all of the proof, the Court took the matter under advisement for the purpose of allowing the parties to file agreed upon "late file" exhibits. The Court further directed that counsel for both parties submit to the Court proposed Findings of Fact and Conclusions of Law. After careful consideration of all of the evidence presented, including late filed exhibits and the proposed Findings of Fact and Conclusions of Law submitted by the parties, the Court finds as follows:

THE QUESTION OF DIVORCE

Each party alleges that the other had been guilty of inappropriate marital conduct. The wife contended that the husband had physically abused her on numerous occasions, that he had abused their children, that he drank to excess, and that he verbally abused her by calling her foul names. The husband categorically denied that he had ever physically abused the wife or children, or that he used alcohol to excess. He contended that these charges made by the wife were fabrications that she made up and were absolute lies. Husband alleged that wife had verbally abused him and that she had used alcohol to excess. Each party admitted that there had been disharmony in the marriage for a number of years, that abusive language had been used, and each testified that a reconciliation would be impossible. Each stated that they wanted a divorce.

The husband offered one corroborating witness who testified as to wife's excessive use of alcohol on three separate occasions. The wife did not present any corroborating witnesses as to grounds for divorce, even though she testified during discovery and during the trial that the parties' two grown children could corroborate her allegations of physical abuse by the husband, and that both children lived close to Nashville and could have been available as witnesses. The wife's failure to call these witnesses, who were immediately available, leads the Court to the inescapable presumption and conclusion that the children would not have corroborated her allegations and substantiates husband's contention and testimony that the wife's allegations as to physical abuse were untrue.

Both parties admit disharmony in their marriage for the past several years. Both parties admit that abusive language has been used by each to the other. The parties admit that they have been separated for over a year and that reconciliation is impossible. Both parties request a divorce.

The Court finds that nothing can be gained by keeping these parties married, and that both parties have been guilty of inappropriate marital conduct that brought about a dissolution of the marriage. Pursuant to the provisions of T.C.A. §36-4-129, it is ORDERED, ADJUDGED and DECREED, and the Court declares the parties to be divorced and restored to all rights and privileges of unmarried persons. The bonds of matrimony heretofore existing between the parties are forever and perpetually dissolved.

THE DIVISION OF THE MARITAL ESTATE

The parties are in agreement as to the value of certain fixed assets hereinafter referred to as agreed value assets. These assets consist of a major portion of the tangible marital estate of the parties, and are as follows:

House in Old Hickory (occupied by wife)--$ 70,000.00

Fish Camp in Stewart County (occupied by husband)---------- 45,000.00

Husband's IRA---------- 8,900.00

Wife's IRA---------- 8,900.00

Husband's Ford Stock Plan---------- 9,000.00

Husband's Ford Credit Union----------	5,700.00
Wife's Northern Life Annuity----------	18,000.00
Wife's Safeco Annuity----------	3,700.00
Wife's Education Credit Union----------	930.00
Total----	--$170,130.00

There is a major dispute between the parties as to the value of the household furnishings located in the Old Hickory home. The husband values these furnishings at $21,000.00, while wife now values the furniture at slightly less than $4,000.00, even though on discovery, she valued the furniture at $11,000.00. As to remaining personal property, wife values her car at $7,500.00, and husband's truck at $10,000.00, while husband values both vehicles at $10,000.00. The husband has a gun collection and a fishing boat, and the wife has a quilt collection and a boat. There is also a lawn mower requested by wife, and a tiller requested by husband.

The most significant dispute between the parties relating to their marital estate is the value of their respective pension and retirement plans. It is undisputed that the husband has a non-contributing retirement plan with Ford, that upon retirement, either now or at a later date, will afford him an income of approximately $1,800.00 per month. If husband retires before he is eligible for Social Security benefits, Ford will pay the entire $1,800.00. However, once husband is entitled to Social Security benefits, Ford will pay the difference between husband's Social Security income and the $1,800.00; thus, affording husband a total retirement income of $1,800.00 per month, including Social Security benefits. These payments are only available to the husband upon retirement, and are payable on a monthly basis in the total amount of $1,800.00, including Social Security benefits, and payable until the death of the husband on a monthly basis. Wife now has a survivor's interest in that portion of husband's retirement income to be paid by Ford that would be payable to her after the husband's retirement and upon the death of the husband, provided that she was still his wife. However, husband's retirement plan is subject to a

