

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

BETTYE SUE MORRISON ADAMS,)
)
Plaintiff/Appellee,) **Shelby Chancery No. D 21140-3**
)
vs.)
) **Appeal No. 02A01-9310-CH-00219**
CHARLES MCAULEY ADAMS,)
)
Defendant/Appellant.)

APPEAL FROM THE CHANCERY COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE
THE HONORABLE D. J. ALISSANDRATOS, CHANCELLOR

FILED

March 12, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

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LINCOLN A. R. HODGES
Germantown, Tennessee
Attorney for Appellee

AFFIRMED

ALAN E. HIGHERS, JUDGE

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

DAVID R. FARMER, JUDGE

This divorce appeal presents the issue whether the trial court erred in its division of marital property and award of alimony *in solido* to the wife.

I. FACTS

Betty Sue Morrison Adams ("Wife") filed suit in the Chancery Court of Shelby County against Charles McAuley Adams ("Husband") for divorce on the grounds of cruel and inhuman treatment and irreconcilable differences. Husband counter-claimed, alleging inappropriate marital conduct. Following a two-day bench trial, the chancellor awarded a divorce to Wife on grounds of cruel and inhuman treatment. Additionally, the chancellor awarded to Wife \$150,000 alimony *in solido*, \$10,000 in attorney fees, custody of the parties' three minor children, and child support in accordance with the child support guidelines. With respect to marital property, he awarded each party whatever was in their possession at the time of trial. The Court also issued a permanent injunction, enjoining Husband from all visitation and contact with the three minor children. On appeal, Husband raises the following issues: (1) Did the trial court err in failing to make findings of fact regarding what property was separate property and what property was marital property, the value of same, who has possession of which specific items of separate property and marital property, and as to what property had been disposed of; and (2) Did the trial court err in the division of marital property, specifically in awarding alimony *in solido* and attorney's fees? For the reasons stated herein, we affirm the decision of the lower court in its entirety.

The parties were married in February 1971 and divorced in September 1993. Four daughters were born of the marriage, three of which were minors at the time of trial.

During their marriage, the parties lived on farm property owned by Husband's mother. Husband derived his livelihood primarily from farming this property until 1990, when Husband and Wife opened a restaurant. Wife was not formally employed for the majority of the time that the parties were married, but she later became the manager and

cook at their restaurant.

Numerous witnesses testified at trial, recounting an appalling and wretched description of events that transpired during the course of this 21-year marriage.

Wife testified that Husband repeatedly abused both her and their four daughters throughout the marriage. The parties' oldest daughter, age 18 at the time of trial, tearfully recalled frequent and unprovoked beatings of her mother that she and her sisters had witnessed. Husband's brother testified to having noticed evidence of physical abuse on Wife, such as bruises and limping. He stated that when he asked Husband about them, Husband replied, "Sometimes you have to discipline the b_____."

Various other witnesses described a myriad of Husband's malevolent acts perpetrated upon his family, which included: (1) shooting and killing the family dog in front of the children; (2) while travelling on the highway, ramming his pickup truck into the family station wagon containing Wife and their four daughters; beating Wife's head against the bathroom wall in front of the children; holding the youngest daughter, age seven, off of the floor by her arms, beating and kicking her, and then throwing her down the steps of the restaurant; throwing their daughter's birthday cake into a wall in a fit of rage in front of the entire family; attempting to stab Wife; and committing adultery and showing certain pictures of his mistress to Wife.

Wife eventually left Husband in 1991, after Husband attempted to drown her in a sink full of water and then beat her head against the dishwasher when she tried to escape.

The chancellor made an oral ruling at the conclusion of the trial, much of which was incorporated into the Final Decree of Divorce. In a thorough 22-page ruling, the chancellor explained with particularity the rationale behind his decision to award alimony and custody to Wife. Specifically, he described Husband as a "manipulative" person and as a "tormentor and destroyer." The chancellor noted that Husband smiled in the courtroom as

his Wife and daughter testified with tears about the horror and abuse to which they had been subjected. The chancellor further found that Husband's testimony was without credibility and that his allegations that Wife had neglected the children were false. He found that Husband had knowingly and willfully dissipated the marital estate in violation of a court injunction. The chancellor described this case as one of the "top two or three...absolute worst divorce case[s] it has had the duty to preside over." He stated that Husband made "a home that can best be described as a nightmare, a home of abuse, and a home of hate."

