IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 9, 2009 Session

DONALD RAY MATHIS v. MARSCHELLA JUNE MATHIS

Appeal from the Chancery Court for Rutherford County
No. 03-6160DR Royce Taylor, Judge

No. M2008-01357-COA-R3-CV - Filed November 13, 2009

In this divorce, husband argues that the trial court erred in rejecting two purported postnuptial agreements, in failing to terminate child support and reduce his alimony obligation during the pendency of the divorce litigation, in ordering rehabilitative alimony, and in ordering the sale of the marital estate. We have concluded that the trial court properly found no postnuptial agreement but erred in ordering the sale of the marital assets. On remand, the trial court must value and divide the marital assets. We affirm the trial court's decisions regarding child support and alimony.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Vacated in Part, and Remanded

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

Stephen W. Pate, Murfreesboro, Tennessee, for the appellant, Donald Ray Mathis.

Jeffrey L. Levy, Nashville, Tennessee, for the appellee, Marschella June Mathis.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Donald Ray Mathis and Marschella June Mathis married on August 20, 1983, and had one child, born in July 1998. Mr. and Ms. Mathis both worked for Ms. Mathis's father, Marshall Lee Carter, in his refrigeration company, 7-11 Installation and Service, Inc. In 1995, Mr. Carter decided to close his business; he sold some of the company's assets to Mr. and Ms. Mathis, who formed Mathis Refrigeration and Service, Inc. ("MRSI"), a company that installed refrigeration systems in supermarkets and serviced refrigeration systems.

The parties' marital home is located on Brinkley Road in Murfreesboro, Tennessee. The offices and facilities of MRSI are located in two buildings on the same property. Mr. Mathis

performed and supervised the installation and service work, and Ms. Mathis worked in the company office and did the bookkeeping. In 1999, Ms. Mathis completed a two-year associate's degree in accounting. In 2002, Ms. Mathis stopped doing MRSI's accounting work; these duties were taken over by H. A. Beasley, Jr., a certified public accountant.

Ms. Mathis testified that she had planned to attend college beginning in August 2002 but that she was unable to do so for financial reasons. She subsequently worked as a retail sales associate and then as a substitute teacher. In October 2003, she began working as a teacher's aid in a middle school special education department.

Mr. Mathis filed a petition for divorce on grounds of irreconcilable differences on February 27, 2003. Ms. Mathis found another house, located on Garcia Boulevard in Murfreesboro, and Mr. Mathis refinanced the mortgage on the Brinkley Road property and put $127,785.21 towards Ms. Mathis's purchase of the Garcia Boulevard property. Ms. Mathis's purchase of the Garcia Boulevard property closed on March 21, 2003, and she moved out of the marital home that day. On March 25 and 26, 2003, Mr. and Ms. Mathis sat down together and wrote down lists of property. These documents will be discussed more fully below. Mr. Mathis testified that he also gave Ms. Mathis $1,000 for earnest money on her new house, a check for $25,000 on March 21, 2003, and an additional $10,000 on May 16, 2003.

Ms. Mathis retained counsel and filed an answer and counterpetition alleging irreconcilable differences on May 9, 2003. On May 29, 2003, Mr. Mathis filed an amended complaint adding an alternative ground of inappropriate marital conduct. Pursuant to an agreed order entered on June 25, 2003, Ms. Mathis was named the primary residential parent of the parties' minor son, and Mr. Mathis was to pay "a combined weekly sum of eight hundred dollars ($800.00) . . . for child and spousal support pending further review and orders of this Court." Mr. Mathis was to have parenting time every other weekend from Friday evening until Sunday evening.

The ensuing litigation consisted of numerous motions, objections, petitions for contempt, and other filings. The trial court's final order includes a list of the filings in the case, a list which takes up most of 20 pages. We will mention only the pertinent highlights. The court referred some issues, especially those related to discovery, to a special master.

