

Cite as 2011 Ark. App. 433

ARKANSAS COURT OF APPEALS

D I V I S I O N I I

No. CA 11-90

DAWNA BELLAMY

APPELLANT

V.

ROBERT BELLAMY

APPELLEE

Opinion Delivered JUNE 15, 2011APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT,
[NO. DR-10-348]HONORABLE SANDY HUCKABEE,
JUDGE

REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

This is an appeal of a divorce proceeding heard in Lonoke County Circuit Court. Appellant Dawna Bellamy appeals the trial court's order contending that the division of assets and debts is not equitable. She specifically takes issue with the trial court's decision to permit appellee Robert Bellamy to retain all of his military retirement benefits. We reverse and remand.

The standard of review is well settled. We review divorce cases de novo, but we will not reverse the trial court's findings of fact on a division of property and allocation of debt unless the decision is clearly erroneous. *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006); *Cummings v. Cummings*, 104 Ark. App. 315, 292 S.W.3d 819 (2009). We give special deference to the superior position of the trial court to evaluate and judge the credibility of the

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witnesses. *Cummings, supra*. A finding is clearly against the preponderance of the evidence when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Farrell, supra*.

Upon divorce, the trial court is required to divide marital property evenly, unless the trial court determines that an even distribution would be inequitable. Ark. Code Ann. § 9-12-315(a)(1) (Repl. 2009). If an unequal distribution of marital property is made, the trial court must state its basis and reasons for not dividing the marital property equally. *Id.* A trial court is required to divide the marital estate in a manner that is equitable, but we do not require mathematical precision in doing so. *Coatney v. Coatney*, 2010 Ark. App. 262; *Boxley v. Boxley*, 77 Ark. App. 136, 73 S.W.3d 15 (2002). Allocation of marital debt must be considered in the context of the distribution of all the parties' property. *Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982). We will not substitute our opinion as to what exact interest each party should have; we will decide only if the order is clearly wrong. *Pinkston v. Pinkston*, 278 Ark. 233, 644 S.W.2d 930 (1983). Notably, permanent disability benefits are excluded from the definition of marital property. Ark. Code Ann. § 9-12-315(b)(6); *Skelton v. Skelton*, 339 Ark. 227, 5 S.W.3d 2 (1999). Typically, each spouse is entitled to one-half of the value of the other's retirement benefits, proportionate to the number of years those benefits accrued while married. *Cherry v. Cherry*, 55 Ark. App. 178, 934 S.W.2d 936 (1996).

The parties married in 1990 and divorced in 2010. During their marriage, the parties had two sons and one daughter. By the time of divorce, the eldest son was an adult. The trial

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court granted Robert the divorce, gave him custody of their minor son, and gave Dawna custody of their minor daughter. Neither party was assessed a child-support duty because of the divided custody. Dawna, age 39, was gainfully employed; Robert, age 42, was a retired, disabled military veteran. Relevant to this appeal, the trial court divided the assets and debts as follows.

Robert was awarded possession and ownership of the marital residence, a mobile home on 5.5 acres in Austin, Arkansas, and he was ordered to be responsible for any and all indebtedness and expense related to it. Dawna had moved out, taking the vast majority of the contents when she did. Robert remained and paid all expenses related to the property. Robert testified that the remaining mortgage indebtedness was approximately \$110,000, but he believed the total value to be only \$85,000, resulting in a negative \$25,000 value. Dawna had “no clue what that property is worth.”

Robert retained possession and ownership of a 2005 Chrysler minivan and the indebtedness related to it of several thousand dollars. Dawna retained possession and ownership of a 1998 Chevrolet Z71 truck, but Robert was ordered to be responsible for the remaining \$3500 indebtedness owed to the credit union on it.

The parties had owned a timeshare, but they both believed it had been lost in foreclosure. The judge ruled that if any indebtedness eventually came to light, it would be Robert’s responsibility. The parties had already divided their bank accounts. Robert retained a Dell computer, for which he was responsible for the remaining indebtedness. Robert was

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to be responsible for a Military Star credit card that he used to buy a washer and dryer after Dawna took the appliances from their mobile home. Dawna was ordered to be responsible for the \$600 to \$800 indebtedness she incurred by purchasing additional furnishings for her apartment. She was also ordered to be responsible for her Visa credit card, on which she charged vacation travel expenses. Robert was ordered to be responsible for the Home Depot credit card used to buy a lawnmower and shed on the marital property, a jointly-held Chase credit card with an approximate balance of \$6985 in marital debt, and a Care Credit card used to pay for medical services for their son that had approximately \$1000 owed on it. Robert was also ordered to maintain medical insurance on both minor children, which he could provide through the military.

