

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 17, 2015 Session

JULIE MARIE CHUMLEY v. RANDALL EDWARD CHUMLEY

**Appeal from the Circuit Court for Sumner County
No. 2012CV1191 Joe Thompson, Judge**

No. M2015-00378-COA-R3-CV – Filed December 23, 2014

Wife and Husband were divorced, and the trial court awarded Wife alimony in futuro as well as alimony in solido. Husband appealed the trial court's awards, and we affirm. We also award Wife the reasonable attorney's fees she incurred defending Husband's appeal pursuant to Tenn. Code Ann. § 36-5-103(c).

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

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Grayson Smith Cannon, Gallatin, Tennessee, for the appellant, Randall Edward Chumley.

Bruce N. Oldham, Gallatin, Tennessee, for the appellee, Julie Marie Chumley.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

This case concerns an award of alimony that was made as part of the divorce proceedings between Julie Marie Chumley ("Wife") and Randall Edward Chumley ("Husband") in 2014. The parties were married for twenty-four years and had one child who was seventeen years old when Wife filed a complaint for divorce in October 2012. Wife alleged Husband had engaged in marital misconduct and that the parties suffered from irreconcilable differences as grounds for the divorce. The trial court issued a Final Decree of Divorce on November 19, 2014. The court divided the marital assets between the parties and

granted Wife alimony in futuro in the amount of \$1,400 per month as well as reasonable attorney's fees as alimony in solido. Husband appeals both the award of alimony in futuro and the award of alimony in solido.

The evidence at trial showed that Husband and Wife are both high school graduates. As of the date of trial in July 2014, Wife was forty-six years old, and Husband was fifty-one years old. Both were in good health. Husband had worked for R. R. Donnelly as a press setter for thirty-three years. He was earning approximately \$60,000 per year. The vice president of manufacturing at the plant where Husband works testified that Husband runs a rotogravure press, which is a specialized press that only a handful of employees at R. R. Donnelly are qualified to operate. Husband testified that his hours have decreased over time due to economic forces, but the vice president stated that so long as the presses are running, Husband's job is secure.

Wife worked throughout the parties' marriage, but she has never earned as much as Husband. Wife had a job with Bosch as a factory worker for sixteen years, until the company relocated to Mexico, and then she worked for Perfect Fit Image Apparel, where Wife operated a machine that embroidered shirts. Wife developed high blood pressure, and her employment at Perfect Fit Image Apparel was terminated in December 2012. Wife fell and broke her ankle shortly after she lost her job, and she was unable to begin looking for work again until November 2013, when her doctor released her from care. When she was able to work again, Wife applied for a job at Publix. She explained that Publix offers good benefits to employees who are there after a year and that benefits are an important consideration when selecting an employer. Wife testified that she was earning approximately \$10 per hour at the time of trial. Wife said that she had considered working as a certified nurse technician before starting to work for Publix. She ultimately decided against that idea because she did not have the money to pay for the required classes. Also, Wife was interested in working in private homes rather than in a facility, and she was concerned that she would not receive health insurance or other benefits if she worked in individual homes.

The parties acquired several vehicles, personal property items, and four parcels of real property during their marriage. They built a house on one of the parcels and primarily used the other three properties for hunting and/or growing timber. At the time of trial, they had no marital debt other than a home equity line of credit on which they owed approximately \$34,500. Two of the properties had been in Husband's family for many years. Husband expressed an interest in having all the real property awarded to him and paying Wife for her interest in the parcels. Wife did not object to this proposal so long as she received cash that she could use to purchase another home for herself. The parties were able to agree on the division of the vehicles and personal property items although they attributed different values to the real property, the vehicles, and the personal property items.

Wife submitted an Income and Expense Statement in which she listed monthly expenses totaling \$3,075. Wife indicated she had the ability to pay \$1,075 of her expenses and sought alimony in the amount of \$2,000 per month. Following the trial, the trial court issued an order in which it divided the parties' marital property and awarded Wife two different types of alimony: alimony in futuro in the amount of \$1,400 per month "to terminate upon the death of either of the parties or remarriage of the Wife, whichever occurs first," and alimony in solido, in an amount to be determined, for the purpose of paying Wife's reasonable attorney's fees.

