

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

November 18, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

JAMES YETT WEST)	ROANE COUNTY
)	03A01-9604-GS-00122
Plaintiff - Appellant)	
)	
v.)	
)	HON. THOMAS A. AUSTIN,
JUDY SCARBROUGH WEST)	JUDGE
)	
Defendant - Appellee)	
)	
and)	
)	
JEANNE WEST BENNETT)	
)	
Intervenor - Appellee)	AFFIRMED AND REMANDED

JERROLD L. BECKER OF KNOXVILLE FOR APPELLANT

ROBERT R. SIMPSON OF KNOXVILLE FOR APPELLEE

O P I N I O N

Goddard, P. J.

This appeal questions the Trial Court's granting a \$13,190.37¹ judgment in favor of Jeanne West Bennett against her

¹ This figure includes interest found by the Court to be owed, less a stipulated credit to which Mr. West was entitled.

father, James Yett West in a divorce suit between her parents, in which M. Bennett intervened.

The judgment was predicated upon a finding that Mr. and Mrs. West were trustees of an oral trust in the initial amount of \$10,000 in favor of the Wests' two daughters, Jeanne and Jamie. This trust was established by Mr. West's step-father and consisted of ten \$1,000 U.S. Bonds. The trust was to be used for the beneficiaries' education.

Upon the bonds maturing, they were converted into a certificate of deposit in the name of both Mr. and Mrs. West. M. Bennett's share of the trust had increased, by reason of interest earned and additions thereto by Mr. and Mrs. West, to the sum of \$19,483.28, as of September 8, 1980, when the Bank of Roane County seized \$19,383.24² of the CD to pay a loan which it secured. The loan was originally made to purchase a Monte Carlo Chevrolet titled in the name of Mr. West. The Monte Carlo was later traded for a van which Mr. West received by the divorce decree.

We are handicapped in our review of the issues raised by the fact that the transcript beginning with a memorandum of law of the Intervenor, M. Bennett, consists of the following:³

² The balance of the funds, \$80.04, was remitted to Mr. and Mrs. West.

³ The appendix of Mr. West's brief contains various unverified materials. However, those not properly included in the transcript may not be considered.

(1) memorandum of law of the Intervenor, (2) memorandum of law in response to memorandum of law of the Intervenor, (3) reply memorandum, (4) judgment entered December 18, 1995, which awarded Mr. Bennett the sum of \$15,190.37 after adding appropriate interest and subtracting a stipulated credit, denied punitive damages and adjudged costs, (5) notice of appeal by Mr. West, (6) notice that a transcript will be filed and that Mr. West would "proceed on the technical record," (7) appeal bond, (8) notice of filing of the transcript, (9) order of the Judge authorizing withdrawal of the original transcript and its use on appeal in lieu of a copy, (10) certificate of the Clerk of the Court, (11) bill of costs.

Although we do not have as a part of the record before us the orders of the Trial Court prior to the entry of the judgment appealed, the proof does show, as already noted, that Mr. West was awarded the van, which was secured by the CD, and ordered to pay the debt owed the Bank. The record does not show when this order was entered nor whether it had ever been modified or set aside.

In any event, not having the earlier orders of the Court before us, we are not in a position to say, in light of the proof that was introduced relative to the Court's prior action, that the Court was in error in rendering judgment against Mr. West.

Ms. Bennett raises an issue, insisting the Trial Court was in error in not awarding her punitive damages. We are likewise handicapped in our review of this issue by the lack of the orders of the Court and testimony of the earlier hearings.

Moreover, the record discloses that the Monte Carlo was in part purchased for the benefit of Ms. Bennett, who was under age at the time, and principally used by her. Because of the foregoing and the fact that the funds were seized by the Bank, not dissipated by Mr. West, we are disinclined to find the Trial Judge abused his discretion in declining to award punitive damages.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for collection of costs below. Costs of appeal are adjudged one-half against Mr. West and one-half against Ms. Bennett.

Houston M. Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Don T. McMurray, J.