

In this divorce action, Linda Faye Bailey (“Wife”) was awarded a divorce from Jerry Lynn Bailey (“Husband”) on the grounds of inappropriate marital conduct. The trial court awarded Wife custody of the parties’ minor child and ordered Husband to pay \$300.00 per month in child support. The trial court valued the parties’ gross marital estate at \$367,000.00 and found that the parties’ total liabilities totaled \$128,000.00. Husband was awarded all of the parties’ marital personal and real property subject to the indebtedness on the property, and Wife was awarded \$125,000.00 in cash as her portion of the marital estate. To insure payment of Wife’s \$125,000.00 cash award, the trial court granted Wife a judicial lien on all of the real and personal property awarded to Husband. Both parties were ordered to pay their own attorney fees, and costs of the action were assessed against Husband. Husband appeals the judgment of the court below arguing that the trial court erred in its division of the marital property. For the reasons stated hereafter, we affirm the judgment of the trial court.

FACTS

The parties married on August 18, 1972 and separated in 1986. Wife filed the present action for divorce on October 17, 1994. Three children were born of the parties’ marriage. Two of the children had reached the age of majority at the time the trial court granted the divorce.

Having a net marital estate totaling \$239,000.00, the parties acquired \$367,000.00 in marital assets and \$128,000.00 in liabilities during the course of their twenty-four year marriage. The parties’ marital assets include real estate, equipment, automobiles and cattle. Purchased prior to their separation, the parties’ six parcels of real property are valued at approximately \$324,000.00, and the parties’ equipment and cattle are valued at approximately \$38,500.00.

Husband testified that he purchased the parties’ farms and equipment and placed the properties in both parties’ names. After their separation, Husband paid \$100,000.00

on the Rose farm, paid all of the indebtedness on the parties' real estate and paid for the parties' farming and logging equipment. Wife, however, testified that Husband's \$100,000.00 payment on the Rose property came from jointly-owned certificates of deposit invested prior to the parties' separation.

Wife testified that Husband had cut approximately \$120,000.00 to \$150,000.00 worth of timber from the parties' jointly-owned property without giving her any of the proceeds. Husband, however, stated that he had only cut \$15,000.00 worth of timber from the parties' property and that he used the proceeds to pay interest on the parties' indebtedness and to make repairs on the parties' equipment. Donnie Kendall, a timber buyer who purchased timber from Husband on a regular basis, testified that he had purchased \$15,000.00 worth of timber from Husband which was cut from the parties' real property.

Since the parties' separation in 1986, Wife testified that she has worked as a waitress, a cook, a dishwasher, a grocery store clerk, and as an employee in a fast food restaurant and a day care center. Wife also tended to the parties' farms, repaired fences on the parties' property and tended to the parties' cattle. Although Husband visited the children during the parties' separation, Wife remained the children's primary caretaker throughout their ten year separation.

During the separation, Husband moved to Mississippi to cut timber. While in Mississippi, Husband admitted that he lived with another woman for approximately two and half years. Husband further conceded that this woman owed extensive criminal fines and court costs for various criminal offenses and that she did not work and did not have any other source of income during the time they lived together. Although Husband denied paying any of the woman's criminal fines or court costs, a witness, who had purchased timber from Husband, identified several large checks written by Husband which were made payable to and cashed by the woman.

Although Husband's logging business had been very successful in years past, he testified that he only made \$10,000.00 to \$15,000.00 per year during the past several years. Substantiating Husband's testimony that his logging business had not been very profitable in the past two or three years, Norma Bailey, Husband's mother, stated that she loaned Husband approximately \$28,000.00 over the past few years due to the decline in Husband's logging business.

LAW

The sole issue before this Court is whether the trial court erred in its division of the marital property.

