IN THE PROBATE COURT FOR DAVIDSON COUNTY, TENNESSEE

JUANITA JOSEPHINE SWETT)
)
VS.) NO. 88D-1043
)
MORRIS CLARK SWETT)

Stratton

FINAL DECREE BOOK 8718 PAGE 524

This cause came on to be heard on the 3rd and 4th days of February, 1992 before the Honorable Chancellor C.K. Smith, sitting by interchange for the Honorable James R. Everett, Jr., Judge of the Probate Court for Davidson County, Tennessee, on a Complaint for absolute divorce filed by Morris Clark Swett and an Answer and Counter Complaint for an absolute divorce filed by Juanita Josephine Swett. After testimony of the parties and consideration of numerous stipulated documents and other exhibits, the Court is of the opinion and it is therefore

ORDERED as follows:

1. Upon the stipulation of Morris Clark Swett that he had been guilty of adultery during the course of the marriage and after the testimony of Juanita Josephine Swett regarding the adulterous conduct of Morris Clark Swett during the marriage, the Court finds that Morris Clark Swett has been guilty of adultery during the marriage and that Juanita Josephine Swett is granted an absolute divorce from Morris Clark Swett on the ground of adultery and that Juanita Josephine Swett is restored to all of the rights and privileges of an unmarried person.

2. The complaint for absolute divorce filed by Morris Clark Swett is dismissed.

3. The Court finds that the house and lot located at 1900 28th Avenue, North titled in the name of Juanita Josephine Swett was given to Juanita Josephine Swett by Morris Clark Swett during the marriage and, therefore, is the separate property of Juanita Josephine Swett. Any and all interest which Morris Clark Swett has in the house and lot located at 1900 28th Avenue, North in Nashville, Davidson County,

Tennessee shall be divested from him and vested in Juanita Josephine Swett as her sole and separate property. A better description of said real estate as contained in Book 5693, page 52 in the Davidson County Register's Office is more particularly described as follows:

> Land in Davidson County, Tennessee, being Lot No. 44 on the Plan of Cumberland Gardens, as of record in Book 2900, pages 3 and 4, Register's Office for said County, described as follows:
>
> Beginning on the northerly margin of Aspen Drive at the corner of Lots Nos. 43 and 44: thence with the line between said two lots northwardly 99.1 feet to the corner of Lots Nos. 43, 44 and 45; thence with the line between said Lots Nos. 44 and 45 westwardly 100 feet to the easterly margin of 28th Avenue North thence with the same southwardly 75 feet to the beginning of a curve, thence around said curve with a radius of 20 feet southeastwardly 31.42 feet to the northerly margin of said Aspen Drive; thence with same eastwardly 70 feet to the beginning.
>
> Being the same property conveyed to Juanita Josephine Swett by deed from Morris Clark Swett of record in Book 5693, page 52, Register's Office for Davidson County, Tennessee.

4. The Court finds that the house and lot located at 6157 Homeland Drive in Nashville, Davidson County, Tennessee is marital property and that any and all interest which Morris Clark Swett has in said house and lot located at 6157 Homeland Drive in Nashville, Davidson County, Tennessee shall be divested from him and vested in Juanita Josephine Swett as her sole and separate property. A better description of said real estate as contained in Book 4935, page 969 in the Davidson County Register's Office is more particularly described as follows:

> Being Lot No. 211 on the Plan of Homeland Heights, Section III, of record in Plat Book 3700, page 55, Register's Office for said County.
>
> Said Lot 211 fronts 136.83 feet on the west margin of Homeland Drive and extends back 385.2 feet on the north line, and 350.0 feet on the south line, to a line on the rear on which it measures 127.00 feet.
>
> Being the same property conveyed to Morris C. Swett and wife, Juanita J. Swett, by deed from Isaac J. Johnson and wife, Marie

