

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

**FILED**

May 23, 1996

Cecil Crowson, Jr.  
Appellate Court Clerk

HELEN MARIE MAYNOR, ) C/ A NO. 03A01-9601-CV-00002  
 )  
Plaintiff - Appellee, ) POLK LAW  
 )  
v. ) HON. JOHN B. HAGLER,  
 ) JUDGE  
JACK BOYD MAYNOR, SR., )  
 ) AFFIRMED AND  
Defendant - Appellant. ) REMANDED

B. PRINCE MILLER, JR., Cleveland, for Plaintiff - Appellee.

ARTHUR BASS, Cleveland, for Defendant - Appellant.

O P I N I O N

Franks. J.

In this divorce action the husband appeals from the division of marital assets and liabilities.

This had been a marriage of 42 years duration, and the wife was granted a divorce ?on the grounds of inappropriate marital conduct?.

The Trial Court awarded the home place and land valued at \$73,000.00 to the wife. The husband and wife were awarded one-half each of the profit-sharing plan from husband's employer, or \$11,731.24 each. The husband's pension benefits from his former employer in the amount of \$1,044.90 per month was awarded one-half to each party. Various items of personalty were awarded to the respective parties. The husband was awarded \$25,000.00 which was the proceeds from the sale of a mobile home and one-acre of land from the original home tract. Various motor vehicles were awarded to the respective parties without assigned values.

The husband contends that the wife was awarded assets to the value of \$87,731.24, and the husband was awarded assets in the amount of \$36,831.24, which includes the \$25,000.00 for the sale of the mobile home and land, one-half of his profit-sharing benefits and the 1991 Oldsmobile. He was also ordered to pay debts in the amount of \$33,506.71, thus reducing the net value of his share in the marital estate to \$3,324.53. Further, he argues that there were items of property missing at the time of trial, including U.S. Savings Bonds, a Luger pistol and a coin collection, all of which the appellant claimed had a value of approximately \$40,000.00.

Under T.C.A. §36-4-121, the Trial Court is given wide discretion in dividing marital property. *See Fisher v. Fisher*, 648 S.W2d 244, 246 (Tenn. 1993). Our review of the distribution of marital assets is *de novo* with a presumption of correctness. T.R.A.P. Rule 13(d). *Lancaster v. Lancaster*, 671 S.W2d 501, 502 (Tenn. App. 1984).

As for the principal asset awarded to the wife, the home place, she testified that her parents left her \$25,000.00 or \$30,000.00 which she paid on the house. This contribution could properly be taken into account by the Trial Court in equitably dividing the marital estate. *See* T. C. A. §36-4-121(2)(c)(7). The husband is correct that he was required to pay off the mortgage on the home.<sup>1</sup> However, the Court specifically provided in the Decree that the mortgage was being paid under the terms of a disability insurance policy which the husband had in force at the time of his disability. As an overview of the plight of these parties, the Trial Judge at one point observed:

When this case started, Mr. Mynor was already well in the process of wasting marital assets. Large bills had been run up and no justification could be given to the Court. We couldn't even find out what these bills were for. All this was marital income and marital property that this couple had spent over 40 years accumulating.

In this regard, the wife testified that withdrawals from the Visa credit account, the IRA account and line of credit cash advances made to the husband from 1990 through 1993 totaled \$37,955.16. The dissipation of marital or separate property is a relevant factor in determining an equitable award of marital property. *See* T. C. A. §36-4-121(c)(5). As for the gun collection and bonds, the Court made no finding. The evidence does not establish the existence of any of these items, and in the absence of a request for a specific fact finding, the judgment of the Trial Court is appropriate.

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<sup>1</sup>The amount of the mortgage was \$13,376.87.

We affirm the Trial Court's awards of marital properties.

The wife has raised the issues on appeal as to whether the Trial Judge should have awarded her attorney's fees in the trial court, and she also seeks an award of attorney's fees for the appeal. We cannot agree that the Trial Judge abused his discretion in not awarding the legal expenses incurred by the wife at the trial level. However, having found the husband's appeal to be without merit, we believe it is appropriate to award the wife her reasonable attorney's fees for defending her award of marital assets on appeal. Accordingly, upon remand, the Trial Judge will determine a reasonable fee for the wife's attorney for representing the wife's interest on appeal.

The cost of the appeal is assessed to the appellant, and the cause remanded.

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Herschel P. Franks, J.

CONCUR:

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Don T. McMurray, J.

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Charles D. Susano, Jr., J.