Husband filed a motion to alter or amend in which he argued, *inter alia*, that the trial court erred in awarding Wife alimony in futuro. Husband contended that the award of all the real property to him required him to incur debt to pay Wife for her interest in the real property and that Wife would be left with substantial unencumbered assets that would reduce her need for alimony. Husband requested that the court "reduce or eliminate the alimony award commensurate with Husband's additional debt and the additional assets which Wife shall receive pursuant to th[e] the division of property." The trial court denied Husband's motion and left its prior awards of alimony intact. Wife's attorney filed an affidavit and supporting documentation to support Wife's request for attorney's fees in the amount of \$17,580. Following a hearing, the trial court awarded Wife \$9,058.75 as alimony in solido, to cover a portion of Wife's attorney's fees.

Husband appeals the trial court's judgment. He argues the trial court erred in determining that Wife is entitled to receive long term alimony. Husband contends that rehabilitative or transitional alimony is preferable to alimony in futuro, and he asserts that the trial court did not consider whether rehabilitation was feasible for Wife or whether transitional alimony might be appropriate in this case. Wife appeals no part of the trial court's order, but she requests an award of the attorney's fees she has incurred on appeal.

II. ANALYSIS

A. Standard of Review

We review a trial court's findings of facts de novo upon the record, according the trial court's findings a presumption of correctness unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *Mayfield v. Mayfield*, 395 S.W.3d 108, 115 (Tenn. 2012). Trial courts have broad discretion to determine the type, amount, and duration of alimony. *Mayfield*, 395 S.W.3d at 114; *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011); *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn. 2004); *Crabtree v. Crabtree*, 16 S.W.3d 356, 360 (Tenn. 2000). Recognizing that a trial court's award of spousal support is factually

driven and results from the balancing of several factors, appellate courts are hesitant to second-guess a trial court's decision involving alimony. *Gonsewski*, 350 S.W.3d at 105 (citing *Kinard v. Kinard*, 986 S.W.2d 220, 234, 235 (Tenn. Ct. App. 1998)). As the *Gonsewski* Court explained:

“The role of an appellate court in reviewing an award of spousal support is to determine whether the trial court applied the correct legal standard and reached a decision that is not clearly unreasonable.” Appellate courts decline to second-guess a trial court's decision absent an abuse of discretion. An abuse of discretion occurs when the trial court causes an injustice by applying an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice. This standard does not permit an appellate court to substitute its judgment for that of the trial court, but “reflects an awareness that the decision being reviewed involved a choice among several acceptable alternatives,” and thus ‘envisions a less rigorous review of the lower court's decision and a decreased likelihood that the decision will be reversed on appeal.’”

Gonsewski, 350 S.W.3d at 105 (citations omitted). Thus, the *Gonsewski* Court wrote, an appellate court should assume the trial court's decision is correct and “review the evidence in the light most favorable to the decision.” *Id.* at 106 (citing *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011) and *Henderson v. SAIA, Inc.*, 318 S.W.3d 328, 335 (Tenn. 2010)).

B. Alimony in Futuro

Following the parties' trial on July 22 and 23, 2014, the trial court issued a Memorandum Opinion containing the following findings of fact, *inter alia*:

1. The parties were married on February 14, 1988 and separated after almost twenty-five years, on October 18, 2012. During the marriage, the Husband had three adulterous relationships.
2. The Wife is 46 years old and the Husband is 51 years old. Both parties are in relatively good health.
3. The Wife has a high school education. During the marriage, the Wife worked for approximately 16 years at Bosch Manufacturing. When Bosch closed its Gallatin plant, Wife went to work at Perfect Fit Image

Apparel. This employment came to an end in December 2012 after Wife's short-term absence for health-related reasons. Wife then worked for a short time as a private sitter but discontinued this work when she broke her ankle. She explored the possibility of becoming a certified nursing technician, but was only interested in working in a private home setting. Since this work would not provide her with employment-related fringe benefits such as health insurance, she pursued it no further. In November 2013, she began a job at Publix in the bakery section. At the time of the hearing, she was making \$10 per hour.