R. Johnson, of record in Book 4935, page 969, said Register's Office.

5. The Court finds that Morris Clark Swett has a 1/2 divisible interest in the real estate located at 2725 Clifton Avenue in Nashville, Davidson County, Tennessee which consists of 5 separate tracts of real estate where Swett's Restaurant is located and which real estate is titled to Swett Properties, Inc. The Court further finds that Morris Clark Swett has a 1/2 divisible interest in the restaurant building, the restaurant equipment and the business known as "Swett's Restaurant" and the Court finds that Morris Clark Swett's 1/2 divisible interest in the real estate, the restaurant building, the restaurant equipment and the restaurant business is marital property. Any and all marital interest which Juanita Josephine Swett has in the restaurant real estate, restaurant building, restaurant equipment and restaurant business known as "Swett's Restaurant" shall be divested from her and vested in Morris Clark Swett as his sole property. In addition, Morris Clark Swett shall hold Juanita Josephine Swett harmless for any outstanding indebtedness which may be owed on the real estate, the building, the restaurant equipment and the restaurant business known as "Swett's Restaurant". A better description of said five tracts of real estate owned by Swett Properties, Inc. where Swett's Restaurant is located as contained in Book 7466, page 965, Davidson County Register's Office is more particularly described as follows:

Tract No. 1:

Land in Davidson County, Tennessee, being the northerly one-half of the southerly 95 feet of Lot No. 21 of Block "A" on the Plan of M.B. and M.S. Pilcher's Resubdivision of part of the Barrow Property, as of record in Book 57, page 91, Register's Office for said County.

Said northerly half of the southerly 95 feet of Lot No. 21 fronts 47-1/2 feet on the easterly side of 28th Avenue, North and runs back between parallel lines 67 feet to the line of Lot No. 22 on said Plan.

Tract No. 2:

Being the southerly one-half of the southerly 95 feet of Lot No. 21 of Block

"A" on the plan of M.B. & M.S. Pilcher's resubdivision of part of the Barrow property, as of record in Book 57, page 91, Register's Office for Davidson County, Tennessee. Said southerly half of the southerly 95 feet of Lot No. 21 fronts 47-1/2 feet on the easterly side of 28th Avenue, North, formerly Barrow Avenue and runs back between parallel lines 67 feet to the line of Lot No. 22 on said plan, and being the southerly half of the property conveyed to James W. Crutcher, Trustee by deed of Eddie Harris and Sadie Harris bearing the date of March 18, 1933.

Tract No. 3:

Land in Davidson County, Tennessee, being Lot No. 23 in M.B. and M.S. Pilcher's resubdivision, a plan of which is of record in Book 57, page 91, Register's Office for Davidson County, Tennessee.

Said Lot 23 fronts 50 feet on the south side of Clifton Avenue and extends back southwardly between parallel lines 190 feet to an alley.

Tract No. 4:

Land in Davidson County, Tennessee, being Lot No. 22 in the M.S. Pilcher's Subdivision; which subdivision is recorded in Plan Book 57, page 91, Register's Office for Davidson County, Tennessee.

Said Lot 22 fronts 67 feet on the southerly side of Clifton Avenue and extends back southerly 190 feet to an alley.

Tract No. 5:

Being the north or front part of Lot No. 21 of Block "A" on the Plan of M.B. and M.S. Pilcher's addition to Nashville as of record in Book 57, page 91, Register's Office for said county. Said part of Lot No. 21 fronts 67 feet on the southerly side of Clifton Pike and runs back between parallel lines with the easterly margin of 28th Avenue, North, formerly Barrow Avenue, 95 feet to Harris' North line.

Being the same property conveyed to Swett Properties, Inc., a Tennessee corporation, by quitclaim deed from David and Morris Swett d/b/a Swett's Enterprises of record in Book 7466, page 962, Register's Office for Davidson County, Tennessee.