II. DIVISION OF MARITAL PROPERTY

In the present case, the lower court awarded to each party whatever property was in their possession at the time of trial. Husband argues that the trial court erred in failing to make findings of fact regarding the classification of the parties' property as marital or separate and the values thereof. We find Husband's contention to be without merit and thus, we affirm the trial court's manner of property division.

Trial courts have wide latitude in dividing the marital estate in divorce cases. Harrington v. Harrington, 798 S.W.2d 244, 245 (Tenn. App.1990). Their decisions are entitled to great weight on appeal, Batson v. Batson, 769 S.W.2d 849, 859 (Tenn. App.1988), and will be presumed to be correct unless the evidence preponderates otherwise. Hardin v. Hardin, 689 S.W.2d 152, 154 (Tenn. App.1983).

Appellate courts are generally disinclined to disturb the trial court's findings unless the distribution lacks proper evidentiary support or results from an error of law or a misapplication of statutory requirements. Thompson v. Thompson, 797 S.W.2d 599, 604 (Tenn. App.1990).

Contrary to Husband's assertion, the chancellor made several findings of fact regarding the parties' marital and separate property. For instance, the chancellor found

that at the time of trial, Wife had no separate estate due to Husband's willful dissipation of said estate. Husband's primary separate property consists of a remainder interest in a trust created by his father's will that entitles him to a one-half interest in the farm property upon his mother's death. A Trust Department Vice-President and Farm Manager testified that the property was worth \$370,000, with an annual income of \$13,430. After Wife filed for divorce, an injunction was issued that prohibited Husband from disposing of any marital or separate property. In contravention of this order, however, Husband sold virtually all of the furnishings in his possession.

The chancellor also found that Husband ran the restaurant, which was marital property, into the ground. If, as Husband alleges, the chancellor's findings of fact were deficient in any respect, such deficiency would be solely attributable to the actions and behavior of Husband in presenting inconsistent testimony to the court and in selling the property in violation of a court order.

The chancellor stated that in attempting to equitably divide the marital property, he was taking into consideration the fact that Husband dissipated the estate, the substantial disparity in the earning capacities of the parties, the fact that the parties enjoyed a good standard of living, the fact that Wife has no separate estate remaining due to Husband's dissipation of it, and the fact that Wife made substantial contributions to the marriage through her labor and nurturing of the children. These factors are entirely appropriate for consideration pursuant to T.C.A. § 36-4-121.

In any event, the failure of a trial court to make complete findings of fact and conclusions of law does not require reversal of a judgment if there are sufficient findings relative to the issues in a cause. Bruce v. Bruce, 801 S.W.2d 102 (Tenn. App. 1990). There is ample evidence from the record to support the trial court's manner of division of property in awarding to each the property in their possession at the time of trial.

The most pertinent evidence on this issue stems from testimony at trial that after the

last beating by Husband, Wife left hastily and took very few personal belongings with her. While she was gone, Husband either sold or otherwise disposed of the majority of the furniture and jewelry that remained in the home. Wife eventually returned to the residence and recovered the few remaining items of property Husband left after he moved in with his girlfriend. Witnesses testified that Wife's current residence is pitifully furnished. In light of these facts, it is surprising that Husband would complain to this Court of the trial court's decision to allow both parties to retain the property each had in their possession.

III. ALIMONY

In the Final Decree of Divorce, the chancellor awarded to Wife \$150,000 as alimony *in solido*. Husband contests this award, arguing that the award was, in essence, periodic alimony. Because he feels that the alimony should be redesignated as periodic or *in futuro*, Husband seeks to have this Court consider as a post-judgment fact that Wife remarried after the divorce and modify the award accordingly. He further asserts that the lower court awarded the alimony to punish him for marital misconduct.

After consideration of all facts contained in the record, we are persuaded that the trial court's award was proper in light of the factors set forth in T.C.A. § 36-5-101(d).

Although payable over a certain period of time, alimony *in solido* consists of a lump sum that is definite in amount. McKee v. McKee, 655 S.W.2d 164 (Tenn. App. 1983). It is designed to provide financial assistance to a needy spouse. Aleshire v. Aleshire, 642 S.W.2d 729 (Tenn. App. 1981). Alimony *in solido* is not subject to later modification or termination despite subsequent events such as remarriage of the recipient or death of the payor. Id. at 732-33; Isbell v. Isbell, 816 S.W.2d 735 (Tenn. 1991).

