

COURT OF APPEALS OF VIRGINIA

Present: Judges Willis, Frank and Clements

FRANCO TRIOLO

v. Record No. 1590-00-1

JEAN MARIE WHITE TRIOLO

MEMORANDUM OPINION\*  
PER CURIAM  
DECEMBER 12, 2000

FROM THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG  
AND COUNTY OF JAMES CITY  
Thomas B. Hoover, Judge

(Vicki Beard, on briefs), for appellant.

(Kenneth B. Murov, on brief), for appellee.

Franco Triolo (husband) appeals the decision of the trial court awarding attorney's fees and spousal support to Jean Marie White Triolo (wife). On appeal, the husband contends that the trial court erred (1) in awarding attorney's fees to the wife after the commissioner had awarded attorney's fees to the husband, and (2) in awarding spousal support to the wife. Upon reviewing the record and briefs of the parties, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27.

On appeal, we view the evidence and all reasonable inferences in the light most favorable to the appellee as the

---

\* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

party prevailing below. See McGuire v. McGuire, 10 Va. App. 248, 250, 391 S.E.2d 344, 346 (1990).

#### Procedural Background

The wife filed for divorce in January, 1995, on the ground of constructive desertion. In September, 1996, the husband requested that the case be referred to a commissioner in chancery. The decree appointing the commissioner did not include a direction that the commissioner determine spousal support. The commissioner reported that the evidence was insufficient to support awarding the wife a fault divorce and recommended that she be awarded a divorce on the ground of one-year separation. Holding that the wife was more responsible for prolonging the suit, the commissioner recommended that the husband be awarded \$2,000 in attorney's fees. Both parties filed objections to the commissioner's report. The trial court held hearings to rule on the objections and to determine spousal support. The court upheld the bulk of the commissioner's report, but awarded the wife \$5,000 in attorney's fees based on disparity of the parties' incomes. The court ordered the husband to pay \$400 per month in spousal support to the wife.

#### I.

The husband contends that the trial court erred in awarding attorney's fees to the wife. He asserts that she was responsible for prolonging the suit and for increasing the legal expenses. The trial court found that both parties contributed to the

prolongation of the proceedings and that the suit involved true issues which required litigation. Based on the differences in the incomes of the parties, the trial court awarded \$5,000 in attorney's fees to the wife. An award of attorney's fees is a matter submitted to the trial court's sound discretion and is reviewable on appeal only for an abuse of discretion. Graves v. Graves, 4 Va. App. 326, 333, 357 S.E.2d 554, 558 (1987). We find no abuse of discretion in the trial court's determination.

## II.

The husband also contends that the trial court erred in awarding spousal support to the wife. "When a [trial] court awards spousal support based upon due consideration of the factors enumerated in Code § 20-107.1, as shown by the evidence, its determination 'will not be disturbed except for a clear abuse of discretion.'" Poliquin v. Poliquin, 12 Va. App. 676, 679, 406 S.E.2d 401, 403 (1991).

The trial court considered all the factors required by Code § 20-107.1. Based on the length of the marriage and the discrepancy in incomes, the court held that the wife was entitled to permanent spousal support. We find no abuse of discretion in that determination.

Accordingly, the judgment of the trial court is summarily affirmed. This case is remanded to the trial court to consider

whether an award of attorney's fees and costs for this appeal should be made to the wife.

Affirmed and remanded.