

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
April 16, 2015 Session

**RONALD ALLEN BRADY v. KAREN LOUISE BRADY**

**Appeal from the Chancery Court for Cheatham County  
No. 15526 George Sexton, Chancellor**

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**No. M2014-01598-COA-R3-CV – Filed August 18, 2015**

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This appeal concerns the division of a marital estate. The trial court ordered a special master to investigate and report on the identification, classification, and valuation of all marital property and assets. The special master issued a detailed report and recommended awarding seventy-two percent of the marital home's equity to the husband and twenty-eight percent to the wife. The special master also proposed that both parties be given an option to purchase the marital home, first husband and then wife, and that, if neither exercised the option, the house be auctioned. Both parties filed objections to the special master's report, but neither party alleged that the special master had acted outside his authority. Following a hearing on the objections, the trial court adopted the special master's findings and recommendations. In connection with a hearing on the auction of the marital home, wife objected on the basis that the special master acted outside of his authority. Wife appeals, challenging the manner in which the marital home was valued and divided. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

W. NEAL MCBRAYER, J., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Jennifer Noe, Ashland City, Tennessee, for the appellant, Karen Louise Brady.

Sharon T. Massey, Clarksville, Tennessee, for the appellee, Ronald Allen Brady.

## OPINION

### I. FACTUAL AND PROCEDURAL BACKGROUND

In April 2005, before their marriage, Ronald Brady (“Husband”) and Karen Brady (“Wife”) purchased real property located on Dorris Winters Road in Chapmansboro, Tennessee. Both Husband and Wife contributed separate funds to the purchase of the real property, and the property was titled in their names as tenants in common. In July 2005, the parties began constructing a home on the property. The parties married in September 2005.

Both parties owned separate real property that had been acquired before the marriage. Upon the sale of Wife’s separate real property, she contributed some amount of her profit to the Dorris Winters Road property. Husband claims he reimbursed Wife for any amount she contributed. Husband further claims he used the proceeds from the sale of his separate property to construct a pool, barn, and fence at the Dorris Winters Road property. In addition to helping coordinate construction of those improvements, Wife claims she contributed another \$25,000 to the Dorris Winters Road property.

In an order entered on April 17, 2013, the trial court declared the parties divorced. With the agreement of the parties, the order also referred several issues to a special master for investigation and a report, including:

1. The identification, classification, and valuation of all property and assets.
2. If separate property is identified, the date of acquisition, value at the date of marriage, value at date of divorce, and the contributions of either spouse to any increase in or preservation of separate property.
3. The contributions from separate property made by the parties to the acquisition of any marital property.
4. The value of any business owned.
5. The identification, classification, and amount of any debt.
6. The amount of any credits or debts to be extended to one party against the property rights of another.

The special master conducted a hearing on August 27, 2013, and October 7, 2013. Husband and Wife agreed that they utilized separate accounts and a joint account during

the marriage. Husband testified that the Dorris Winters Road mortgage was paid from the joint account, and Wife stated that taxes and insurance were also paid from the joint account. Other than limited shared expenses, Husband claimed that the parties kept separate bank accounts and used separate funds to acquire assets during the marriage. Wife, on the other hand, maintained that they bought assets together as a “family.”

On December 3, 2013, the special master issued a detailed, forty-four page report valuing the Dorris Winters Road property at \$750,000. The special master found that Husband contributed \$262,597 of his separate funds and Wife contributed \$30,000 of her separate funds toward the acquisition of the marital home. The special master proposed that Husband be granted seventy-two percent and that Wife be granted twenty-eight percent of the equity in the property. The special master also proposed that each party have the option to purchase the other spouse’s share. If neither party exercised their option, the special master proposed that the property be sold at auction.

Husband and Wife each made several objections to the special master’s report. Wife objected to many of the special master’s findings, including those regarding Husband’s income, business, retirement, and separate property; Husband’s separate contribution to the marital home; and the division of the marital home. Husband objected to the special master’s findings on the home’s market value; the value of his business; and the division of marital personal property and debts. Following a hearing, in an order entered January 30, 2014, the court overruled all objections and adopted the special master’s report.

