

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE**

WANDA GAIL KERR HOOPER,)	
)	
Plaintiff/Appellee,)	Sumner Circuit No. 14145-C
)	
VS.)	Appeal No. 01A01-9607-CV-00328
)	
ROBERT EDWIN HOOPER,)	
)	
Defendant/Appellant.)	

FILED

January 17, 1997

Cecil W. Crowson
Appellate Court Clerk

APPEAL FROM THE CIRCUIT COURT OF SUMNER COUNTY
AT GALLATIN, TENNESSEE
THE HONORABLE THOMAS GOODALL, JUDGE

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AFFIRMED

ALAN E. HIGHERS, J.

CONCUR:

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

DAVID R. FARMER, J.

Defendant Robert Edwin Hooper (Husband) appeals the trial court's final decree dissolving the parties' marriage. In its final decree, the trial court designated Plaintiff/Appellee Wanda Gail Kerr Hooper (Wife) the primary custodian of the parties' two minor children, ordered the Husband to pay the Wife child support in the amount of \$1189 per month, awarded the Wife rehabilitative alimony in the amount of \$576 per month for thirty months, and equitably distributed the parties' property. In distributing the parties' property, the trial court awarded the Wife a 1994 Pontiac valued at \$10,000, \$21,957 in savings from the parties' credit union accounts, and the marital home having an equity of between \$54,000 and \$59,000,¹ subject to a \$5000 lien in favor of the Husband. The Husband, in turn, was awarded his 401k plan valued at \$24,202, his retirement plan valued at \$18,459, \$12,657 in savings, and a 1992 Pontiac valued at \$7,000. On appeal, the Husband's sole contention is that the trial court erred in distributing the parties' marital property. Specifically, the Husband complains that the trial court's award of the marital home to the Wife resulted in an inequitable distribution of the parties' property because the Wife received over sixty percent of the marital estate. We affirm.

Trial courts have broad discretion in dividing marital estates, and their decisions are afforded great weight on appeal. Fisher v. Fisher, 648 S.W.2d 244, 246 (1983); Harrington v. Harrington, 798 S.W.2d 244, 245 (Tenn. App. 1990). As this court recently stated, the "division of property need not be equal to be equitable." Jackson v. Jackson, 1995 WL 700187, at *3 (Tenn. App. 1995) (citing Batson v. Batson, 769 S.W.2d 849, 859 (Tenn. App. 1988)). In distributing marital property, trial courts are required to consider the following factors:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contribution by one party to the education, training or increased earning power of the other party;

¹The Wife valued the equity in the marital home at \$54,000, while the Husband set the value at \$59,000. The trial court made no specific valuation with regard to this property.

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the marriage;

(8) The economic circumstances of each party at the time the division of property is to become effective;

(9) The tax consequences to each party; and

(10) Such other factors as are necessary to consider the equities between the parties.

T.C.A. § 36-4-121(c) (1991).

We conclude that the trial court properly considered these factors in awarding the Wife a greater share of the marital estate than the Husband in this case. The parties had been married for almost seventeen years when they separated in April 1995. At the time of the trial in January 1996, the Wife was forty-one and the Husband was forty-four years of age. When they married, both parties worked at Genesco. After the Wife became pregnant with their second child, the parties agreed that the Wife would quit her job and stay home with the children. Accordingly, the Wife became the homemaker and the children's primary care giver. After the youngest child began attending school, the Wife returned to work as a substitute teacher. At the time of trial, the Wife worked as a librarian's and teacher's assistant earning \$840 per month. The Wife planned to attend college to earn an associate's degree in accounting, which she estimated would take two and one-half years to complete. The Husband, on the other hand, already had an associate's degree in accounting, and he earned an income far greater than that of the Wife. In 1994, the Husband earned \$59,632 from his employment with Genesco. In 1995, the Husband accepted a new position with Columbia HCA at a salary of \$58,000 (\$4833

per month). The Husband was scheduled to receive a four percent raise in March 1996.

In light of the duration of the parties' marriage, the Wife's significant contributions to the marriage as a homemaker, and the great disparity in the parties' earning abilities, we hold that the trial court did not abuse its discretion in awarding the Wife a larger portion of the marital estate than the Husband. In so holding, we note that the Husband's current earning ability is over five times greater than the Wife's and that the Husband was awarded his 401k and retirement plans, valued in excess of \$42,000,² as well as \$5000 of the equity in the marital home. Under the circumstances of this case, the trial court achieved an equitable distribution of the parties' marital property.³

The judgment of the trial court is hereby affirmed. Costs on appeal are taxed to the Husband, for which execution may issue if necessary.

HIGHERS, J.

CONCUR:

CRAWFORD, P.J., W.S.

FARMER, J.

²These accounts, or a large portion thereof, constituted marital property. T.C.A. § 36-4-121(b)(1)(B) (1991) ("Marital property' includes . . . the value of vested pension, retirement or other fringe benefit rights accrued during the period of the marriage.").

³As an additional matter, we note that the trial court was not required to divide the equity in the marital home. By statute, the trial court was authorized to award the family home to either party. T.C.A. § 36-4-121(d) (1991). In doing so, the court was required to give special consideration to the spouse having physical custody of the parties' children. Id. Here, the Wife was designated the primary custodian of the parties' two children, and the marital home was the only home that the children had known. (Tr. p. 10).