The trial court ordered that Dawna would retain her entire 401K account, then valued at approximately \$14,000; she was not yet retired and had worked for six years at Suddenlink. She testified she brought home an approximate weekly income of \$700 to \$800 depending upon the availability of hours (approximately \$3000 per month).

Robert was permitted to retain his non-marital disability benefits of approximately \$1470 per month (due to PTSD) and his full military retirement benefits of approximately \$1470. He retired in 2008 after 22 years of service, 18 of which he was married. Robert also received \$900 per month from the government to cover college education expenses related to vocational rehabilitation. This totals approximately \$3840 per month of income for Robert. Robert testified, and Dawna agreed, that she had not made her truck payments, so Robert

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paid them to avoid their bank account being “frozen.” He testified that after paying all the monthly debts and expenses for Dawna and himself, he was left with about \$100 per month.

In rendering findings from the bench, the trial judge acknowledged that allowing Robert to keep his entire military retirement benefits would result in an unequal distribution of marital assets. But the judge found that Robert would be assessed the bulk of the marital debt—Dawna’s truck indebtedness, the marital Chase credit card, the home indebtedness, and the Care credit card used for their son.

In review of this distribution, and ignoring those marital debts for which Robert received a potential correlating asset, Robert was assessed a negative value of \$25,000 on the marital real property, the entire \$6985 in Chase credit card marital debt, \$1000 owed for their son’s medical care, and \$3500 on Dawna’s truck. This gave Robert an overall marital debt burden of approximately \$36,485, which necessitated enough income to service it. Robert was also due half of Dawna’s 401K retirement, which he did not receive and about which he does not complain. Dawna had few debts to pay, which she incurred for additional furnishings and travel, and a steady income of approximately \$3000 per month.

Dawna argues that the trial court clearly erred in failing to award her half of the marital portion of Robert’s \$1470 in monthly military retirement benefit. She acknowledges that her marital share of retirement would be calculated upon 18 of the 22 years Robert was in the military, so approximately \$600 per month or \$7200 per year to her. This, she says, is a tremendous overall loss to her, even after Robert pays off the disproportionate portion of

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marital debts. She asserts that her situation is comparable to that of the appellant in *Broggi-Dunn v. Dunn*, 2011 Ark. App. 56. While we acknowledge that each case is to be tried, and reviewed on appeal, on its own facts, we are convinced that *Broggi-Dunn* compels reversal and remand for reconsideration.

The trial judge is vested with a measure of flexibility in apportioning the total assets held in the marital estate upon divorce, and the critical inquiry is how the total assets are divided. See *Canady v. Canady*, 290 Ark. 551, 721 S.W.2d 650 (1986). The trial judge is thus given broad powers under the statute to distribute all property in divorce cases, marital and nonmarital, in order to achieve an equitable distribution. *Smith v. Smith*, 32 Ark. App. 175, 798 S.W.2d 442 (1990). Where a trial court fails to compare the amount of debt from which the non-receiving spouse was relieved to the amount and duration of retirement benefits of which she was deprived, this compels reversal and remand. See *Broggi-Dunn, supra*.

In that appeal, Ms. Broggi-Dunn appealed portions of the Lonoke County Circuit Court's division of marital assets, one being military retirement benefits allowed to be retained fully by Mr. Dunn. Although the circuit court reasoned that it was assessing Mr. Dunn responsibility for \$20,000 more in marital debt than Ms. Broggi-Dunn to justify allowing him to keep his full retirement, we found that to be inequitable. We reasoned that Ms. Broggi-Dunn's portion of the military retirement would pay off the disproportionate debt in a few years or less, the parties were in their forties and relatively young, and Mr. Dunn would receive a windfall by continuing to retain the full monthly pension for the remainder of their lives.

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In this particular case, Robert was ordered to pay the vast majority of marital debts, approximately \$36,485 when counting the loss in value on the marital residence. Dawna's portion of the military retirement would pay off the outstanding indebtedness she was spared within a few years. After a certain point, the extra marital debt assigned to Robert would be paid off, but his continued receipt of the entire monthly benefit would result in a substantial windfall to him, considering the parties' relatively young ages. *See Broggi-Dunn, supra*. While not as patently unfair as the situation in *Broggi-Dunn*, it is unfair nonetheless.

We remand to the circuit court to determine an equitable division of the marital portion of the monthly military pension, in light of the specific facts and circumstances of this case. *See Broggi-Dunn, supra*. The circuit court has discretion to make other adjustments to the division of all the marital property and debt responsibility that it deems necessary as a consequence of our holding. *Id.*

Reversed and remanded.

MARTIN and BROWN, JJ., agree.