6. The Court finds that Morris Clark Swett has a 1/2 divisible interest in the real estate located at 2801 Clifton Avenue in Nashville, Davidson County, Tennessee and that Morris Clark Swett's interest in said real estate is marital property. Any and all interest which Juanita Josephine Swett has in Morris Clark Swett's 1/2 divisible interest in said real estate

is divested from her and vested in Morris Clark Swett as his sole property. A better description of said real estate as contained in Book 6663, page 510, Davidson County Register's Office is more particularly described as follows:

> Land in Davidson County, Tennessee, being Lot No. 1 on the Map of Steger's Clifton Pike Subdivision, as of record in Book 421, page 112, Register's Office for said County.
>
> Said Lot No. 1 fronts 40 feet on the southerly side of Clifton Pike and runs back between lines, along the westerly margin of Barrow Avenue, 125 feet to an alley, measuring 45.4 feet thereon.
>
> Being the same property conveyed to David E. Swett and Morris C. Swett by deed from Claude Swann of record in Book 6663, page 510, Register's Office for Davidson County, Tennessee.

7. Even though the real estate where Swett's Convenient Market is located at 2714 Clifton Avenue is titled in the name of Walter Swett, the father of Morris Clark Swett, the Court finds that said real estate at 2714 Clifton Avenue, the building, all equipment and all inventory located at 2714 Clifton Avenue and known as Swett's Convenient Market is owned by Morris Clark Swett rather than his father, Walter Swett, and that the real estate, the building, the equipment and inventory of Swett's Convenient Market is all marital property. The Court further finds that there is an unrecorded indebtedness owed by Morris Clark Swett to his father, Walter Swett, for the real estate, the building, the equipment and inventory which comprises Swett's Convenient Market. Even though it had been previously stipulated by counsel and agreed by the Court that in the event the Court found Swett's Convenient Market was a marital asset that a real estate appraisal could be performed in order to determine the net equity value, since the Court has found that there is an unrecorded mortgage indebtedness owed on the real estate, the building, the equipment and inventory known as Swett's Convenient Market in the amount of approximately $249,000.00, the Court finds that the net equity value of Swett's Convenient Market would be a somewhat nominal amount of money. Any and all interest which Juanita Josephine

Swett may have in the real estate, the building, the equipment and inventory known as Swett's Convenient Market shall be divested from her and vested in Morris Clark Swett as his sole and separate property. Morris Clark Swett shall hold Juanita Josephine Swett harmless for any either recorded or unrecorded mortgage indebtedness which may be owed on the real estate, the building, the equipment and inventory known as Swett's Convenient Market. A better description of the real estate at 2714 Clifton Avenue in Nashville, Davidson County, Tennessee where Swett's Convenient Market is located as contained in Book 6824, page 376, Davidson County Register's Office is more particularly described as follows:

> Land in Davidson County, Tennessee, being a parcel of land composed of Lots 1, 2 and 3 of Roth's Subdivision of Lot No. 22 of Boyd-McNairy Addition to Nashville, as of record in Book 57, page 147, Register's Office for Davidson County, Tennessee, and more particularly described as follows:
>
> Beginning at the point of intersection of the East right-of-way line of 28th Avenue, North with the North right-of-way line of Clifton Road and run North 15 deg. 27' West along said East right-of-way line for a distance of 170 feet to a point, said point being the common corner of Lots 3 and 4 of said subdivision.
>
> Thence to the right with an interior angle of 89 deg. 52' and run North 74 deg. 41' East for a distance of 116.0 feet to a point, on the West margin of a 10.0 feet alley; thence to the right with an interior angle of 90 deg. 08' and run South 15 deg. 27' East along said West margin for a distance of 207.0 feet to a point, on the North right-of-way line of Clifton Road; thence to the right with an interior angle of 72 deg. 09' and run North 87 deg. 40' West along said North right-of-way line for a distance of 122.0 feet to the true point beginning.
>
> Being part of the same property conveyed to Walter Swett by deed from Hawk Investments, Ltd., a limited partnership, of record in Book 6824, page 376, Register's Office for Davidson County, Tennessee.

