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BOOK 10908 PG 273

JIMMIE DAVID ANDERSON,)
)
Plaintiff-Appellee,)
)
vs.) DAVIDSON LAW
) App. No. 88-233-II
ALICE ANN ANDERSON,)
)
Defendant-Appellant.)

FILED
APR 05 1989
A. B. NEIL, JR., CLERK

IN THE COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE DAVIDSON COUNTY CIRCUIT COURT

AT NASHVILLE, TENNESSEE

HONORABLE MURIEL ROBINSON, JUDGE

FILED:
APR 05 1989

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MODIFIED, AFFIRMED & REMANDED

HENRY F. TODD
PRESIDING JUDGE

CONCURS:

SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL, JUDGE

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JIMMIE DAVID ANDERSON,)
)
Plaintiff-Appellee,)
)
vs.)
)
ALICE ANN ANDERSON,)
)
Defendant-Appellant.)

BOOK 10908 PG 274

DAVIDSON LAW
App. No. 88-233-II

O P I N I O N

The Trial Court granted to the defendant/counter-plaintiff-wife an absolute divorce and division of marital property. She has appealed from the division of property and the denial of rehabilitative alimony.

The parties were married in 1973. The wife has worked continuously during the marriage. Beginning in 1976, the husband operated a welding and tractor shop which evolved into a lawn and drive business which was operated by both parties. Upon separation, the husband continued to operate the lawn and drive business, and the wife began a similar business on her own.

At the time of the marriage, the wife owned a 5.87 acre tract on Old Hickory Boulevard in Davidson County. During the marriage, it was improved by the parties by installing a mobile home with attachments and by extensive renovation and improvement of an existing dwelling. During the marriage the parties also acquired 3.3 acres adjoining the 5.87 acre tract and a 24 acre tract in Hickman County.

The judgment awards property as follows:

To the husband:

1. Personal property listed on Exhibit

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17 (Purchased since separation)

2. Personal property listed on Exhibit 15, lines 1-13. Owned prior to marriage.

3. Business equipment listed on Exhibits 14, 30, 36.

4. Items on Exhibit No. 19:
   1986 Nissan Truck
   1979 Motorhome
   1971 Bus
   1976 International Scout
   1975 Fishing boat
   Miscellaneous personal items

5. The Lawn and Driveway Service

6. Traveller's checks and accounts in husband's possession.

7. The Hickman County property.

7a. $50,000 to be paid by the wife within 90 days.

To the wife:

8. Personal property listed on Exhibits 18, 20 & 29 except items awarded to husband. (Household goods, 1985 Dodge Auto, "Mary K. Inventory", cash in bank.)

9. All accounts in wife's possession.

10. Wife's new business and associated assets.

11. The two tracts of 5.87 acres and 3.3 acres (The home place.)

12. Wife was ordered to pay to the husband $50,000 within 90 days of the decree, secured by a lien on the property granted to her.

There is no finding of fact as to the value of any of the property described above.

Appellant-wife has presented three issues, of which the second is as follows:

Did the Trial Court err in failing to place values on the marital property of the parties?

Rule 6 of the Rules of this court provides in pertinent part:

> Rule 6. Briefs. - (a) Written argument in regard to each issue on appeal shall contain:
>
> 1. A statement by the appellant of the alleged erroneous action of the trial court which raises the issue and a statement by the appellee of any action of the trial court which is relied upon to correct the alleged error, with citation to the record where the erroneous or corrective action is recorded.
>
> 2. A statement showing how such alleged error was seasonably called to the attention of the trial judge with citation to that part of the record where appellant's challenge of the alleged error is recorded.
>
> 3. A statement reciting wherein appellant was prejudiced by such alleged error, with citations to the record showing where the resultant prejudice is recorded.

The briefs of appellant and appellee have been examined closely without the discovery of any compliance with the foregoing portions of Rule 6. So far as this Court can discover, the record does not disclose any refusal by the Trial Court of any request for specific findings of fact as to the values of the various properties to be divided between the parties; or any such findings with or without a request. This is unfortunate, for such findings by the judge who heard the witnesses in person would have been of great benefit to this Court in the resolution of the issues on appeal. Nevertheless, in the absence of a specific request for the desired findings, there is no basis for finding reversible

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error in failure to make unrequested findings. See T.R.C.P. Rule 46.

BOOK 10908 PG 277

No merit is found in appellant's second issue.

Appellant's first issue is as follows:

> Did the Trial court err in its division of the marital property of the parties?