4. The Husband has a high school education and has worked at R. R. Donnelly & Sons since prior to the marriage. His most recent pay record reveals that his rate of pay is \$23.59 – more than double that of Wife. Husband's capacity for maximum annual earnings has been decreased by a change in company policy that no longer permits employees to convert accrued vacation leave into a cash payment.

5. Both parties contributed to the creation and preservation of the marital estate by working outside the home and parenting the parties' minor child

The trial court addressed the parties' marital assets and divided the vehicles and items of personal property between the parties. The court awarded all four parcels of real property to Husband, upon Husband's request. The court assigned a total value of \$411,500 to the real property and ordered Husband to pay Wife \$188,500 for her interest in these parcels. The court also considered the parties' retirement accounts and equitably distributed those accounts between the parties. The court awarded Wife 50% of Husband's 401(k) plan (\$92,585) and 34% of Husband's pension plan (about \$425/month). The court awarded Husband the entirety of his frozen accrued benefit plan (\$366/month) and awarded Wife the entirety of her pension plan from Bosch (\$246/month).

Next, the trial court addressed the issue of spousal support. The court wrote:

The legislature has directed that Tennessee courts consider twelve factors in determining whether an award of alimony is appropriate. *See* T.C.A. § 36-5-121(i). In this case, the Court gives weight to the following relevant factors:

- The relative earning capacities of the parties.
- The relative education and training of the parties.

- The duration of the marriage.
- Relative fault of the parties.
- The provisions made with regard to the marital property, as provided in T.C.A. § 36-4-121.
- The standard of living of the parties established during the marriage.
- Such factors as are necessary to consider the equities between the parties.

Given the disparity in earning capabilities between the Husband and the Wife, the Court finds that the Wife is at an economic disadvantage and has a need for alimony. The Court takes the allocation of marital property and debt into account in making the following award of alimony, and specifically the large cash sums awarded to Wife as division of the marital estate.

Therefore, the Court awards periodic alimony in the amount of \$1,400 per month until the death of either of the parties, or remarriage of the Wife, whichever occurs first.

During the hearing on Husband's motion to alter or amend, the trial court had an opportunity to explain further its reasons for awarding Wife the type and amount of alimony it did. The court stated:

Let me talk about the alimony a little bit. There were a couple of reasons that [Wife] didn't get what she asked for. One of those is she is getting a large cash settlement out of this property division, and I have to take that into account. The other is - - and I don't know that I put this in the memorandum opinion, but I certainly noted that she said she didn't want to do certain things when it came to being a nursing tech. Well, that's all well and good, but not wanting to do something when you might be able to is something that I take into account. . . . There wasn't any testimony that she couldn't have worked in a nursing home environment had she considered - - had she continued down the CNA track. So I took that into account when I reduced under what they asked for.

Husband contends Wife is able-bodied and capable of supporting herself without assistance in the form of alimony, especially since she is getting such a large amount of cash for her interest in the real property the parties owned during their marriage. If any amount of alimony is warranted, Husband believes the court should have awarded Wife either rehabilitative or transitional alimony.

Tennessee recognizes four different types of alimony: rehabilitative alimony, alimony in futuro, transitional alimony, and alimony in solido. Tenn. Code Ann. § 36-5-121(d)(1). Rehabilitative alimony is appropriate when the recipient spouse is able to achieve, with reasonable effort, an earning capacity that is comparable to the standard of living enjoyed during the marriage or the post-divorce standard that the other spouse is expected to achieve. Tenn. Code Ann. § 36-5-121(e)(1). When a court finds that one spouse is relatively disadvantaged economically, and that rehabilitation is not feasible, the court may award alimony in futuro, which is also known as periodic alimony. Tenn. Code Ann. § 36-5-121(f)(1). *See generally Gonszewski*, 350 S.W.3d at 107-10, and *Mayfield*, 395 S.W.3d at 115-16 (providing comprehensive discussion of different types of alimony).

Alimony in solido may be awarded to pay the recipient spouse's attorney fees, and this type of alimony may be awarded in addition to another type of alimony award. Tenn. Code Ann. § 36-5-121(d)(5). Transitional alimony is appropriate when rehabilitation is not necessary but the economically disadvantaged spouse needs help adjusting to the economic consequences of a divorce or other separation from a spouse. Tenn. Code Ann. § 36-5-121(g)(1).