In May 2004, Mr. Mathis filed a motion for a declaratory judgment regarding the validity and construction of the lists of property he and Ms. Mathis had drafted, which he alleged constituted postnuptial agreements. In December 2004, the court ruled that it could not enforce the writings as a binding settlement agreement but would take the writings into account in determining how to divide the property. The parties engaged in extensive discovery, including multiple depositions. There were ongoing disputes with respect to obtaining information needed for a court-ordered business appraisal of MRSI by Trenton Watrous. Ms. Mathis argued that there were significant company expenditures that were actually personal in nature. Both parties hired accountants to compile valuations of MRSI.

On August 17, 2006, the court ordered that Mr. Mathis's motion for a declaratory judgment would be reargued and reconsidered on August 30, 2006, in light of the Supreme Court's ruling in *Barnes v. Barnes*, 193 S.W.3d 495 (Tenn. 2006). After a hearing in September 2006, the court entered an order finding that "the 'lists' are not an agreement for purposes of *Barnes v. Barnes*, 193 S.W.3d 495 (Tenn. 2006), and therefore are not enforceable as postnuptial agreements as a matter of law."

Trial of the case began on October 23, 2006, and proceeded through October 27, 2006. On December 19, 2006, and January 12, 2007, the court held hearings to resolve discovery issues. The court ruled that discovery would be terminated as of December 31, 2006. The trial resumed on February 14, 2007, and continued on February 15, February 20, and March 6, 2007. On April 18, 2007, Mr. Mathis filed a motion for termination of child support based on the minor child's expected graduation from high school in May 2007. When the trial resumed on April 30, 2007, the court took up the child support issue and ruled that "the weekly temporary support in the amount of $800 as ordered by the Agreed Order entered on June 25, 2003, would continue to be paid by Mr. Mathis through the end of the trial in this matter." The court declined to determine what part of the $800 previously paid as temporary support should be considered child support. After another hearing, the court clarified that the $800 weekly payments made after the minor child's emancipation were to be considered alimony.

Due to serious injuries sustained by Ms. Mathis's attorney in May 2007, the trial was continued, and Ms. Mathis retained new counsel. The trial resumed on November 6, 2007, continued on November 7 and November 15, and concluded on December 14, 2007. In an order entered on December 19, 2007, the trial court declared the parties divorced but took all other issues under advisement pending the filing of briefs by both parties.

On May 12, 2008, the trial court issued a 25-page decision.[1] The court noted that "[t]he majority of the time spent in this case has been to determine the value of the parties' business known as Mathis Refrigeration, Inc." The court identified several factors that made valuation of the business difficult, including the goodwill attributable to Mr. Mathis and the business's location on the same property as the marital home. In order to come up with a value for the business, "[t]he parties have incurred litigation expenses in excess of $860,000.00 to value a business that is appraised from $330,000.00 to $1,200,000.00." The court also identified problems with determining a value for other assets, such as the marital residence, four lake lots, and two antique cars, and stated that the parties could not agree on the value or division of much of the personal property. Based upon the circumstances, the court concluded that "a sale of all property is the best way to establish a fair value." The court, therefore, ordered the clerk and master to sell the parties' real and personal property, including the Brinkley Road property, the Garcia Road property, and all personal property with the exception of the vehicle driven by each party and their personal effects. The clerk and master was further ordered to determine the salary and rental income received by Mr. Mathis for the years 2007 and 2008 and to pay to Ms. Mathis out of the sale proceeds one-half of "[a]ny amount

[1] As noted above, a substantial portion of the decision consists of a list of the voluminous filings in this case.

in excess of $145,000.00 annually or $12,083.33 monthly" for those years; for the years 2003 through 2006, she was to receive $85,568.00.

In its order, the court also concluded that a determination of alimony was dependent upon the price obtained for MRSI and awarded token rehabilitative alimony of $1.00 per year for five years "subject to review based upon the results of the sale." The court declined to determine how much of the $800 temporary alimony should be considered alimony and child support.

Ms. Mathis filed a motion to alter or amend the court's final decree. Mr. Mathis then filed a motion to alter or amend a July 14, 2008 order modifying and clarifying the May 2008 order. Ms. Mathis then filed another motion with respect to the appeal bond. The court's rulings on these various motions are not relevant to the present appeal.

Mr. Mathis raises four main issues on appeal. He challenges the trial court's decisions regarding the purported postnuptial agreements, the termination of child support, rehabilitative alimony, and the sale of the marital estate. Ms. Mathis argues that she was entitled to alimony in futuro and asserts that Mr. Mathis's appeal is frivolous.