8. Even though counsel for Juanita Josephine Swett had alleged that Morris Clark Swett had an undivided 1/2 interest in the 2 undeveloped lots located at 2803 and 2805 Clifton Avenue in Nashville, Davidson County, Tennessee, which

lots are titled in the names of David Swett and Bennie Swett, the Court finds that Juanita Josephine Swett has failed to carry the burden of proof that Morris Clark Swett is in reality a 1/2 owner of said lots; therefore, the Court finds that the lots located at 2803 and 2805 Clifton Avenue are neither a part of the marital estate, nor a part of either of the parties' separate estates.

9. The Court finds that the retirement benefits in the name of Juanita Josephine Swett through the Metropolitan Davidson County School System as well as the annuity and the IRA which are in the name of Juanita Josephine Swett are marital property, and any and all interest which Morris Clark Swett may have in the retirement benefits, the annuity and the IRA shall be divested from him and vested in Juanita Josephine Swett as her sole and separate property.

10. The Court finds that the 1990 Lincoln automobile titled in the name of Morris Clark Swett and the 1986 Cadillac vehicle titled in the name of Juanita Josephine Swett are both marital property. Any interest which Juanita Josephine Swett may have in the 1990 Lincoln automobile titled and in the possession of Morris Clark Swett shall be divested from her and vested in Morris Clark Swett as his sole and separate property. Any and all interest which Morris Clark Swett may have in the 1986 Cadillac vehicle titled and in the possession of Juanita Josephine Swett shall be divested from him and vested in Juanita Josephine Swett as her sole and separate property.

11. All items of household furniture, furnishings, appliances and other items of personal property currently in the possession of Juanita Josephine Swett and located in the home at 6157 Homeland Drive in Nashville, Davidson County, Tennessee shall become the sole and separate property of Juanita Josephine Swett except the following items of household furniture, furnishings, appliances and other items of personal property which items shall become the sole and separate property of Morris Clark Swett. The items of household furniture, furnishings, appliances and other items of personal

property which shall become the sole and separate property of Morris Clark Swett are as follows: one living room sofa, one of the three living room chairs, two of the four living room tables, one of the two living room tables with drawers, 1/2 the living room lamps, 1/2 the living room pictures, the television entertainment center and satellite located in the den, the grandfather clock located in the den, the bed in the master bedroom, the two end tables in the master bedroom, the three lamps in the master bedroom, the chest of drawers in the master bedroom, the dresser with the mirror in the master bedroom, the chair in the master bedroom, the pictures in the master bedroom, one Buck stove located downstairs, the pool table located downstairs, the Lazyboy located downstairs and a reasonable number of sheets, pillow cases, pillows, wash cloths and towels.

12. Even though Morris Clark Swett's reported yearly income is less than the reported yearly income of Juanita Josephine Swett, the Court finds that based on the lifestyle of the parties during the marriage and based on the individual lifestyle of Morris Clark Swett and the availability Morris Clark Swett has to various sums of cash, that Morris Clark Swett has a greater ability to pay alimony than his testimony or records of his income suggest. Therefore, the Court finds that Morris Clark Swett shall pay directly to Juanita Josephine Swett as alimony in futuro the sum of $100 per week with said payments to be made on Friday of each week commencing with Friday, February 7, 1992, and continuing thereafter until the death of Juanita Josephine Swett. In the event Juanita Josephine Swett remarries, the Court takes under advisement the issue of whether or not all or a portion of the above-stated periodic alimony will cease, and in the event Juanita Josephine Swett remarries, the alimony in futuro issue will be presented to the Court and argued by counsel at that time. The Court finds from all of the testimony as well as the documentary proof which has been made part of the evidence in this cause that Juanita Josephine Swett has the need for alimony in futuro

and that Morris Clark Swett has the ability to pay the alimony in futuro as ordered.