Husband is correct that the statutes governing alimony reflect a legislative preference for short-term support over long-term support, and the statute's goal is to rehabilitate an economically disadvantaged spouse whenever possible to achieve self-sufficiency. Tenn. Code Ann. § 36-5-121(d)(2); *Gonszewski*, 350 S.W.3d at 109; *see Mayfield*, 395 S.W.3d at 115 ("Tennessee statutes concerning spousal support reflect a legislative preference favoring rehabilitative or transitional alimony rather than alimony in futuro or in solido."). The *Gonszewski* Court explained that "[w]hile this statutory preference does not entirely displace long-term spousal support, alimony in futuro should be awarded only when the court finds that economic rehabilitation is not feasible and long-term support is necessary." *Gonszewski*, 350 S.W.3d at 109.

The factors a court is to consider when making an award of alimony, and in determining the type and amount, are set out in Tenn. Code Ann. § 36-5-121(i). They include the following:

- (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the

necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;

(3) The duration of the marriage;

(4) The age and mental condition of each party;

(5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;

(6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;

(7) The separate assets of each party, both real and personal, tangible and intangible;

(8) The provisions made with regard to the marital property, as defined in § 36-4-121;

(9) The standard of living of the parties established during the marriage;

(10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and

(12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-5-121(i).

In its Memorandum Opinion, the trial court wrote that it gave weight to factors (1), (2), (3), (8), (9), (11), and (12). Husband contends Wife is underemployed because she formerly had a job that paid more than she is currently earning, and at the time of trial, Wife was working part-time rather than full-time. However, Wife's testimony was undisputed that she has suffered health problems, and she found a job shortly after being cleared by her

doctor to begin working again. She was offered a part-time position, but she is hoping to become a full-time employee with benefits as soon as possible. Wife was forty-six years old at the time of trial and has no formal education beyond high school.

Husband's reliance on *McKee v. McKee*, No. M1997-00204-COA-R3-CV, 2000 WL 666363, at *6-7 (Tenn. Ct. App. May 23, 2000), to argue the court erred in awarding Wife alimony in futuro is misplaced because the obligee spouse in that case had a college degree and work experience as a school teacher and administrative assistant. Unlike Wife, the obligee spouse in *McKee* did not have the need for long-term support that Wife does here because of her education and work history. *See id.* at *7. Wife has worked in manufacturing plants as a factory worker, and she testified that she is unable to stand for long periods due to pain she experiences in her ankle. No evidence was introduced that Wife's education or work experience qualifies her for jobs that will pay close to the hourly rate Husband earns or that will enable her to have a standard of living even close to the one the parties had during the marriage or that Husband is able to maintain post-divorce.

Husband's main complaint seems to be that the trial court did not consider the debt Husband would be required to incur to pay Wife for her interest in the four parcels of real property in determining the amount and type of alimony Wife was entitled to receive. The trial court gave Husband the option of selling one or more parcels of the real property in an effort to acquire the necessary cash to pay Wife for her interest, but Husband responded that he did not want to sell any of the properties. Wife is entitled by statute to an equitable share of the marital assets, Tenn. Code Ann. § 36-4-121, and Husband provides no support for his argument that the amount and nature of alimony Wife is entitled to receive should depend on the amount of debt Husband may incur to compensate Wife for her fair share when Husband could sell some of the marital assets and avoid incurring additional debt. The trial court stated that it relied on its division of the parties' marital assets when determining how much alimony to award Wife and, contrary to Husband's argument, it considered the cash settlement Wife would receive from the equitable division of the marital assets when deciding to award Wife less alimony per month than she requested.

The two most important factors in determining whether an award of alimony is appropriate are the demonstrated need of the disadvantaged spouse and the obligor spouse's ability to pay. *Mayfield*, 395 S.W.3d at 116; *Gonsewski*, 350 S.W.3d at 110. Husband contends his income is expected to decrease over time as a result of fewer hours and a change in company policy with respect to vacation pay. Awards of alimony in futuro remain in the trial court's jurisdiction throughout the term of the award, and the court may modify the amount of the award "upon a showing of substantial and material change in circumstances." Tenn. Code Ann. § 36-5-121(f)(2)(A). Thus, Husband can seek a modification of the periodic payments in the future if a substantial and material change of circumstances

warrants a change.

