

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

BONNIE LYNNE LUDWIG HEZEL,)

Plaintiff/Appellee)

v.)

WILLIAM MORRIS HEZEL,)

Defendant/Appellant)

Shelby Circuit No. 136450-7 R.D.

Appeal No. 02-A-01-9307-CV-00171

FILED

February 29, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

APPEAL FROM THE CIRCUIT COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE
THE HONORABLE ROBERT A. LANIER, JUDGE

WILLIAM MORRIS HEZEL

6001 Knight Arnold Road
Memphis, Tennessee 38115
Appellant Pro Se

CHARLES A. SEVIER

The Sevier Law Firm
200 Jefferson, Suite 975
Memphis, Tennessee 38103
Attorney for Appellee

AFFIRMED AS MODIFIED

WILLIAM H. INMAN, SENIOR JUDGE

CONCUR:

W. FRANK CRAWFORD, PRESIDING JUDGE

DAVID R. FARMER, JUDGE

OPINION

It is necessary that we reiterate the in-court statement of the Presiding Judge that our review of this case is *de novo* on the record, accompanied with the presumption that the judgment is correct unless the evidence otherwise preponderates. TENN. R. APP. P., RULE 13(d). We do not try the case *de novo*; our jurisdiction is to review for errors of fact or law, subject to the presumption, and we cannot substitute our judgment for that of the trial judge.

I

This is a domestic relations case involving a seventeen-year marriage with four children, for whose support the appellant was ordered to pay \$600.00 monthly each, together with alimony *in solido* of \$600.00 monthly for 30 months and attorney fees of \$15,000.00. The divorce, custody, visitation, support and alimony are not questioned.

Appellant, *pro se*, complains of (1) the division of the marital estate, (2) the disposition of his claimed separate property, and (3) the award of attorney fees. The appellee complains of the refusal of the trial judge to include the market value of the appellant's veterinary practice in the marital estate.

Review of this voluminous record is difficult because of the confusing and contradictory nature of the appellant's testimony. He complains specifically of the refusal of the trial judge to award him a 24-gun collection, which he says was his separate property because the guns were acquired either before marriage or purchased by inherited money, or given to him. We have carefully reviewed the testimony and exhibits relative to these firearms and conclude from the totality of all the circumstances that they should have been awarded to the appellant.

Appellant says that he inherited \$20,000.00 from a member of his family. He concedes that he commingled one-half of these funds with marital property, but insists that he cached the remainder, less \$1,500.00 expended for guns, in the attic of his residence, and that the appellee spent the entire amount during the interim three years between the filing and trial of the divorce. He argues that \$8,500.00 was his personal estate, and that this amount should have been awarded to him. The appellee testified that she found the cache in 1991, and deposited the entire amount.

With these funds she purchased four horses, an air conditioning unit, bedroom furniture and other items. The appellant was aware of these purchases and offered no objections to any of them. Under these circumstances we cannot find that the cache should have been awarded to appellant as his separate property.

The appellant next argues that the award of \$15,000.00 attorney fees for the appellee was unjustified. We do not agree. The appellee had no adequate funds of her own with which to pay her attorney, whose time and hourly rate are not disputed. The need clearly appears, and the concomitant obligation of the appellant to pay the fee is not seriously disputed. See *Campanali v. Campanali*, 695 S.W.2d 193 (Tenn. App. 1985). We find no abuse of discretion in allowing the fee. See *Houghland v. Houghland*, 844 S.W.2d 619 (Tenn. App. 1992).

The appellant next argues that the trial court erred in valuing the Mississippi farm at \$15,000.00 and awarding it to the appellee. The record reflects that the appellant agreed that the appellee was entitled to this farm.

Finally we briefly note that, as already stated, this prolix record is so replete with inconsistent testimony, theories, statements, and arguments that proper review is difficult. Superimposed upon all this is the finding of the trial court that the appellant secreted income from his veterinary practice, and failed to account for much of it. Further, the trial court expressed grave doubts as to the credibility of the appellant, keeping in mind that the trial judge, and he alone, is the judge of the credibility of a witness, *Walls v. Magnolia Truck Lines*, 622 S.W.2d 526 (Tenn. 1981).

We have reviewed the appellee's issue that the trial court erred in refusing to hold that the veterinary practice was a marital asset and thus divisible to the appellee. We find the evidence does not preponderate against this finding.

The judgment is modified by awarding the firearms to the appellant. In all other respects it is affirmed, at the costs of the appellant.

William H. Inman, Senior Judge

CONCUR:

W. Frank Crawford, Presiding Judge

David R. Farmer, Judge