ANALYSIS

Postnuptial agreement

Mr. Mathis asserts that the trial court erred in failing to divide the marital assets in accordance with what he contends are postnuptial agreements.

We begin by setting out the contents of the two purported agreements. The first document, Exhibit 11, consists of the following lists:

Donny Signature: /Donald R. Mathis/
3/26/03
Home–390 Brinkley Rd.
Mathis Refrigeration & Svc, Inc.
Personal items
Master Bedroom
Upstairs Living Room
Dining Room
Sun Room
Health coverage for Josh

Marschella Signature: /Marschella Mathis/
3/25/03
Guest Bedroom
Living Room

Pictures
Personal items
200,000 cash
No alimony
No child support
~~½ cost of 4-wheeler–Josh~~

On the back of this page, the parties made some calculations as to how much each was due the other for certain items:

Dining room	$760.00	
Sun Room	$600.00	
	1360.00	Due to Marschella
Earnest money	1,000.00	
Appraisal	360.00	
	1360.00	Due to Donny
Balance	0	

At the bottom of this second page, the following calculations appear:

200,000
- 25,000
175,000.00
- 127,785.21
47,214.79 Bal Due.

The second document, Exhibit 12, consists of one page with a list of property under each party's name, signed by that party:

<u>Marschella</u>

1999 GMC Suburban
1988 Honda LXI
Lots at Roselawn Memorial Gardens
Downstairs living room furniture
Pictures of choice
Spare bedroom furniture
200,000.00 cash
Personal belongings
~~50,000 To be paid by Mathis Refrigeration, Inc. within 12 months of the final divorce. I will not close the company. If company should [sell] or close within the 12 months I Donald Mathis will be responsible to pay the remaining amount.~~

/Marschella Mathis/ 8:25

Donny

Dining Room furniture
Kitchen furniture
Upstairs furniture
Master Bedroom
Mathis Refrigeration & Svc., Inc.
No alimony
No child support

Signed This Day 3/25/03 At 8:30 a.m.
/Donald R. Mathis/

It appears from the dates and times appearing on these documents that Exhibit 12 was signed before Exhibit 11.

Mr. Mathis characterizes these documents as postnuptial agreements, which are enforceable under Tennessee law. *See Barnes v. Barnes*, 193 S.W.3d at 498. Postnuptial agreements are generally agreements entered into by married couples before marital problems arise. *See Bratton v. Bratton,* 136 S.W.3d 595, 599 (Tenn. 2004). Settlement agreements are made "during or in contemplation of litigation." *Barnes*, 193 S.W.3d at 498. Both types of agreements are to be interpreted and enforced in accordance with general contract principles. *Id.*; *Bratton*, 136 S.W.3d at 600. Our Supreme Court has stated that, "[b]ecause of the confidential relationship which exists between husband and wife, postnuptial agreements are likewise subjected to close scrutiny by the courts to ensure that they are fair and equitable." *Bratton*, 136 S.W.3d at 601. The same reasoning would apply to settlement agreements between spouses. *See In re Estate of Davis*, 184 S.W.3d 231, 238 (Tenn. Ct. App. 2004).

Under Tennessee law, "a valid and enforceable contract must . . . result from a meeting of the minds and must be sufficiently definite to be enforced." *Ziyad v. Estate of Tanner*, No. W2007-01683-COA-R3-CV, 2008 WL 4830872, at * 6 (Tenn. Ct. App. Nov. 6, 2008). The omission or uncertainty of one or more terms of a proposed bargain "may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance." *Rice v. NN, Inc. Ball & Roller Div.*, 210 S.W.3d 536, 542 (Tenn. Ct. App. 2006) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 33). In this case, the writings upon which Mr. Mathis relies do not cover all of the parties' property and do not even mention the marital debts.[2] A review of these exhibits suggests that they were part of the parties' discussions and negotiations as to how they would divide their property. As noted by the trial court in its initial December 2004 order declining to enforce the purported agreements, "there is no explanation as to what the documents are used for or how they are to be enforced, or

[2] Mr. Mathis concedes that the provision for no child support was against public policy and unenforceable.

their purpose." The writings do not expressly purport to be postnuptial or settlement agreements. The documents are not notarized and do not contain any formal language indicating the parties' intent that they were entering into an enforceable agreement. At the time when the parties signed these documents, Mr. Mathis had already consulted an attorney and filed a complaint for divorce; Ms. Mathis had not yet consulted an attorney. Mr. Mathis testified that he understood these writings to be a binding contract with Ms. Mathis, whereas Ms. Mathis testified that the lists were made in preparation for the drafting of a marital dissolution agreement by Mr. Mathis's attorney.