In actions for divorce, courts shall "equitably divide, distribute or assign the marital property between the parties without regard to marital fault in proportions as the court deems just." T.C.A. § 36-4-121(a)(1). Trial courts are afforded wide discretion in adjusting and adjudicating the parties' rights and interests in all marital property. Fisher v. Fisher, 648 S.W.2d 244, 246 (Tenn. 1983); Wade v. Wade, 897 S.W.2d 702, 715 (Tenn. Ct. App. 1994); Barnhill v. Barnhill, 826 S.W.2d 443, 449 (Tenn. Ct. App. 1991); Harrington v. Harrington, 798 S.W.2d 244, 245 (Tenn. Ct. App. 1990); Thompson v. Thompson, 797 S.W.2d 599, 604 (Tenn. Ct. App. 1990); Batson v. Batson, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988). Accordingly, a trial court's distribution of marital property will be given great weight on appeal and will be presumed correct unless the evidence preponderates otherwise. Brown v. Brown, 913 S.W.2d 163, 168 (Tenn. Ct. App. 1994); Wade, 897 S.W.2d at 715; Barnhill, 826 S.W.2d at 449-50; Thompson, 797 S.W.2d at 604; Batson, 769 S.W.2d at 859; Lancaster v. Lancaster, 671 S.W.2d 501, 502 (Tenn. Ct. App. 1984); Edwards v. Edwards, 501 S.W.2d 283, 288 (Tenn. Ct. App. 1973).

While the courts must divide all of the parties' marital property, they are not required to award both parties an interest in each piece of marital property. Thompson, 797 S.W.2d at 604. Tenn. Code Ann. § 36-4-121(a) and § 36-4-121(f)(1) permit trial courts to divest

and reinvest title to property and to make distributive awards in order to achieve equity.

Id.

In making an equitable division of marital property, the court shall consider all relevant factors including:

- (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 (1) party to the education, training, or increased earning power of the other party;
- (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;
- (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) (1996).

In divorce cases, the statute gives the trial courts broad discretion in deciding how the marital estate should be divided. Harrington, 798 S.W.2d at 245; Pennington v. Pennington, 592 S.W.2d 576, 577 (Tenn. Ct. App. 1979). We have stated in prior cases that ownership of the marital estate should be presumed to be equal until proven otherwise. Harrington, 798 S.W.2d at 245; Kelly v. Kelly, 679 S.W.2d 458, 462 (Tenn. Ct. App. 1984); Salisbury v. Salisbury, 657 S.W.2d 761, 770 (Tenn. Ct. App. 1983). On the other hand, we have said that the statute does not mandate an equal division of the marital estate but requires an equitable division upon consideration of the factors enumerated in

the statute. Ellis v. Ellis, 748 S.W.2d 424, 427 (Tenn. 1988); Harrington, 798 S.W.2d at 245. An equitable division of marital property is not necessarily an equal one. Brown, 913 S.W.2d at 168; Barnhill, 826 S.W.2d at 449; Thompson, 797 S.W.2d at 604; Batson, 769 S.W.2d at 859.

Moreover, the statute specifically recognizes a spouse's non-monetary contributions as a homemaker to the accumulation of property from the earnings of the working spouse. T.C.A. § 36-4-121(c)(5) (1996). See, Inman v. Inman, 811 S.W.2d 870, 874 (Tenn. 1991); Harrington, 798 S.W.2d at 245; Batson, 769 S.W.2d at 860.

Husband argues that the trial court erred in equitably dividing the marital estate. Husband contends that the trial court should have awarded Wife no more than \$119,500.00, or one-half of the net marital estate.

In light of the fact that Wife served as the primary caretaker of the parties' children throughout the marriage and during the parties' ten year separation, that Wife tended to the parties' personal and real property during the parties' separation, and that Husband dissipated part of the marital estate by writing significantly large checks to a woman with whom he was living during the parties' separation, the trial court did not abuse its discretion in awarding Wife \$125,000.00 as her part of the marital estate and in awarding Husband \$114,000.00 as his portion of the marital estate.

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

HIGHERS, J.

CONCUR:

FARMER, J.

LILLARD, J.