qualified domestic relations order vesting wife with a percentage interest in the benefits paid by Ford, and which would be available to her at the retirement of the husband. The husband does not have a present vested interest in this plan that is or ever will be available on a lump sum basis. There is no proof offered to the effect that a lump sum payment from this plan is now or will ever be available to either husband or wife, as this is a non-contributing plan wherein benefits are available only upon the retirement of the husband, and are payable on a monthly basis. At best, husband has what may be defined as a deferred vested interest in these retirement benefits, payable only upon his retirement, and payable on a monthly basis. The wife introduced testimony by an accountant relating to an evaluation of the husband's retirement plan. Based upon retirement at age sixty-two, the husband's present-day interest in the plan has a value of $102,371.00, and wife's present-day survivor benefit interest in the plan is in the amount of $40,156.00. This evaluation is made upon the assumption that the husband will retire at sixty-two years of age and will live twenty-one years thereafter, and that wife will live for twenty-eight years after the retirement of the husband at sixty-two. Admittedly, all benefits payable to husband cease immediately upon his death, and should wife survive husband, benefits payable to her would cease immediately upon her death. All benefits available to either party are payable only on a monthly basis, and there is no provision for the payment of any lump sum benefit to either party, now or ever. Therefore, should the Court award the wife an interest in husband's retirement benefits, this award would only be available to her upon the retirement of the husband, or the death of the husband, whichever occurred first.

The wife now has a vested interest in her retirement plan as a Metropolitan Government employee. If she leaves Metropolitan Government tomorrow, she would receive a little over $6,000.00. Based upon her current salary, if she retires at age sixty, she will receive approximately $250.00 per month. If she retires at age sixty-two, she will receive approximately $325.00 per month. If she retires at age sixty-five, she will receive

approximately $500.00 per month. These payments, unlike the retirement payments available to the husband, are not subject to the receipt of Social Security benefits by the wife. All Social Security benefits that wife will eventually be entitled to will be in excess of the retirement benefits that she will receive from the Metropolitan Government.

The Court has carefully considered all of the provisions of T.C.A. §36-4-121 relating to the division of marital property. Accordingly, it is ORDERED, ADJUDGED and DECREED that the marital estate be divided as follows:

(1) AGREED VALUE ASSETS:

To Wife:

Old Hickory Home	$ 70,000.00
Wife's IRA	8,900.00
Northern Life Annuity	18,000.00
Safeco Annuity	3,700.00
Educator's Credit Union	930.00
Total	$101,530.00

To Husband:

Fish Camp in Stewart County	$ 45,000.00
Husband's IRA	8,900.00
Ford Stock Plan	9,000.00
Ford Credit Union	5,700.00
Total	$ 68,600.00

Each party, at all times as hereinafter may be necessary, will execute such deeds or other documents as may be required to effectuate the conveyances of real property as ordered by this decree. Husband will quitclaim his interest in the homeplace property located at 912 Anita Drive in Old Hickory, Tennessee, to wife, and wife will hereafter hold husband harmless from any mortgage or other indebtedness against said property. Wife will quitclaim her interest in the fish camp located in Stewart County, Tennessee, to husband, who will hereafter hold wife harmless from any mortgage or other indebtednesses against said property.

(2) Other than as awarded above, the wife will retain her automobile and hold husband harmless from any payments therefor, and husband will retain his truck and hold wife harmless. Husband will retain all other personal property in his possession, including his gun collection, boat and contents of the trailer home in Stewart County. Wife will retain all personal property in her possession, including all of the household furnishings in the Old Hickory home, her quilt collection and her boat. All items awarded to each party are free from any claim by the opposite party. Wife is awarded the lawn mower, and husband is awarded the tiller. Regardless of location, any property not listed that is personal to either party will become the property of that party.

Each party will retain all of their pension and retirement benefits, free and clear from any claim by the opposite party. The Court carefully considered the question of awarding the wife an interest in the husband's retirement benefits, but determined that it is more equitable to award wife substantially more of the agreed value marital assets that can immediately be made available to her. For this reason, the Court has awarded the wife agreed value assets that exceed those of the husband in value by almost $33,000.00, and including $31,530.00 in cash assets. In addition thereto, the Court has awarded the wife all of the furniture at the Old Hickory residence that the wife formerly valued at $11,000.00.