Trial courts have broad discretion concerning the amount and duration of spousal support. Jones v. Jones, 784 S.W.2d 349, 352 (Tenn. App. 1989). These determinations are factually driven and require a balancing of the factors contained in T.C.A. §

36-5-101(d) (Supp.1992). As a general matter, we are disinclined to alter a trial court's spousal support decision unless the court manifestly abused its discretion. Ingram v. Ingram, 721 S.W.2d 262, 264 (Tenn. App.1986). With regard to alimony, courts are required to apply the factors set out in T.C.A. § 36-5-101 to determine whether alimony is necessary or appropriate.

This section provides:

(d)(1) It is the intent of the general assembly that a spouse who is economically disadvantaged, relative to the other spouse, be rehabilitated whenever possible by the granting of an order for payment of rehabilitative, temporary support and maintenance. Where there is such relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors, including those set out in this subsection, then the court may grant an order for payment of support and maintenance on a long-term basis or until the death or remarriage of the recipient except as otherwise provided in subdivision (a)(3). Rehabilitative support and maintenance is a separate class of spousal support as distinguished from alimony in solido and periodic alimony. In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

(A) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;

(B) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earning capacity to a reasonable level;

(C) The duration of the marriage;

(D) The age and mental condition of each party;

(E) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;

(F) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be a custodian of a minor child of the marriage;

(G) The separate assets of each party, both real and personal, tangible and intangible;

(H) The provisions made with regard to the marital property as defined in Sec. 36-4-121;

(I) The standard of living of the parties established during the marriage;

(J) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(K) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and

(L) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

T.C.A. § 36-5-101 (Supp. 1995).

In Tennessee, therefore, fault of a spouse is a factor to be considered in making an award of alimony. T.C.A. § 36-5-101(d)(10). In the ruling of the trial court below, it was stated that the considerable fault of Husband was taken into account in calculating the alimony award. In addition, the chancellor supported his decision with the following factual findings: (1) There is a substantial disparity in the earning capacities of the parties; (2) Wife has no skills as compared to Husband's numerous skills; (3) Husband possesses the asset of his remainder interest in the trust; (4) Wife has no separate property; (5) The marriage was of long duration; (6) Wife suffers from emotional trauma due to Husband's abuse; (7) Wife should not be employed full-time outside the home due to the needs of the parties' three minor children; (8) The parties established a good standard of living during the marriage; (9) Wife made substantial tangible and intangible contributions to the marriage through her labors and contributions in nurturing the children; (10) Husband willfully and substantially dissipated the parties' estate; and (11) Husband was clearly at fault through his abuse, cruel and inhuman conduct, and adultery.

We could hardly contemplate a more thorough or factually well-supported analysis than that which was rendered by the chancellor. He unquestionably considered and applied the appropriate factors in arriving at his award of alimony *in solido* and there is no evidence indicating that such award was punitive in nature.

We can summarily dispose of Husband's assertion that the award was periodic

alimony rather than alimony *in solido* by simply iterating the principle that alimony is alimony *in solido* when the amount to be paid is definite. Isbell, 816 S.W.2d 735. In the present case, the trial court specifically stated in the final decree that \$150,000, which is a definite amount, was alimony *in solido*. Therefore, Husband's contention is without merit.

IV. ATTORNEY'S FEES

Husband's final contention on appeal is that the trial court erred in awarding to Wife \$10,000 in attorney fees.

Attorney fee awards are treated as alimony *in solido*. Gilliam v. Gilliam, 776 S.W.2d 81, 86 (Tenn. App.1988). In determining whether to award attorney fees, the trial court should again consider the relevant factors delineated above in T.C.A. § 36-5-101(d)(1). Houghland v. Houghland, 844 S.W.2d 619, 623 (Tenn. App.1992). These awards are within the sound discretion of the trial court and will not be disturbed on appeal unless the evidence preponderates against the award. Lyon v. Lyon, 765 S.W.2d 759, 76263 (Tenn. App.1988). Where, as here, the Husband has the ability to pay and the Wife demonstrates that she is financially unable to afford counsel, a trial court may properly require the Husband to pay the Wife's attorney fees. Id.; Harwell v. Harwell, 612 S.W.2d 182, 185 (Tenn. App.1980).

Because an award of attorney fees is an alimony *in solido* award, we believe that it is justified in this case, considering the factors set forth in T.C.A. § 36-5-101(d)(1). We find that the evidence does not preponderate against the trial court's finding that Wife is entitled to attorney fees, and that the trial court did not abuse its discretion.

Accordingly, the judgment of the trial court is affirmed in its entirety. Costs in this cause are taxed to Husband, for which execution may issue if necessary.

HIGHERS, J.

CONCUR:

CRAWFORD, P.J., W.S.

FARMER, J.