

IN THE COURT OF APPEALS

<b>FILED</b>
<b>January 31, 1996</b>
<b>Cecil Crowson, Jr.</b> <b>Appellate Court Clerk</b>

BARBARA HOUSLEY,

Plaintiff - Appellee

vs.

FLOYD EDWARD HOUSLEY,

Defendant - Appellant

) RHEA CIRCUIT  
) C. A. NO. 03A01-9509-CV-00302

) HON. BUDDY D. PERRY  
) JUDGE

) AFFIRMED AND REMANDED

J. ARNOLD FITZGERALD, Dayton, for Appellant.

DAVID HAINES ROTROFF, Chattanooga, for Appellee.

O P I N I O N

McMurray, J.

This is an appeal from the trial court's division of marital property. Mr. Housley, appellant here, argues that the trial court

erred in awarding \$20,000 to Barbara Housley and the marital residence to M. Housley. We affirm the judgment of the trial court.

These parties were married in September, 1985, and were divorced in November, 1994. There were no children born to the marriage. Barbara Housley filed a complaint for divorce alleging inappropriate marital conduct or, in the alternative, irreconcilable differences. M. Housley answered the complaint and then filed a counter-complaint for divorce alleging inappropriate marital conduct on the part of Barbara Housley or, in the alternative, cruel and inhuman treatment. He also alleged irreconcilable differences.

Subsequent to the filing of both the complaint and the counter-complaint, Barbara Housley moved the court for leave to file a third-party complaint. This motion was granted and Barbara Housley filed a third-party complaint against Broyles and Ella Mae Housley, parents of Floyd Housley, asking the court to determine the ownership interest of all the parties in a parcel of land upon which the modular home belonging to Barbara and Floyd Housley was located. Broyles and Ella Mae Housley answered alleging that there was no contract for the sale of land as between these parties and asking that Floyd be given credit for all sums paid by them on the home.

After hearing evidence from all the parties and Larry Cunningham, a representative of the company that financed the modular home, the trial judge ordered the parties divorced; awarded each party those personal items in their possession along with any indebtedness thereon; awarded Barbara Housley \$5,000 that had been her separate property; found that the value of the home was \$30,000.00; awarded Barbara Housley one-half of the value of the home and awarded the home to Floyd Housley. The judge also ordered that a lien in the amount of \$20,000.00 be placed against the home, the outbuildings and any interest Floyd Housley might have in the property appurtenant thereto, in favor of Barbara Housley to secure payment of the award to Barbara Housley. Lastly, the trial judge dismissed the complaint against Broyles and Ella Mae Housley.

Mr. Floyd Housley has appealed raising the following issue for our review: "Whether or not the trial court committed error in granting the Plaintiff/Appellee judgment against the Defendant/Appellant, for the sum of \$20,000.00 ... and awarding the 1986 Art Craft Modular Home to the Defendant/Appellant when the only proof in the record with regard to the value of the 1986 Art Craft Modular Home, was worth \$16,000.00 ..., and the property division was based on one-half of the value of the Modular Home, plus \$5,000.00 ... that had initially been paid by the Plaintiff/Appellee as a down payment on the Modular Home."

We enter upon our review cognizant of our duty pursuant to Rule 13(d), Tennessee Rules of Appellate Procedure. "Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise."

Mr. Housley does not take issue with the \$5,000.00 awarded to Barbara Housley. It appears that the only item in contention is the modular home. Both parties testified as to the value of the home. Mr. Housley testified that the home was worth \$16,000.00. Ms. Housley testified that the home and surrounding property were worth between \$45,000.00 and \$47,000.00. She further testified that in her opinion the value of the modular home alone was between \$30,000.00 and \$35,000.00. The trial judge found the value of the home standing alone to be \$30,000.00.

We note that ownership of the property on which the home was located is not an issue here. This property belongs to Broyles Housley and Ella Mae Housley, Mr. Housley's parents. It appears that this fact, and the fact that the parties had added some improvements to the surrounding property that would make it difficult to recoup the value of the improvements, persuaded the trial judge to award the home to Mr. Housley.

The trial court awarded Barbara Housley the \$5,000.00 that she had given as a down payment on the home. After finding the value of the home to be \$30,000.00, the trial court awarded her half of that sum for a total award of \$20,000.00. As hereinbefore noted, the trial judge imposed a lien against appellant's property in that amount to protect the appellee's judgment.

Mr. Housley argues that the home should have been sold and whatever amount it obtained divided equally between the parties. We cannot agree.

It is well-settled law in this state that the trial court has wide discretion in adjudicating the parties' rights and interests in the marital estate, and that the trial court's findings are entitled to great weight on appeal. See e.g., Batson v. Batson, 769 S.W2d 849 (Tenn. App. 1988).

It is also well settled law in this state that the division of marital property must merely be an equitable one and not necessarily an equal division. See T. C. A. § 36-4-121 (c).

We cannot say that the evidence preponderates against the trial court's determination of the value of the property or the manner in which the division was made. We find this issue to be without merit.

Lastly, Barbara Housley has asked this court to find that this is a frivolous appeal. We are not persuaded that such a finding is justified under the circumstances of the case. We, therefore, decline to do so.

The trial court is affirmed. Costs are taxed to the appellant and this cause is remanded to the trial court for the collection thereof.

-----  
Don T. Murray, J.

CONCUR:

-----  
Houston M. Goddard, Presiding Judge

-----  
Charles D. Susano, Jr., J.

IN THE COURT OF APPEALS

BARBARA HOUSLEY,	)	RHEA CIRCUIT
	)	C. A. NO. 03A01-9509-CV-00302
	)	
Plaintiff - Appellee	)	
	)	
	)	
	)	
	)	
vs.	)	HON. BUDDY D. PERRY
	)	JUDGE
	)	
	)	
	)	
FLOYD EDWARD HOUSLEY,	)	AFFIRMED AND REMANDED
	)	
Defendant - Appellant	)	

ORDER

This appeal came on to be heard upon the record from the Circuit Court of Rhea County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was no reversible error in the trial court.

The trial court is affirmed. Costs are taxed to the appellant and this cause is remanded to the trial court for the collection thereof.

PER CURIAM