The evidence does not preponderate against the trial court's determination that there was no contract between the parties. We furthermore reject Mr. Mathis's promissory estoppel argument as there was no promise upon which he could reasonably rely.

Mr. Mathis also argues that the trial court "erred in failing to allow evidentiary proof [to] be admitted from husband regarding the terms of the writings prior to making a final determination." While the trial court entered an order in October 2006, finding no contract as a matter of law, the court proceeded to allow Mr. Mathis to present evidence at the trial concerning the two purported agreements and the facts surrounding them. In its order entered on May 21, 2008, the trial court found "the facts surrounding the preparation of the writings to be so uncertain that the plaintiff fails to carry his burden of proof to establish the parties reached an agreement." Thus, the trial court considered all of the evidence concerning the writings and reaffirmed its original conclusion that there was no contract.

Pendente lite support

Mr. Mathis argues that the trial court erred in failing to terminate child support and reduce his alimony obligation during the pendency of the divorce litigation. It is undisputed that the parties' minor child graduated from high school in May 2007.

Near the beginning of the divorce litigation, in June 2003, the parties entered an agreed order providing that Mr. Mathis would pay "a combined weekly sum of eight hundred dollars ($800.00) . . . for child and spousal support pending further review and orders of this Court." The order further provided that the weekly support "may be subject to adjustment upon the full disclosure and calculation of the total income of Donald Ray Mathis." Mr. Mathis was employed by MRSI, a family-owned company, and the proper amount of income attributable to him was (and continues to be) a significant issue between the parties.

Mr. Mathis filed a motion in February 2004 to reduce his support obligation, which motion was denied by a special master. In June 2004, Mr. Mathis renewed his motion to reduce his support obligation and requested that the court distinguish between his child support obligation and his alimony obligation. We find no order addressing this motion in the record. On April 18, 2007, during the trial of this case, Mr. Mathis filed a motion for termination of child support as of the date of the minor child's expected graduation from high school in May 2007. At a hearing on April 29, 2007, the court ruled that Mr. Mathis should continue to pay weekly temporary support of $800.00

during the pendency of the trial. The court deferred the issue of differentiating between child support and alimony. The matter came back before the court on August 1, 2007, on a show cause order after Mr. Mathis reduced his temporary support payments to $147.00 per week. The court reiterated its previous ruling: "I thought it was fairly clear that after the child graduated from high school the $800.00 would continue and be considered as alimony until we get this case final." In its final order, the court stated that "Ms. Mathis shall continue to receive $800.00 per week for spousal support until the date of the sale."

From the trial court's orders, it is clear that the trial court did terminate child support based upon the minor child's emancipation. The $800 per week was thereafter to be considered alimony.

We cannot agree with Mr. Mathis's assertion that the trial court erred in failing to reduce the amount of pendente lite alimony. Tenn. Code Ann. § 36-5-121(b) gives a trial court broad discretion to award temporary support during the pendency of the divorce litigation. A trial court's decisions regarding alimony are reviewed under an abuse of discretion standard. *Garfinkel v. Garfinkel*, 945 S.W.2d 744, 748 (Tenn. Ct. App. 1996). There has been an abuse of discretion "when the trial court reaches a decision against logic that causes a harm to the complaining party or when the trial court applies an incorrect legal standard." *Riley v. Whybrew*, 185 S.W.3d 393, 399 (Tenn. Ct. App. 2005).