At a March 13, 2014 hearing on a motion by Husband to auction the marital home, Wife, at the time proceeding pro se, argued that the marital estate had been incorrectly divided, that the court’s order adopting the special master’s report contained no findings of fact, and that the special master had acted outside his scope of authority. On April 8, 2014, the trial court ordered that the property be sold in May 2014 and that Wife vacate the property by April 20, 2014.

The marital home was auctioned, resulting in net proceeds of \$241,529.38. On July 17, 2014, the trial court entered an order directing the clerk to distribute to Husband \$173,901.15 (72% of the net proceeds) and to Wife \$67,628.23 (28% of the net proceeds).<sup>1</sup> Wife timely appealed the trial court’s judgment.

## II. ANALYSIS

The issues on appeal, as we perceive them, are whether: (1) the special master exceeded his authority; (2) the trial court failed to exercise its independent judgment in

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<sup>1</sup> The trial court subsequently amended its order to withhold a percentage of the distribution to Husband pending the outcome of this appeal.

adopting the special master's report; and (3) the trial court erred in its division of the marital home.

#### A. SPECIAL MASTER'S AUTHORITY

Special masters may be appointed in the discretion of Tennessee trial judges to assist with “[c]ollateral, subordinate, and incidental issues and the ascertainment of ancillary facts.” *Vraney v. Med. Specialty Clinic, P.C.*, No. W2012-02144-COA-R3-CV, 2013 WL 4806902, at \*34 (Tenn. Ct. App. Sept. 9, 2013) (quoting *Archer v. Archer*, 907 S.W.2d 412, 416 (Tenn. Ct. App. 1995)). The scope of the special master's authority is addressed in Tennessee Rule of Civil Procedure 53.02:

The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only, and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. *Subject to the specifications and limitations stated in the order*, the master has and shall exercise the power to regulate all proceedings in every hearing before him or her and to do all acts and take all measures necessary or proper for the efficient performance of duties under the order.

Tenn. R. Civ. P. 53.02 (emphasis added). “While the master is given broad powers to carry out his assigned task, those powers ultimately are limited to the boundaries set forth in the order of reference.” *Pennington v. Boundry, Inc.*, No. M2006-02650-COA-R3-CV, 2008 WL 1923110, at \*9 (Tenn. Ct. App. May 1, 2008) (citing Robert Banks, Jr. & June F. Entman, Tennessee Civil Procedure § 4-4(b) (2d ed. 2004)). The master may not exceed the authority granted to him by the order of reference, even with the parties' consent. *Id.* at \*13 (citing *Plumb v. State*, 809 P.2d 734, 742 (Utah 1990)).

Although the parties may not consent to expand the special master's authority beyond the order of reference, they must timely object to unauthorized acts. “It is well-settled that a litigant ‘cannot wait until after the trial court has conducted its hearing and ruled on the master's report to raise new objections to the report.’” *Clear Channel Outdoor, Inc. v. A Quality, Inc.*, No. W2007-00213-COA-R3-CV, 2008 WL 2901345, at \*7 (Tenn. Ct. App. July 29, 2008) (quoting *Harlan v. Soloman*, No. M2003-01396-COA-R3-CV, 2005 WL 110172, at \*2 (Tenn. Ct. App. Jan. 19, 2005)). If a party fails to object to the special master's actions before the master's report is adopted by the trial court, then the objection is waived.

Here, the order of reference did not direct the special master to propose a division of the marital estate. Although the special master acted outside the scope of his authority,

neither party objected to the special master's lack of authority before the trial court adopted the report. Wife only objected once Husband moved to have the marital home auctioned. Therefore, Wife waived any objection that the special master exceeded his authority.

#### B. ADOPTION OF THE SPECIAL MASTER'S REPORT

The special master's obligation is to prepare a report on the matters submitted by the order of reference and to file the report and transcript of evidence with the court. Tenn. R. Civ. P. 53.04(1). The trial court then considers objections to the special master's report. In ruling on objections to the report, the trial court may adopt the report in full, modify it, reject it in whole or in part, receive further evidence, or recommit it with instructions. *Tarver v. Garrison's Custom Cabinets, Inc.*, No. W2006-01765-COA-R3-CV, 2007 WL 3194566, at \*2 (Tenn. Ct. App. Oct. 31, 2007); *see also* Tenn. R. Civ. P. 53.04(1)-(2)).