Appellant's entire argument in support of this issue is as follows:

> The appellant submits that the trial court erred in making a division of the parties' marital property.
>
> The Tennessee Supreme Court has made it clear that the trial courts have wide discretion in the manner in which they divide marital property. The trial court's division of property will be upheld unless the evidence preponderates otherwise. (citing authorities)
>
> While the failure of the court to find the values of the marital property makes it virtually impossible to determine if the division of property was equitable, the property division in this case is so disproportionate that it is apparent, even without knowing the specific values, that the division is inequitable.
>
> The marital property of the parties consists of approximately nine acres of land with improvements located on Old Hickory Boulevard, approximately twenty-four acres of unimproved land in Hickman County, the Dave Anderson Lawn and Drive Service, business equipment, household furnishings in the homeplace, camping and fishing equipment, including a camper, boat and trailer, and miscellaneous items of personal property. These items are more specifically set forth in Exhibits 14, 18, 29 and 30.
>
> Out of all these items of real and personal property, Mrs. Anderson was awarded only the Old Hickory Boulevard Property and certain items of marital

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personalty listed on Exhibits 18, 20 and 29.

Mr. Anderson was awarded the Hickman County property, and the lawn and drive service, all the personal property listed on Exhibits 14, 15, 17, 19, 30 and 36 and certain valuable items from Exhibits 18, 20 and 29. In addition to these items, Mr. Anderson was awarded fifty-thousand dollars cash. Based on Mrs. Anderson's valuations of the property, Mr. Anderson received a net estate nearly twice that of Mrs. Anderson's.

The proof was clear that Mrs. Anderson contributed as much, if not more than, Mr. Anderson did to the acquisition, preservation and enhancement of the parties' property particularly in light of the fact that she brought six acres of the Old Hickory Boulevard property into the marriage. Applying the criteria set forth in Tenn. Code Ann. §36-4-121 Mrs. Anderson should have been awarded at least fifty percent of the marital estate, if not more.

Clearly, the trial court abused its discretion in dividing the property of the parties. Appellant submits that this Court should reverse the decision of the trial court and remand this matter for an equitable division of property.

Rule 6(b) of the Rules of this Court states in pertinent part:

> . . . No assertion of fact will be considered on appeal unless the argument upon such assertion contains a reference to the page or pages of the record where evidence of such fact is recorded.

As will be seen from the above quotation, appellant's argument contains no reference to the evidentiary record, except exhibits. This Court is not required to search the record for evidence to support the argument of a party. Schoen v. J.C. Bradford & Co., Tenn. App. 1982, 642 S.W.2d 420.

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The division of the marital estate by the Trial Court is analyzed according to the contentions of the parties as follows:

Mrs. Anderson's Version

	To Wife	To Husband
House & 9.17 acres	$88,000	
lien in favor of husband		$50,000
Hickman Co. property		12,500
Dave Anderson Lawn & Drive		49,965
Travelers Checks & Bank Accts.	810	5,966
Personal Property	8,694	20,246
TOTAL	$97,504	$138,677

Mr. Anderson's Version

	To Wife	To Husband
House & 9.17 acres	$102,302	
Lien in favor of husband		$50,000
Hickman Co. property		12,000
Dave Anderson Lawn & Drive		13,915
Travelers Checks & Bank Accts.	810	5,966
Personal Property	8,694	20,246
TOTAL	$111,806	$102,127

It is seen that the only serious conflict as to property value involves the 9.17 acre tract which the wife values at $88,000 and the husband values at $102,302, and the lawn and drive business which the wife values at $49,965 and the husband values at $13,915.

The principal asset of the marital estate is a home located on a 9.17 acre tract on Old Hickory Boulevard. At the marriage of the parties in 1973, the appellant-wife owned the original 5.87 acres on Old Hickory Boulevard which contained a 40 year old residence in bad repair. The parties did not initially occupy the residence, but acquired a mobile home which they combined with a building owned by the wife and used the combination for a home. In 1978, the parties renovated the old residence for their use, and subsequently

they continued improvements and additions, including a swimming pool. The wife claims to have paid the major part of cost of the improvements, but no specific amounts of her contributions are found in the record.

In 1983, in exchange for a tractor of undisclosed value, the parties acquired an adjoining 3.3 acres increasing the tract to 9.17 acres.

This property was appraised by three experts, one selected by each of the parties, and one selected by the Trial Judge. The appraisal of the wife's expert was $8,000 per acre. He valued the 5.87 acre tract at $46,960 and improvements thereon at $48,040 making a total of $95,000. He valued the 3.3 acre tract at $26,400, making a total value of the 9.17 acres of $121,400.