In objecting to the trial court's failure to decrease the amount of temporary alimony awarded, Mr. Mathis points to evidence concerning Ms. Mathis's earning capacity and argues that she exaggerated her expenses in her statement of need. Ms. Mathis points to evidence of Mr. Mathis's earnings as being much higher than hers and his alleged use of company money to pay personal expenses. In light of all of the conflicting evidence and the trial court's ability to assess the credibility of the parties, we cannot find any abuse of discretion regarding the award of pendente lite alimony.

<u>Sale of marital property</u>

We must next address the issue of whether the trial court erred in ordering the sale of the parties' real and personal property.

Decisions concerning the division of marital property are necessarily fact-specific. *Edenfield v. Edenfield*, No. E2004-00929-COA-R3-CV, 2005 WL 2860289, at * 7 (Tenn. Ct. App. Oct. 31, 2005). A trial court has a great deal of discretion in determining the manner in which it divides marital property, and an appellate court will generally defer to a trial court's decision unless that decision is inconsistent with the factors set out in Tenn. Code Ann. § 36-4-121(c) or the evidence preponderates against the decision. *Jolly v. Jolly*, 130 S.W.3d 783, 785-86 (Tenn. 2004).

The first step in the division of marital property is the classification of the parties' property as separate or marital. *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003). In the present case, there is no dispute that the personal and real property at issue on appeal all constitutes marital property. The trial court is to "equitably divide, distribute or assign the marital property between the

parties . . . in proportions as the court deems just." Tenn. Code Ann. § 36-4-121(a)(1). After the identification of the marital property, the trial court's next step is to place a reasonable value on each asset subject to division. *Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407, at * 7 (Tenn. Ct. App. Sept. 1, 2006). Valuation of marital assets is a question of fact. *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998). Each party has the burden of providing competent evidence concerning the value of disputed assets. *Id.* If there is conflicting evidence, the trial court "may assign a value that is within the range of values supported by the evidence." *Id.*

The record contains voluminous evidence concerning valuation of the assets in question. Particularly with respect to the most significant asset, MRSI, the parties spent substantial money and time to produce evidence concerning its value.[3] Mr. Mathis presented the opinions of two experts concerning the company's value. H.A. Beasley, Jr., a certified public accountant and accountant for MRSI, testified about the value of the business as of June 30, 2003, under three different valuation approaches and opined that the most accurate estimate of its value was $200,000. Christopher Lovin, a CPA accredited in business valuation and a certified fraud examiner, testified concerning his valuation report and explained valuation figures under three different approaches. He concluded that the most accurate value for MRSI as of December 31, 2005, was $330,000. Ms. Mathis presented valuation testimony from David Mensel, a CPA accredited in business evaluation, a certified fraud examiner, and a certified valuation analyst, who opined that the business had a value of $1,155,000 as of December 31, 2005.[4] There was also a great deal of testimony and proof concerning what adjustments in MRSI's value should be made to reflect expenditures that were actually for Mr. Mathis's personal expenses.

Mr. Mathis testified about the value of two antique cars, a 1940 Ford Coupe and a 1955 Chevy Bel-Air, acquired during the marriage and introduced expert testimony concerning the value of these cars. Mr. Mathis also introduced his own testimony as to the values of all disputed real and personal property items. A real estate appraiser testified on behalf of Mr. Mathis as to the value of the Brinkley Road property, including the marital home and two steel buildings, and the Garcia Boulevard property. A furniture consignment store owner testified as to the value of each item of furniture in the marital home. A person in the HVAC/refrigeration supplies industry testified about the value of MRSI's inventory. Ms. Mathis introduced the testimony and report of a real estate appraiser concerning the value of the Brinkley Road property. She also put on expert testimony concerning the values of the two antique cars.

The trial court did not place values on the disputed items; instead, the court ordered the real and personal property sold and the proceeds divided equally between the parties. The court discussed reasons why some of the assets, especially the business, were difficult to value and concluded that "a sale of the property is the best way to establish a fair value." We find that, in the

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[3] As previously mentioned, the trial court estimated that the parties spent over $800,000 to value MRSI.

[4] The court also permitted Ms. Mathis to introduce Mr. Mensel's valuation as of December 31, 2006, wherein he opined that, excluding the antique cars and the building housing the company (for which a separate appraisal had been done), the fair value of MRSI was $1,193,000.

circumstances presented by this case, the trial court erred in failing to assign values to the disputed assets.