If the trial court decides to adopt the special master's report, "it must be satisfied, after exercising its independent judgment, that the master is correct in the decision he has made." *Lakes Prop. Owners Ass'n. v. Tollison*, No. 03A01-9402-CV-00038, 1994 WL 534480, at \*3 (Tenn. Ct. App. Oct. 4, 1994). A trial court may not simply defer to the special master. For example, in *Blankenship v. Blankenship*, No. 02A01-9603-CH-00051, 1997 WL 15241 (Tenn. Ct. App. Jan. 17, 1997), the judge stated that the special master would determine a disputed boundary line because the judge could not "make heads or tails out of [it]." *Id.* at \*1. The trial court ultimately adopted the master's report without permitting evidence to be submitted in opposition to the report. *Id.* at \*2. In that circumstance, we found the trial court's judgment should be vacated. *Id.* at \*3. Conducting a full hearing on objections and an independent review of the record indicates an exercise of independent judgment. *Tarver*, 2007 WL 3194566, at \*2.

We find no error in the trial court's adoption of the special master's report. The trial court conducted a full hearing on the parties' objections. The parties also did not seek to introduce further evidence in support of their objections.<sup>2</sup> *See* Tenn. R. Civ. P. 53.04(2) ("The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."). The record shows that the trial court appropriately exercised its independent judgment in adopting the report.

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<sup>2</sup> At the hearing on the objections to the master's report, the trial court did indicate it would not "reopen the proof." However, Wife does not raise her inability to submit evidence at the hearing as an issue on appeal. *See Forbess v. Forbess*, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011) ("This court has repeatedly held that a party's failure to cite authority for its arguments or to argue the issues in the body of its brief constitute a waiver on appeal.").

### C. VALUATION AND DIVISION OF THE MARITAL PROPERTY

Wife argues the trial court improperly valued and divided the parties' marital residence. She does not challenge the trial court's classification of the residence as marital property. Rather, she claims only that she should have been awarded fifty percent of the home's equity value. She also claims the court erred in directing that the marital home be auctioned.

Dividing a marital estate necessarily begins by classifying property as separate or marital property. *McClellan v. McClellan*, 873 S.W.2d 350, 351 (Tenn. Ct. App. 1993). Once the property has been classified and valued, "[t]he trial judge's goal is to divide the marital property in an essentially equitable manner." *Manis v. Manis*, 49 S.W.3d 295, 306 (Tenn. Ct. App. 2001). A division is not inequitable simply because it is not exactly equal. *Kinard v. Kinard*, 986 S.W.2d 220, 230 (Tenn. Ct. App. 1998). Reaching an equitable distribution requires a careful weighing of the relevant factors in Tennessee Code Annotated § 36-4-121(c) (Supp. 2012).<sup>3</sup>

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<sup>3</sup> Tennessee Code Annotated § 36-4-121(c) provides as follows:

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) (A) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as a homemaker or wage earner to be given the same weight if each party has fulfilled its role;  
(B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed.
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;

Trial courts have wide discretion in dividing marital assets. *Kinard*, 986 S.W.2d at 230-31. Accordingly, we give the trial court’s division of marital property great weight on appeal. *Id.* at 231 (citing *Wade v. Wade*, 897 S.W.2d 702, 715 (Tenn. Ct. App. 1994); *Wallace v. Wallace*, 733 S.W.2d 102, 106 (Tenn. Ct. App. 1987)). We are “disinclined to disturb the trial court’s [division of marital property] unless the distribution lacks proper evidentiary support or results in some error of law or misapplication of statutory requirements and procedures.” *Keyt v. Keyt*, 244 S.W.3d 321, 327 (Tenn. 2007) (quoting *Herrera v. Herrera*, 944 S.W.2d 379, 389 (Tenn. Ct. App. 1996)). We presume the trial court’s factual determinations regarding the valuation of a marital estate are correct unless the evidence preponderates against them. *Kinard*, 986 S.W.2d at 231.