Had the Court awarded the wife a portion of the husband's retirement benefits, it would also have considered wife's retirement benefits, and in addition would have made a more even division of the agreed value assets and the household furnishings. This would have deprived the wife of a substantial amount of cash assets that she is being awarded, and which are immediately available to her. In addition, it would have placed the wife in a position of having to wait until husband's retirement before being eligible for any portion of his retirement benefits. The Court feels that the award to wife of almost $33,000.00 in fixed value assets over and above that awarded to the husband, plus awarding wife all of the household

furniture and her retirement plan, more than exceeds any portion of husband's retirement that would have been awarded wife, and also, invests wife with the immediate lump sum cash assets instead of long term deferred assets. In addition thereto, wife will immediately have available to her the interest income that will be earned from the substantial cash assets that she is being awarded.

ALIMONY AND ATTORNEYS' FEES

The conduct of both parties brought about the dissolution of this marriage. However, the Court finds that there is a disparity in the income earned by the parties in favor of the husband. Fortunately, wife has a home that is almost paid for and upon which monthly mortgage payments are minimal. There is also evidence that the wife will eventually, in all probability, inherit substantial assets. It is therefore ORDERED, ADJUDGED and DECREED that wife is awarded $350.00 per month as indefinite alimony to be paid by husband as income to wife, and until further orders of the Court, or the death of the husband. For so long as husband has an alimony obligation to wife, or until further orders of the Court, the husband shall also maintain a life insurance policy wherein, upon his death, wife will be the beneficiary of the sum of $25,000.00. Wife's $25,000.00 interest in said policy shall be free and unencumbered, and will designate the wife as the sole and exclusive beneficiary thereof. However, husband will own the policy, and benefits provided therein will revert back to him upon the termination of his alimony obligation. This award is made to afford the wife some security in the event of the untimely death of the husband during the time that he has an alimony obligation to the wife.

If she desires, the wife may retain her medical insurance coverage through husband's employment as long as is possible under COBRA, but wife will pay all insurance premiums therefor. This provision is made, taking into consideration that the wife has available to her excellent medical and dental benefits available as an employee of the Metropolitan Government, and at little or no cost to the wife.

Since the Court has found that this marriage is being terminated as the result of both parties' misconduct, and since each party is being awarded substantial cash assets, each party will be responsible for the payment of their respective attorney's fees, and the court costs will be equally shared by both parties.

It is further ORDERED, ADJUDGED and DECREED that at all times as may be necessary, each party will execute any and all documents as may be required to effectuate the transfer or conveyance of personal property from one to the other, and as provided for by this Decree.

Enter this 30 day of Oct, 1991.

JAMES R. EVERETT, JR., JUDGE

APPROVED FOR ENTRY:

JACK NORMAN, JR., Attorney for Husband
213 Third Avenue, North
Nashville, Tennessee 37201
(615)254-0656
Reg. No. 2702

I certify that a copy of this Decree has been mailed, postage prepaid, to Mr. Michael Binkley, attorney for wife, at 150 Second Avenue, North, Suite 300, Nashville, Tennessee 37201, on October 24, 1991.

Mail

JACK NORMAN, JR., Attorney

1010 02/13 0101 03CHECK 27.00

BOOK 8550 PAGE 63

84027

IDENTIFICATION REFERENCE

FEB 13 2 59 PM '92

DAVIDSON COUNTY, TN

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* PROBATE *Circuit Court for Davidson County, Tennessee, on the* THIRTY-FIRST *day of* OCTOBER, *19* 91, *in Case Number* 90D-2982 *between* ERNEST GLENDON OVERSTREET *Plaintiff, and* BARBARA ANN BARNES OVERSTREET *Defendant, as same remains of record in Book* 64B, *Page* 1255 *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* twelfth *day of* February *in the year one thousand nine hundred and* ninety-two *and in the* two hundred and sixteenth *year of American Independence.*

GEORGE L. ROOKER, *Clerk,*

By K. Garrett, *D.C.*

Form #GR-117