13. In order to protect the alimony in futuro payment to be made by Morris Clark Swett to Juanita Josephine Swett, the universal life insurance policy no. VO851334 with American National Insurance Company in the amount of $100,000.00 insuring the life of Morris C. Swett shall be continuously maintained and kept in full force and effect by Morris Clark Swett, and Morris Clark Swett shall further name Juanita Josephine Swett as irrevocable beneficiary of $100,000.00 of the death benefits provided by said life insurance policy. Morris Clark Swett shall further provide documentary proof that this portion of the Court Order has been implemented.

14. The Court also finds for the same reasons as above-stated in paragraph #12 that Morris Clark Swett has the greater ability to pay the attorney's fees incurred by Juanita Josephine Swett in this cause. In addition, the Court finds that Juanita Josephine Swett has the need for Morris Clark Swett to pay all of the attorney's fees incurred by Joe P. Binkley, Jr. in his representation of Juanita Josephine Swett in this cause. Therefore, Joe P. Binkley, Jr. shall have and recover a judgment against Morris Clark Swett in the amount of $38,307.50 which represents attorney's fees incurred by Juanita Josephine Swett in this cause, for which let execution issue if necessary. The Court has examined Joe P. Binkley, Jr.'s affidavit in support of request for attorney's fees and the Court finds that the amount of attorney's fees, the hourly rate and the number of hours which were involved in the representation of Juanita Josephine Swett were both reasonable and necessary under all the circumstances.

15. It appearing to the Court that Joe P. Binkley, Jr., counsel for Juanita Josephine Swett, has also filed a Motion as per Rule 54.04 for the recovery of certain discretionary costs to be paid by Morris Clark Swett, which costs are not included in the bill of costs prepared by the

Clerk of the trial court. The Court finds that the $6,706.76 of expenditures incurred by Joe P. Binkley, Jr. in his representation of Juanita Josephine Swett are reasonable and necessary expenses. The Court further finds that Morris Clark Swett has the ability to pay these discretionary costs and that Juanita Josephine Swett has the need for Morris Clark Swett to pay these discretionary costs. Therefore, Joe P. Binkley, Jr. shall have and recover an additional judgment against Morris Clark Swett in the amount of $6,706.76 which represents reasonable and necessary expenses and costs which were required to be paid by Joe P. Binkley, Jr. in his representation of Juanita Josephine Swett, for which let execution issue if necessary.

16. The Court finds and therefore ORDERS that the alimony in futuro, the judgment for attorney's fees and the judgment for discretionary costs to be paid by Morris Clark Swett are all reasonable support debts which are necessary to meet the daily living expenses of Juanita Josephine Swett.

17. All Court costs incurred in this cause shall be paid by Morris Clark Swett, for which let execution issue if necessary.

ENTERED this 20 day of Feb, 1992.

C K Smith
CHANCELLOR C.K. SMITH

APPROVED FOR ENTRY:

Joe P. Binkley, Jr.
JOE P. BINKLEY, JR.
Attorney for Juanita J. Swett
150 Second Avenue, North
Suite 300
Nashville, TN 37201-1902
(615) 244-8630
BPR NO. 3094

GALE B. ROBINSON, JR.
Attorney for Morris C. Swett
153 Ben West Building
100 James Robertson Parkway
Nashville, TN 37201

BOOK 8718 PAGE 534

1993 09:02 1:01 03CHECK 40.00

41933

IDENTIFICATION REFERENCE

SEP 2 8 56 AM '92

DAVIDSON COUNTY, TN

MAIL ENV.

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* 21ST *day of* FEBRUARY, *19* 92, *in Case Number* 88D-1043 *between* JUANITA JOSEPHINE SWETT *Plaintiff, and* MORRIS CLARK SWETT *Defendant, as same remains of record in Book* 66A, *Page* 208 *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* 22ND *day of* JUNE *in the year one thousand nine hundred and* NINETY-TWO *and in the* 216TH *year of American Independence.*

GEORGE L. ROOKER, *Clerk,*

By Clay M. Hardin, *D.C.*

Form #GR-117