ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION IV

CA07-581

January 30, 2008

APPEAL FROM THE UNION COUNTY CIRCUIT COURT
[DR2006-471-2]

CURTIS A. BYRAM
APPELLANT

V.

HONORABLE MICHAEL R. LANDERS, CIRCUIT JUDGE

CHERYL L. BYRAM
APPELLEE

AFFIRMED

Appellant, Curtis Byram, appeals from the trial court's division of marital property and debt in the divorce decree ending appellant's marriage to appellee, Cheryl Byram. He contends that the trial court erred 1) in concluding that he owned stock in a corporation and in awarding appellee an interest in that corporation, and 2) in allocating all of the debt to him. We affirm.

Our supreme court explained the standard of review for property-division cases in *Taylor v. Taylor*, 369 Ark. 31, ____ , ____S.W.3d ___, ____ (2007) (quoting *Farrell v. Farrell*, 365 Ark. at 469, 231 S.W.3d at ___ (2006)):

> On appeal, divorce cases are reviewed de novo. With respect to the division of property, we review the trial court's findings of fact and affirm them unless they are clearly erroneous, or against the preponderance of the evidence; the division of property itself is also reviewed and the same standard applies. A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. In order to demonstrate that the trial court's ruling was erroneous, the appellant must show that the trial court abused its discretion by making a decision that was arbitrary or groundless. We give due deference to the chancellor's superior position to determine the credibility of witnesses and the weight to be given their testimony.

In his first point of appeal, appellant contends that the trial court's finding that he had a one-third ownership interest in the Byram Family Corporation was clearly erroneous and that making that determination without appellant's father and brother being parties to the action was an error of law. We do not address the second portion of the argument because it was not raised below. *Shaw v. Shaw*, 337 Ark. 530, 989 S.W.2d 919 (1999).

In making the argument that the trial court clearly erred in finding that he had an ownership interest in the corporation, appellant notes that appellee did not present any witnesses and did not testify herself, leaving only the testimony of appellant and his brother to support the trial court's finding. The argument, however, ignores the fact that the trial court specifically found that appellant and his brother were not credible and also that designated exhibits did not necessarily support appellant's position. In a letter opinion dated January 24, 2007, the trial court explained:

> The plaintiff's brother, Robert Byram, testified that the entity known as Byram Family Corporation was owned by himself and his father, Curtis V. Byram. This witness verified the authenticity of Schedule K-1s issued to Curtis V. Byram and the witness for the taxable year 2005. *However, the Schedule K-1 for taxable year 2004 issued in the plaintiff's name and the corporation's Balance Sheet dated December 31, 2004 confirm that the plaintiff owned an undivided one-third interest in that corporation at that time. The Balance Sheet (Defendant Ex. 1), at page 9, lists the plaintiff as holder of one-third of the outstanding Capital Stock and equity in the corporation along with his brother, Robert, and his father, Curtis V. Byram. There was no evidence presented showing any subsequent transfer of this interest.* This asset is marital property and the defendant is awarded one-half of the plaintiff's one-third interest in said corporation. *The Court finds that Robert Byram's and the plaintiff's testimony denying that plaintiff had any interest in this corporation is not credible.*

(Emphasis added.) And, as noted by appellee in her reply brief, "The trial court was certainly justified in believing that the 2002, 2003, and 2004 income tax filings rather than the 2005 filing accurately reflected the ownership of the corporation. The parties were separated, and divorce was imminent." Also, appellant argues that no evidence was presented that he still owned a one-third interest in the corporation *at the time of the divorce*. This argument is disingenuous in light of the trial court's explanation that the earlier documents showed appellant as an owner, that there was no evidence presented to show a subsequent transfer of the interest, and that appellant and his brother were not credible witnesses. As noted previously, the documents purporting to show appellant's father and brother as fifty-fifty owners in the corporation were prepared while the divorce between the parties was imminent — supporting the trial court's assessment of

credibility. Our review of the evidence does not leave us with a definite and firm conviction that the trial court made a mistake.

For his second point of appeal, appellant contends that the trial court erred in allocating "all" of the debt to him. We disagree.

As we explained in *Boxley v. Boxley*, 77 Ark. App. 136, 141-42, 73 S.W.3d 19, 23 (2002) (emphasis added):

> Although the division of marital debt is not addressed in Arkansas Code Annotated § 9-12-315 (Repl. 2002), the judge has authority to consider the allocation of debt in a divorce case. *Box v. Box*, 312 Ark. 550, 851 S.W.2d 437 (1993); *Anderson v. Anderson*, 60 Ark. App. 221, 963 S.W.2d 604 (1998). In fact, this court has stated that an allocation of the parties' debt is an essential item to be resolved in a divorce dispute. *Ellis v. Ellis*, 75 Ark. App. 173, 57 S.W.3d 220 (2001); *Warren v. Warren*, 33 Ark. App. 63, 800 S.W.2d 730 (1990). *A judge's decision to allocate debt in a particular manner is a question of fact and will not be reversed on appeal unless clearly erroneous*. *Anderson v. Anderson, supra*.
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> *Further, the allocation of marital debt must be considered in the context of the distribution of all of the parties' property*. *See Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982). Arkansas Code Annotated section 9-12-315 does not compel mathematical precision in the distribution of property; it simply requires that marital property be distributed equitably. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996). The statute vests the judge with a measure of flexibility and broad powers in apportioning property, nonmarital as well as marital, in order to achieve an equitable distribution; the critical inquiry is how the total assets are divided. *Id*. The overriding purpose of the property division statute is to enable the court to make a division that is fair and equitable under the circumstances. *Canady v. Canady*, 290 Ark. 551, 721 S.W.2d 650 (1986); *Smith v. Smith*, 32 Ark. App. 175, 798 S.W.2d 443 (1990). The judge's findings as to the circumstances warranting the property division will not be reversed unless they are clearly erroneous. *Dunavant v. Dunavant*, 66 Ark. App. 1, 986 S.W.2d 880 (1999). We will not substitute our judgment on appeal as to what exact interest each party should have; we will decide only

> whether the order is clearly wrong. *Pinkston v. Pinkston*, 278 Ark. 233, 644 S.W.2d 930 (1983).
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> *A judge's determination that debts should be allocated between the parties in a divorce case on the basis of their relative ability to pay is not a decision that is clearly erroneous*. *Richardson v. Richardson*, 280 Ark. 498, 659 S.W.2d 510 (1983); *Ellis v. Ellis, supra*; *Anderson v. Anderson, supra*.

Here, it is clear that the trial court did not allocate all of the debt to appellant. For example, during the marriage appellant purchased a house in Tennessee in his name only. The trial court ordered appellant to execute a warranty deed to appellee, conveying to her an undivided one-half interest in the marital real estate. The court also ordered that payment of the mortgage note was to be shared equally by the parties as of the date of the transfer of the one-half interest to appellee. The mortgage debt on this property was the only debt that was actually listed on appellant's affidavit of means; even though the affidavit contained a notation that a spreadsheet was attached, it was not. Appellant's Exhibit Number 4 was a list of purported debts totaling $14,842, which he described during his testimony as "old and outstanding" and "delinquent." The exhibit itself did not designate any time frames for the debts, although appellant testified that they were incurred during the marriage and that he did not think any of the medical bills were older than two years. He testified that he had no current periodic liabilities. In its letter opinion, the trial court found that appellant "has failed to prove the existence of valid unpaid family debts for which the [appellee] should be liable." We are not convinced that the trial court clearly erred in that conclusion.

Affirmed.

BIRD and VAUGHT, JJ., agree.