When reviewing the trial court’s order on a special master’s report, we apply a particular standard of review. Generally, a concurrent finding of fact by a special master and a trial court is conclusive. Tenn. Code Ann. § 27-1-113 (2000); *Manis*, 49 S.W.3d at 301. The concurrent finding can be overturned on appeal only where “it is upon an issue not proper to be referred [to the special master], where it is based on an error of law or a mixed question of fact and law, or where it is not supported by any material evidence.” *Manis*, 49 S.W.3d at 301 (citing *Long v. Long*, 957 S.W.2d 825, 828 (Tenn. Ct. App. 1997); *Aussenberg v. Kramer*, 944 S.W.2d 367, 370 (Tenn. Ct. App. 1996); *Archer*, 907 S.W.2d at 415).

After an examination of the record and the factors in Tennessee Code Annotated § 36-4-121(c), we find material evidence to support the trial court’s finding as to the value of the marital residence. The record contains several detailed appraisals indicating that the value of the home was between \$650,000 and \$779,900. The most recent appraisal by a licensed appraiser assessed the home’s value at \$750,000.

We also conclude that the trial court appropriately divided the home equity value under Tennessee Code Annotated § 36-4-121(c). Although Wife challenges only the

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- (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, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
  - (10) The amount of social security benefits available to each spouse; and
  - (11) Such other factors as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-4-121(c) (Supp. 2012).

division of one marital asset, we consider the division of each asset in light of the overall distribution of the marital estate. *See King v. King*, 986 S.W.2d 216, 218-19 (Tenn. Ct. App. 1998) (considering Husband’s challenge to the division of the marital home in light of the division of other marital assets and debts). In this case, the marital home constituted the principle marital asset. The home’s equity value exceeded \$500,000; the parties’ other marital assets totaled less than \$65,000. The marital debts were less than \$30,000. Wife received roughly one-third of the value of the marital residence and the overall marital estate.

Beginning with factor one, this marriage was only seven and one-half years long—a relatively short duration. Accordingly, 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). In such cases, “each spouse’s contributions to the accumulation of assets during the marriage is an important factor.” *Id.*

Factors four, six, and seven in Tennessee Code Annotated § 36-4-121(c) also support the trial court’s decision to allocate a majority of the home’s equity value to Husband. Factor four considers each party’s separate contributions to marital property. Material evidence supports the finding that Husband contributed over \$250,000 and Wife contributed \$30,000 to the marital home. Material evidence also supports the finding that Husband had significantly more separate property and had a larger estate at the time of the marriage. Therefore, factors six and seven suggest he should receive a larger portion of the marital estate.

Several remaining factors, including the parties’ age, health, earning capacity, vocational skills, and economic circumstances, indicate that the parties are in otherwise relatively equal positions. To return the parties to their pre-marital state, Husband appropriately received more of the home’s equity value because he contributed significantly more of his separate funds to the home. *See Batson*, 769 S.W.2d at 859.

Finally, we see no error in the auction of the marital home. Wife argues that the auction failed to generate the best possible price for the marital home. While that may be true, Wife had at least three means of protecting the value of the marital home of which she failed to take advantage. First, in the order declaring the parties divorced, the court ordered the marital home to be listed for sale for \$765,000.<sup>4</sup> There were some statements from Wife at the hearing on the motion to auction the property that the marital home was never listed for sale and that Husband was not cooperating in the process. However, even if we are to accept those statements as true, Wife apparently never sought assistance from

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<sup>4</sup> In a subsequent order, the trial court ordered that “the Parties shall list the property for sale with an independent Realtor, and both parties shall follow the recommendations of the Realtor as to the condition of the property for marketing.”

the court in seeking enforcement of the order to market the property. Second, the master's report adopted by the court gave Wife the option to purchase Husband's interest in the property prior to an auction taking place. Third, Wife, like Husband, could have bid on the marital home at auction.

We also find nothing in the record showing that the auction was conducted inadequately. Wife complains that the sale was left to the auctioneer without any oversight from the master and that the sale was never confirmed by the court. Yet, Wife does not indicate how the auction was deficient, and it does not appear that she objected to the price obtained at auction. Her only objection was to how the proceeds of the auction were to be distributed.

### **III. CONCLUSION**

For the foregoing reasons, we affirm the trial court's judgment.

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W. NEAL McBRAYER, JUDGE