The husband's expert determined that the 1973 value of the 5.87 acres with improvements was $33,198.00. He determined that the present land value was $24,599 per acre, $144,396 for the 5.87 acres and $81,177 for the 3.3 acres. He determined that the present value of improvements on the 5.87 acres was $60,174.00. His total appraisal of the 9.17 acres with improvements was $285,747.

The Court's expert stated that the land was worth 12,000 per acre, or $70,440 for the 5.87 acres and $39,600 for the 3.3 acres. He valued the improvements at $70,000, making a total appraisal of $180,040.

The foregoing appraisals are tabulated as follows:

	Wife's Expert	Husband's Expert	Court's Expert
3.3 acres 1973		33,198	
5.87 acres land	46,960	144,396	70,440
5.87 acres bldgs.	48,040	60,174	70,000
3.3 acres present	26,400	81,177	39,600
TOTAL PRESENT VALUE	121,400	285,747	180,040

Since the Trial Court did not make any specific findings as to value, this Court must review the evidence de novo without any presumption and make its own finding. Accordingly, this Court has determined that $180,040 is the reasonable value of the 9.17 acres and improvements. The $33,198 appraisal of the husband's expert is the only estimate of 1973 value of the portion of this property which belonged to the wife at the marriage. Accordingly, this Court finds that the value of the wife's real estate at the time of the marriage was $33,198. Excluding the initial contribution of the wife, the marital estate of the parties in the Old Hickory Boulevard property at the time of the divorce was $180,000 minus $33,198 or $146,802.

The Lawn and Drive Service was started during the marriage in 1976, and was jointly operated by the parties until their separation. The wife estimated the value of the business as $49,965 comprised of value of equipment and good will. The husband estimated the value of the business to be $13,915, comprised of value of equipment without good will. This Court finds the value of the business to be $31,940.

The Hickman County property was valued by the parties at $12,000 and $12,500, respectively, and is found by this Court to be worth $12,225.

The personal property of the parties awarded to the husband (including traveller's checks and bank accounts) is valued at $26,212.

The personal property of the parties awarded to the wife including traveller's checks and bank accounts is valued at $9,504.

The values assigned by this Court to the marital property produce the following evaluation of the division made by the Trial Court:

Property	Value	To Wife	To Husband
9.17 acre tract	$146,802	$146,802	
Hickman Co. Tract	12,225		$ 12,225
Lawn & Drive Bus.	31,940		31,940
Personal Property & Money	35,716	9,504	26,212
TOTALS	226,683	156,306	70,377
Payment by Wife to Husband		50,000	50,000
		106,306	120,377

The foregoing result is not a grossly inequitable division of the marital property. However, as argued by the wife, she does not have the means of making a $50,000 payment as required by the Trial Court.

This Court has determined that the 3.3 acre tract valued at $39,600 be awarded to the husband. The division of property will thus be as follows:

Property	Value	To Wife	To Husband
5.87 acre tract	107,202	107,202	
3.3 acre tract	39,600		39,600
Hickman Co. tract	12,225		12,225
Lawn & Drive Bus.	31,940		31,940
Personal Property & Money	35,716	9,504	26,212
	226,683	116,706	109,977
To be paid to husband by wife		- 3,364.50	+ 3,364.50
Share of each spouse		113,341.50	113,341.50

The $3,364.50 will be paid by the wife to the husband within 90 days after the decision of this Court becomes final, and will constitute a lien upon the 5.7 acres until paid.

The judgment of the Trial court is modified to conform to the foregoing.

Appellant's third issue is as follows:

> Did the Trial Court err in failing to award wife rehabilitative, periodic alimony?

The wife has not demonstrated that she is "economically disadvantaged relative to the other spouse", as set out in T.C.A. §36-5-101. Although trained in other fields of endeavor, she has chosen to operate her own business in competition with her husband. Had she not made this decision, it appears that she would be able to support herself by those endeavors in which she is otherwise skilled.

No error is found in the denial of rehabilitative alimony.

The judgment of the Trial Court is modified as heretofore set out. As modified, the judgment of the Trial Court is affirmed. Costs of this appeal are taxed against the defendant-husband. The cause is remanded to the Trial Court for entry of judgment in conformity with this opinion and for such further proceedings, if any, as may be necessary and proper.

Modified, affirmed and remanded.

Henry F. Todd
HENRY F. TODD
PRESIDING JUDGE

CONCURS:

Samuel L. Lewis
SAMUEL L. LEWIS, JUDGE

Ben H. Cantrell
BEN H. CANTRELL, JUDGE

I, Cecil Crowson, Jr., Clerk, hereby certify that this is a true and exact copy of the original filed in the cause.
This 30 day of April 1998
CLERK OF COURT
By _____ D.C.