Our review of the record convinces us that the trial court applied the correct legal standards, took the relevant facts into account, and reached a conclusion that is not clearly unreasonable. *See Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). Wife has shown a need for the financial support on an ongoing basis, and the evidence shows Husband has the ability to pay. Husband has failed to show that the trial court abused its discretion in awarding Wife alimony in futuro in the amount of \$1,400 per month. Accordingly, we affirm the trial court's judgment in this regard.

C. Alimony in Solido

We now turn to the trial court's award to Wife of alimony in solido in the amount of \$9,058.75. An award of attorney's fees in the context of a divorce proceeding constitutes alimony in solido. Tenn. Code Ann. § 36-5-121(h)(1); *Gonsewski*, 350 S.W.3d at 113. An award of this form of alimony is not modifiable, except by agreement of the parties, and it is available to be awarded along with alimony in futuro. Tenn. Code Ann. § 36-5-121(h)(1)-(2); *Gonsewski*, 350 S.W.3d at 108 (citing *Broadbent v. Broadbent*, 211 S.W.3d 216, 222 (Tenn. 2006)). A trial court has discretion in deciding whether to award alimony in solido, and we will not disturb the trial court's decision absent an abuse of discretion. *Id.* at 105, 113. A trial court considers the same factors in awarding alimony in solido as it considers in awarding other types of alimony. *Id.* at 113.

Husband does not allege the amount of the award is unreasonable, but he contends the award is unwarranted in light of the cash award Wife will receive for her share of the marital estate. The trial court granted Wife an award of just over half of the full amount of her attorney's fees. Trial courts often award alimony in solido when an economically disadvantaged spouse would otherwise be forced to deplete his or her assets to pay attorney's fees. *Keyt v. Keyt*, 244 S.W.3d 321, 334 (Tenn. 2007). The *Keyt* Court explained that a trial court's award of attorney's fees is "largely discretionary" and an appellate court will not interfere with such an award absent proof of a "clear abuse of that discretion." *Id.*; *see Koja v. Koja*, 42 S.W.3d 94, 100 (Tenn. Ct. App. 2000) (reversing lower court's decision to deny wife alimony in solido, appellate court awarded economically disadvantaged wife attorney's fees in addition to award of alimony in futuro where wife would have had to use assets court awarded for future support to pay attorney's fees). Here, Wife's cash assets are primarily comprised of the funds the trial court awarded her for her share of the equity in the marital property. The trial court awarded Wife just over half of the fees her attorney has billed for her services, which means Wife already has to use some of the cash she has been awarded from the property division to pay her lawyer's fees. Husband has the ability to pay, and Wife has the need for the funds. Husband has failed to show how the trial court abused its

discretion in awarding Wife alimony in solido in the amount of \$9,058.75. Accordingly, we affirm the trial court's judgment in this regard.

D. Attorney's Fees Incurred on Appeal

Wife requests an award of attorney's fees she has incurred in defending this appeal. Tennessee Code Annotated section 36-5-103(c) provides that a plaintiff spouse may recover from a defendant spouse reasonable attorney fees incurred in enforcing a decree for alimony.

As the prevailing party in this case, Wife can recover these fees from Husband if we exercise our discretion to award her these fees. *See Evans v. Evans*, M2002-02947-COA-R3-CV, 2004 WL 1882586, at *13 (Tenn. Ct. App. Aug. 23, 2004) (noting that alimony recipient who is forced to defend action to reduce or terminate alimony is entitled to award of attorney's fees pursuant to Tenn. Code Ann. § 36-5-103(c)). We hereby exercise our discretion to award Wife a reasonable amount of fees she has incurred to defend this appeal. The case is remanded to the trial court for a determination of Wife's reasonable fees, and the trial court is instructed to order Husband to pay the amount so determined.

III. CONCLUSION

The trial court's judgment is affirmed in all respects. The case is remanded for a determination of Wife's reasonable attorney's fees incurred on appeal, which amount shall be awarded against Husband. Costs of appeal are assessed against the appellant, Randall Edward Chumley, for which execution shall issue if necessary.

ANDY D. BENNETT, JUDGE