

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

FILED

November 13, 1996

Cecil W. Crowson
Appellate Court Clerk

SHERRI LYNN MILAM FORD,)
)
 Plaintiff/Appellee,)
)
)
 VS.)
)
)
 PAUL EDWARD FORD, JR.,)
)
 Defendant/Appellant.)

General Sessions-Div. II
No. 1207-G

Appeal No.
01-A-01-9605-GS-00237

IN THE CIRCUIT COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE GENERAL SESSIONS COURT OF SUMNER COUNTY
AT GALLATIN, TENNESSEE

HONORABLE BARRY R. BROWN, JUDGE

D. SCOTT PARSLEY
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Nashville, TN 37201
ATTORNEY FOR PLAINTIFF/APPELLANT,

RONALD D. BUCHANAN
103 Hazel Path Court
Hendersonville, TN 37075
ATTORNEY FOR DEFENDANT/APPELLEE

AFFIRMED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:
BEN H. CANTRELL, JUDGE,
WILLIAM C. KOCH, JR., JUDGE,

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

SHERRI LYNN MILAM FORD,)	
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Plaintiff/Appellee,)	
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VS.)	General Sessions-Div. II
)	No. 1207-G
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)	Appeal No.
PAUL EDWARD FORD, JR.,)	01-A-01-9605-GS-00237
)	
Defendant/Appellant.)	

O P I N I O N

The captioned defendant has appealed from the disposition of his post-divorce petition to enforce a divorce decree entered on July 24, 1987.

The divorce decree approved a property settlement agreement placing the two children of the parties with the plaintiff-wife and requiring the defendant to pay \$100 per week child support and provide medical insurance and services for the children. The agreement and decree also provided:

The HUSBAND shall maintain, pay and provide health and dental insurance, until such time as the said minor children, Tacle Brian Ford and Guy Edward Ford, have reached legal age or otherwise becomes emancipated. All medical, dental, hospital, doctor, drug, optic, orthodontic and other health care bills not covered by said insurance shall be paid by HUSBAND.

As of the date of the signing of this Agreement, the parties own as tenants by the entirety the following described tract of land: Route 6, Box 4, Slaters Creek Road, Millersville, Tennessee. The parties agree that this property shall be vested as tenants in common, however, the WIFE shall be allowed to reside at the subject property until the youngest child obtains his eighteenth birthday or until the parties agree at which time the WIFE shall either pay to the husband his portion of the equity in the home which shall be defined as \$11,000.00. After the husband receives

this amount he shall quitclaim his interest in the property over to the WIFE. In the alternative if the WIFE agrees the property will be sold and the husband shall be paid the sum of \$11,000.00 and the WIFE shall receive the remainder of the sale proceeds. The WIFE shall pay the mortgage and all the upkeep and repair on the subject property during this period of time. The parties agree that they will sign all documents necessary in order to carry out the intent of this paragraph and this agreement.

On February 2, 1990, the Trial Court reduced child support to \$70.00 per week. On February 22, 1991, an order was entered reducing child support to \$45.00 per week and providing:

By allowing this reduction and modification of child support, the Court does not forgive the difference between the reduction and the previously set child support but will not hold the Petitioner Paul Ford, Jr. in contempt for not paying this but shall allow the amount to accumulate during his unemployment but still holds the Petitioner responsible for child support at a later time.

On April 11, 1995, the husband filed a "Petition to Require Wife to Pay husband his Portion of the Interest in Parties' Real Property or in the Alternative Order the property To Be Sold."

The petition cited the above quoted paragraph from the divorce decree, alleged that the younger child had reached the age of 18 on July 13, 1994, and that the wife had refused to comply with the quoted provision of the decree.

The wife answered asserting that the younger child did not graduate from high school until May 26, 1995. By counter-petition, the wife alleged \$5,848.25 delinquent child support and failure to provide health insurance resulting in medical expenses which, with the \$5,848.25 child support aggregated \$13,211.23 which was plead in satisfaction of the \$11,000 sought by the husband. The wife sought judgment for \$2,211.33 and a quitclaim deed or order vesting title to the home in her name.

The Trial Judge found that the husband was entitled to \$11,000 plus pre-judgment

interest of \$1,778, or a total of \$12,778. He found that the wife was entitled to \$5,550 arrears child support, insurance premiums of \$5,611, and medical bills of \$1,157, or a total of \$12,318. Judgment was rendered in favor of the husband for \$460 and costs; and the husband was required to execute the necessary quitclaim deed upon payment of the judgment.

On appeal the husband first insists that the Trial Court erred in failing to award him pre-judgment interest on the equity of the parties' domicile from the date of the order granting appellant such interest. He argues that the wife was granted a "windfall" by having exclusive use of the house for nearly nine years. The agreement and decree quoted above, specifically granted to the wife the use of the house, obviously because she was to care for the children. If any interest or other charge for the use was contemplated by the parties, it should have been included in their agreement. Moreover, the wife was required to pay the mortgage payments, upkeep and repair during the period.

It was not error to fail to award any pre-judgment interest for the period prior to the due date of the \$11,000.

Appellant next complains of the award of insurance premiums. The original agreement of the parties and divorce decree, quote above, specifically required the husband to provide, maintain and provide health and dental insurance and to pay health care bills not covered by insurance.

Appellant next complains of the award of past due child support.

It will be recalled that the parties originally agreed to and the Court ordered \$100.00 per week child support which was reduced to \$70.00 per week on February 2, 1990; and on February 22, 1991, the Trial Court temporarily allowed the husband to pay only \$45.00 per week, but

expressly preserved the obligation of the remaining \$25.00 of the \$70.00 per week.

In the judgment under review, the Trial Court simply enforced the \$25.00 obligation which was never released by the Court.

No merit is found in any of the contentions of the husband on appeal. This appeal is found to be a frivolous appeal for which damages should be allowed as provided by T.C.A. § 27-1-122.

The judgment of the Trial Court is affirmed. Costs of this appeal are taxed against appellant. The cause is remanded to the Trial Court for necessary further proceedings, including the hearing of evidence and rendering of judgment against the appellant for damages as set out in T.C.A. § 27-1-122.

AFFIRMED AND REMANDED.

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

BEN H. CANTRELL, JUDGE

WILLIAM C. KOCH, JR., JUDGE