

**IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE**

FILED

November 30, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

RONA RENAYE EDWARDS BAKER,)	03A01-9901-CH-00070	
Plaintiff/Appellee)		
)	Appeal As Of Right From The	
vs.)	SULLIVAN CO. CHANCERY COURT	
)		
LARRY WAYNE BAKER,)		
Defendant/Appellant)	HON. RICHARD E. LADD	
)	CHANCELLOR	

For the Appellant:

David W. Tipton
Tipton & Jones
301 Eighth Street
Bristol, TN 37620

For the Appellee:

J. Wesley Edens
Icenhour & Edens
P. O. Box 1919
Bristol, TN 37621-1919

AFFIRMED

Swiney, J.

OPINION

In this divorce case, Larry Wayne Baker, Defendant/Appellant (“Husband”), appeals the Trial Court’s division of assets and debts in two respects: (1) the award to Rona Edwards Baker, Plaintiff/Appellee (“Wife”) of 40 percent (\$8,000) of the net increase in value of Husband’s separate real property during the marriage, and (2) the assignment to Husband of debts of \$7,300 owed on Wife’s credit card and \$5,000 owed on her automobile. We affirm the judgment of the Trial Court.

BACKGROUND

_____ These parties had been married for twelve years when Wife filed a petition for divorce alleging grounds of inappropriate marital conduct. Husband filed no counter-complaint and testified that he did not want a divorce. The Trial Court granted Wife a divorce upon the asserted grounds.

The couple had lived on Husband's 85 acre farm throughout the marriage, which he farmed while Wife worked as a secretary for various companies. At the time of trial she was employed by the Bristol, Virginia Police Department, earning \$10.28 per hour (net wages of \$1,050 per month). Husband's income was derived solely from farming, from which he earned \$3,300 in 1993, \$100 in 1994, lost \$1,700 in 1995, lost \$400 in 1996 and earned \$17,000 mainly from \$16,000 income received from the sale of timber, in 1997.

Wife testified that at the time they married, Husband decided for them to buy a mobile home and set up housekeeping on the land given to him by his grandfather. Husband wanted to be a farmer. He asked her to pay the family expenses with her income for a few months at which time he expected to be able to assume some responsibility for their support. Wife testified that he promised to get a part-time job to help with the family bills if the farm soon was not profitable. They established two separate checking accounts, with Wife's income being deposited into a joint account which she maintained and from which she paid all of the household bills. Husband's income from farming was deposited in his farm account, which he maintained and used to pay farming expenses. Prior to their marriage, Husband's land was debt-free. In anticipation of marriage, he borrowed approximately \$20,000 using the land as security, with which he purchased the mobile home they were to live in, put in a septic tank, a well, a driveway, ran electric and phone lines and paid the expenses of setting up housekeeping. During the first year of the marriage, Wife contributed \$50 monthly toward retirement of this debt, and testified that "I just got to where I couldn't afford to pay it." The farm produced very little or negative net income. Wife's salary was insufficient to meet the family living expenses, resulting in additional marital debt of \$30,000, also secured by a Deed of Trust on the farm.

The parties agreed at trial that evidence of the farm's value would be proven by county tax records which showed that the land was appraised at \$63,000 when the parties married and at \$132,900 when they divorced. In addition to those improvements required for the parties to live on the farm, other improvements during the marriage included the removal of a dilapidated barn, construction of a greenhouse, installation of water, electric and gas service to the greenhouse, clearing of two

large tracts for the cultivation of tobacco, clearance of timber, installation of a covered front porch on the mobile home and construction of two large drying and cooling racks for tobacco.

The agreed upon \$70,000 increase in value of the farm during the marriage was diminished by the \$50,000 in loans against it which were accumulated during the marriage. This resulted in a net increase of \$20,000 in its value during the marriage. The Trial Court awarded the farm and its \$50,000 debt to Husband, and divided the \$20,000 net increase in its value between the parties, with 40 percent (\$8,000) to Wife and 60 percent (\$12,000) to Husband.

At the time of trial, the parties had a tobacco crop growing on the farm. The Trial Court valued the tobacco crop at \$20,000. Rather than dividing this \$20,000 value of the tobacco crop between the parties, the Trial Court awarded the full value of the tobacco crop to Husband.

In addition to the \$50,000 marital debt attached to the farm, the parties accumulated other debts during the marriage. The Trial Court allocated marital debts of \$8,530 to the Wife and \$79,900 to the Husband. Husband's portion of the marital debt included the \$50,000 debt attached to the farm which was netted from the increase of the value of the farm to arrive at the \$20,000 increase. Backing out this \$50,000 from the share of the marital debts assigned to the Husband leaves \$29,900. Subtracting the \$20,000 value of the tobacco crop leaves the net marital debt assigned to the Husband of \$9,900.

DISCUSSION

Our review is de novo upon the record, accompanied by a presumption of the correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Rule 13(d), T R A P.; *Lindsey v. Lindsey*, 976 S.W.2d 175, 178 (Tenn. Ct. App. 1997). Courts have wide discretion when determining how to divide a marital estate in an equitable manner. *Fisher v. Fisher*, 648 S.W.2d 244, 246 (Tenn. 1983). Their discretion is guided by the factors listed in Tenn. Code Ann. § 36-4-121(c) and by other factors made relevant by the facts of the particular case. *Ellis v. Ellis*, 748 S.W.2d 424, 427 (Tenn. 1988); *Denton v. Denton*, 902 S.W.2d 930, 932, *perm. app. denied* (Tenn. Ct. App. 1995). Reviewing courts give great weight to a Trial Court's distribution of marital property and will not disturb its decision unless it is contrary to the preponderance of the evidence. *Wilson v. Moore*, 929 S.W.2d 367, 372, *perm. app. denied* (Tenn. Ct. App. 1996); *Wade v. Wade*, 897 S.W.2d 702, 715, *perm. app. denied* (Tenn. Ct. App. 1994).

