IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

RICHARD GLENN KITCHENS, SR.,	)	From the Shelby County Circuit Court
	)	at Memphis, Tennessee
Plaintiff/Appellant,	)	
	)	The Honorable Kay S. Robilio, Judge
vs.	)	
	)	Shelby Circuit No. 142270 R.D.
DEBORAH HIZER KITCHENS,	)	Appeal No. 02A01-9503-CV-00047
	)	
Defendant/Appellee.	)	**AFFIRMED**
	)	
	)	Clyde W. Keenan
	)	Memphis, Tennessee
	)	Attorney for Appellant
	)	
	)	Bruce Kelley, Jr.
	)	Memphis, Tennessee
	)	Attorney for Appellee

FILED

August 7, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

MEMORANDUM OPINION[1]

HIGHERS, J.

In this divorce case, the primary issue is whether the trial court erred in failing to enforce a property settlement agreement allegedly executed ten years prior to the filing of the present complaint for divorce.

In 1983, Richard Kitchens, Sr. ("husband") retained James Eikner, attorney, to prepare a divorce complaint and a property settlement agreement. Deborah Kitchens ("wife") refused to sign the agreement prepared by Eikner. Wife obtained independent counsel, Ed Johnson, who drafted a second property settlement agreement. This agreement provided for child support, division of marital property, and custody of the parties' two minor children. Wife signed the agreement on April 18, 1983, before a notary public. Husband stated that after wife signed the agreement, she presented it to him for his signature. Husband testified that he signed the agreement and retained a copy. Husband could not remember the precise date on which he signed the agreement, nor

[1]Rule 10 (Court of Appeals). Memorandum Opinion. -- (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied upon for any reason in a subsequent unrelated case.

could he remember who notarized his signature. At trial, husband produced his copy of the agreement. However, the agreement lacked the last page, which would have contained the notary of his signature. Husband was unable to produce the missing page.

Wife denies that she gave husband the agreement for his signature. According to wife, her attorney sent the agreement to husband's attorney in April 1983. Wife withdrew from the agreement on July 5, 1983, because she felt that the agreement contained insufficient provisions for child support. Her attorney communicated her withdrawal to husband's attorney by letter the same day.

Wife elected not to pursue the divorce due to financial reasons. Since 1983, the parties have lived separately. Husband did not learn that wife had not followed through with the divorce proceedings until 1989. Husband filed the present complaint for divorce in 1993.

At trial, husband sought to enforce the terms of the 1983 settlement agreement. The trial court refused the enforce the agreement, finding that the agreement was not properly executed and that the wife's offer was withdrawn prior to husband's acceptance.

Following a hearing, the trial court orally granted a divorce to wife on grounds of husband's inappropriate marital conduct, ordered husband to pay $300.00 per month rehabilitative alimony for a period of five years, awarded the equity in the home to wife, allowed husband to retain all title and interest in the real property that he had acquired since 1983, and ordered the parties to pay their own attorney's fees.

Husband subsequently filed a motion for findings of fact, and wife filed a proposed Final Decree of Divorce. Prior to the hearing on husband's motion for findings of fact, the trial judge sent a letter to both parties in which the judge stated that she was adopting the first four paragraphs of the proposed final decree as her findings of fact.

Our review of this case is *de novo* upon the record, accompanied by a presumption of correctness, unless the evidence preponderates against the trial court's findings. T.R.A.P. 13(d).

Husband argues that the parties executed the agreement on or about the same date, April 18, 1983; therefore, the agreement was a valid and enforceable contract. In addition, husband contends that this court should enforce the agreement because the parties have abided by its terms since its execution. We find these contentions to be without merit.

In the present case, wife testified that she did not present the agreement to husband for his signature. Moreover, she testified that she withdrew from the agreement prior to husband's acceptance. Although husband disputes these facts, he was unable to produce the last page of the agreement that would have contained the date and notary of his signature. In light of the foregoing evidence, coupled with the fact that findings of fact by the trial court are afforded a presumption of correctness, we decline to reverse the trial court's determination on this issue. Additionally, we find insufficient evidence from the record of the parties' adoption or ratification of the agreement.

Alternatively, husband argues, if we elect not to enforce the 1983 agreement, the trial court's award of rehabilitative alimony was improper and its distribution of marital property was inequitable.

It is well-settled that an award of alimony is largely within the discretion of the trial court. Loyd v. Loyd, 860 S.W.2d 409, 412 (Tenn. App. 1993). After reviewing the record and considering the factors set forth in T.C.A. § 36-5-101(d), we find no abuse of discretion with respect to the trial court's award of alimony. Similarly, an evaluation of the evidence in light of the factors delineated in T.C.A. § 36-4-121(c), leads us to the conclusion that the manner in which the trial court divided the marital property was equitable and fully supported by a preponderance of the evidence.

Finally, husband contends that the trial court erred in failing to make written findings of fact and conclusions of law. In our opinion, however, the trial court's adoption of the first four paragraphs contained in the proposed final decree of divorce and the subsequent hearing that was conducted on the matter sufficiently complied with Tenn. R. Civ. P. 52.01.

Accordingly, the judgment of the trial court is affirmed *in toto*. Costs on appeal are taxed to husband.

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HIGHERS, J.

CONCUR:

_____
FARMER, J.

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LILLARD, J.