

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

**NILA VILETA (BROWN) RODERICK, v. STEVEN MATTHEW
RODERICK**

**Direct Appeal from the Circuit Court for Rhea County
No. 19976 Thomas W. Graham, Judge**

No. E1999-00235-C0A-R3-CV - Decided May 4, 2000

In this divorce action, the Trial Judge granted the parties a divorce, ordered child support with custody to the wife, and divided the marital assets and debts between the parties. The wife has appealed. The Trial Court's judgment is affirmed as modified. The modification rephrases the custodial order and identifies a small debt as non-marital property.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Trial Court Affirmed.

FRANKS, J., delivered the opinion of the court, in which , GODDARD, P.J., and SWINEY, J., joined.

Virginia A. Schwamm, Schwamm, Albiston and Higgins, PLLC, Knoxville, Tennessee, for the Plaintiff-Appellant.

William H. Horton, Horton, Maddox & Anderson, PLLC, Chattanooga, Tennessee, for the Defendant-Appellee.

OPINION

The parties were married on May 14, 1994, one child was born to the parties, and the final decree of divorce was entered on May 17, 1999.

At trial, the parties stipulated the husband would pay guideline child support and provide health insurance for the child. The wife would have primary custody of the child and

would keep most of the furniture in the marital residence and her vehicle, upon assuming the vehicle's loan. The husband was to take his vehicle, along with the accompanying debt. The parties stipulated numerous debts.

At the conclusion of the trial, the Court stated he was granting the divorce to the wife, approved custody to the wife, and adopted the visitation schedule proposed by the husband, with slight modification. The Court approved the parties' agreement that they each take their vehicles with attending debt, and that the wife would receive furnishings from the house, except a cappuccino machine.

The marital debts were then divided, the Court observing that since all of the furniture had been awarded to the wife, she should bear a slightly higher percentage of the debt. The total indebtedness to be assumed by the husband was \$15,860.00 and \$17,740.00 by the wife.

The factors to be considered by the Trial Judge when dividing the marital assets, are set forth at Tennessee Code Annotated §36-4-121(c). The law is also well settled that a property distribution does not have to be mathematically equal to be equitable. *Ellis v. Ellis*, 748 S.W.2d 424 (Tenn. 1988.) However, in cases involving a marriage of relatively short duration, "it is appropriate to divide the property in a way that, as nearly as possible, places the parties in the same position they would have been in had the marriage never taken place." *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988).

The wife has raised issues as to certain valuations, and whether all of the debts found by the Trial Judge are marital debts and whether the division was equitable. We find these issues to be without merit, except the inclusion of an \$800.00 debt to Audrey Collins, the husband's mother. The wife argues that there was no testimony as to this debt and/or its purpose. This debt was one of the debts read into the record by the husband's attorney at the beginning of trial and the Court, at the conclusion of trial, ordered the husband to pay it, after the husband's attorney stated that the debt should be allocated to the husband because, it was "to do with his mother". There is no proof in the record of when and why this debt was incurred and who benefitted from it. On the basis of this record, the Trial Court should have found this to be a separate debt of the husband, and should not have allocated it as a marital debt. Accordingly, we conclude that the property distribution should be amended by requiring the husband to pay the wife \$400.00, since the husband is credited in the distribution with \$800.00 which is not a marital debt.

Finally, the wife argues that it was improper for the Trial Court to approve the custody provisions contained in the Final Divorce Decree submitted by the husband, because the provisions suggest a joint custodial arrangement where none was intended. The parties stipulated at the beginning of the trial that wife should have custody of the parties' child, and the Court affirmed this agreement at the conclusion of the trial. The Final Decree entered by the Court recites that custody is awarded to the wife, and then states that the parties "shall share parenting

responsibilities with Mother to have primary custody of the parties' minor child, Natasha Shyla Roderick.”

The husband argues that the provisions are consistent because “parenting responsibilities” does not mean the same as “custody”, as reflected by Tenn. Code Ann. §36-6-402. We believe this provision could be more artfully worded to reflect the intention of the parties in their agreed custodial arrangement. The Order of Custody will be modified to read “Mother is granted sole custody of the minor child, but father shall share in the parenting responsibilities relating to said child as defined in Tenn. Code Ann. §36-6-402.”

We affirm the Judgment of the Trial Court, as modified, with cost of the appeal assessed to the father.