Husband states the two issues on appeal as follows:

1. "That the Trial Court erred in granting to Plaintiff a portion of the increased value of the real property owned solely by the Defendant."

2. “That the Trial Court erred in its division of the parties’ marital debts.”

On appeal, we must consider the fairness of the overall division of the marital estate in order to determine if the division of this asset and these debts was proper. *Brown v. Brown*, 913 S.W.2d 163, 168, *perm. app. denied* (Tenn. Ct. App. 1994).

The Farm

_____ Husband argues that the Trial Court erred in applying Tenn. Code Ann. § 36-4-121(b)(1)(B) to the facts of this case. That statute provides, as pertinent:

“Marital property includes income from, and any increase in value during the marriage, of property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation. . . .”

Notwithstanding this statutory directive, Husband argues that “there is no evidence in the record that the real property’s value increased as a result of the efforts of either party, but may have increased solely due to the natural increase in land values in Sullivan County, Tennessee between 1986 and 1998.”

Further, Husband contends the evidence proves that he alone farmed the land, and although Wife contributed her income to household expenses, she is not entitled to a share of his separate real property. He asserts that there is no evidence that “her contributions to the marriage directly contributed to the preservation and appreciation of the separately owned property of the Defendant . . . [and] the improvements were the result of farm income produced solely by the Defendant and from [his] having borrowed some \$50,000 against the property during the marriage.”

Whether a spouse has made a substantial contribution to the preservation and appreciation of the other spouse’s separate property is a question of fact. Substantial contributions are not limited to direct contributions but also include indirect contributions such as homemaker, wage earner, parent or family financial manager. Tenn. Code Ann. § 36-4-121(b)(1)(C); *Wright-Miller v. Miller*, 984 S.W.2d 936, 943 *perm. app. denied* (Tenn. Ct. App. 1998). A spouse’s contributions must be real and significant in order to be substantial. However, these contributions need not be monetarily commensurate to the appreciation in the separate property’s value, nor must they relate directly to the separate property at issue. *Brown at 167*.

The evidence in this case shows that many substantial improvements were made to Husband’s farm during the marriage, including the establishment of a dwelling, clearing of land for farming and building of a tobacco greenhouse. Although

Husband paid for the improvements out of farm income, he could not have accumulated that farm income if Wife had not provided virtually all of the parties' financial support during the marriage. From the record before this Court, it is undisputed that without the Wife's contribution of her income to this marriage, Husband could not have worked as a farmer for the duration of this marriage. It was the Wife's substantial contribution of her income to support this couple that allowed the husband to work this farm and to plow any farm income, however small it was, back into the farm. It is also pertinent to note that the Husband produced no proof at trial that the increase in value of the farm land was due to inflation. The Trial Court took notice of some increase in value due to "purely inflation" and considered it in dividing the increase in value 40/60 between Wife and Husband. The evidence does not preponderate against the Trial Court's decision on this issue.

The Marital Debt

_____ Husband complains that the Trial Court erred in its allocation of the marital debts. Specifically, Husband argues that Wife should have been assigned the additional marital debts of \$7,300 on her credit card and the \$5,000 owed to First Bank because these two debts were incurred solely by Wife and she is more able to pay them. Wife testified that during the marriage she had used the credit card to pay off a Sears account at the request of Husband, paid household expenses such as groceries, and that they had been robbed during the first part of their marriage and she had purchased replacements for items stolen with her credit card.

The \$5,000 debt resulted from the Wife's sale of her 1996 Camaro automobile after the parties' separation. She felt she could no longer afford to make the payments on the Camaro and had to find a less expensive car. An auto dealer bought the car "for what they thought they could get out of it," and she paid the proceeds from that sale against the auto loan at First Bank. However, the loan still had a balance of \$5,000 after she sold the car and made this payment.

A major factor the Trial Court considered in apportioning these debts to Husband was the tobacco crop which was valued at \$20,000. As previously stated, Husband was assessed the farm debt, for which he received the farm, the home thereon, and all of the farming equipment. Excluding that farm debt/asset, the parties' marital debt was divided \$8,530 to Wife and \$29,900 to Husband. It is uncontested that neither party had any cash at the time of the divorce. Husband's expected income of \$20,000 or more from the sale of tobacco will provide funds for him to pay his share of the non-farm marital debt down to \$9,900. Wife was awarded no interest in the income from the tobacco sale, and presumably must pay her share of the marital debt from her work income.

This Court has previously held that “[i]n the final analysis, the justness of a particular division of the marital property and allocation of marital debt depends on its final results.” *King v. King*, 986 S.W.2d 216, *perm. app. denied* (Tenn. Ct. App. 1998). Considering the Trial Court’s division of the marital debt as a whole, we find the Trial Court did not err but rather made a fair and equitable apportionment of the debt.

CONCLUSION

_____The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for such further proceedings, if any, as may be required, consistent with this Opinion, and for collection of the costs below. The costs on appeal are assessed against the Appellant.

D. MICHAEL SWINEY, J.

CONCUR:

HOUSTON M. GODDARD, P.J.

HERSCHEL P. FRANKS, J.