This court has "repeatedly stressed the importance not only of classifying the parties' property but also placing a specific value on the property when trial courts turn their attention to the financial aspects of a divorce case." *Davidson v. Davidson*, No. M2003-01839-COA-R3-CV, 2005 WL 2860270, at *3 (Tenn. Ct. App. Oct. 31, 2005). In order to fulfill its duty of equitably dividing the marital estate, a trial court must assign a reasonable value to the assets in question. *Fox*, 2006 WL 2535407, at *7; *Edmisten v. Edmisten*, No. M2001-00081-COA-R3-CV, 2003 WL 21077990, at *11 (Tenn. Ct. App. May 13, 2003). This view is consistent with the rule applied in most states that "the trial court must determine the value of all marital property before distributing it." 3 John Tingley & Nicholas B. Svalina, MARITAL PROPERTY LAW § 44:1, at 44-2 (rev. 2d ed. 2006).

Tenn. Code Ann. § 36-4-121(a)(3) provides that "the court shall be empowered to effectuate its decree [concerning the division of marital property] by divesting and reinvesting title to such property and, where deemed necessary, to order a sale of such property and to order the proceeds divided between the parties." The statute expressly contemplates that, under certain circumstances, sale of marital property may be necessary. For example, there might be a substantial marital asset of such value that the only way to divide it is to sell it and distribute the proceeds. We do not, however, interpret this provision to authorize a trial court to use the sale of marital assets as a substitute for valuing the assets. Dissolution of a marriage requires a court to "engage in the orderly disentanglement of the parties' personal and financial affairs." *Adams v. Adams*, No. W2007-00915-COA-R3-CV, 2008 WL 2579234, at *5 (Tenn. Ct. App. June 30, 2008) (quoting *Anderton v. Anderton*, 988 S.W.2d 675, 679 (Tenn. Ct. App. 1998)). We consider the following observations relevant:

> [T]he absence of findings and conclusions on the nature of the property and its allocation leaves the parties without the thing they most need: a decision. . . . [T]he trial court in a divorce case must divide the parties' assets and obligations in a manner that resolves their differences and allows them to move forward separately. This is the court's privilege and its responsibility. . . .
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> . . . .
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> [T]he trial court may, in its discretion, order marital property sold, either to facilitate its division between the parties or to satisfy marital debt. T.C.A. § 36-4-121(a)(3). Such discretion, however, should be exercised with wisdom. It makes little sense, for example, to order the sale of items whose value is largely sentimental, or where the sale of things such as minor household items would result in negligible proceeds while necessitating that the parties spend substantial monies to replace the items.

Adams, 2008 WL 2579234, at *6-7.

In this case, the trial court ordered the sale of all of the following properties: the Brinkley Road property, the Garcia Boulevard property, four lake lots, MRSI, two antique cars, "[a]ll household furnishings including furniture, yard furniture, electronic equipment, tools and accessories," and all vehicles except a 1999 Suburban driven by Ms. Mathis and a 1997 Jeep Wrangler driven by Mr. Mathis. As to most of these assets, there was evidence presented at trial from which the trial court could have assigned a value to the assets. While we are aware of the difficulties associated with valuing some of the assets in question, especially MRSI, we must conclude that the trial court erred in failing to fulfill its responsibility to assign values in order to facilitate the division of the assets. We further note that the trial court did not impose any conditions to insure that the assets were sold for fair market value. *See* Tenn. Code Ann. § 36-4-121(a)(3)(C); *Doran v. Doran*, No. W2003-00170-COA-R3-CV, 2004 WL 86174, at *2 (Tenn. Ct. App. Jan. 12. 2004); *Powers v. Powers*, No. 03A019503-CH-00104, 1995 WL 512029, at *2 (Tenn. Ct. App. Aug. 30, 1995).

We conclude that, under the circumstances of this case, the trial court erred in ordering the sale of the parties' real and personal property. On remand, the trial court shall assign values to the disputed properties based on the evidence submitted at trial and order an equitable division thereof.

<u>Alimony</u>

Mr. Mathis objects to the trial court's award of $1.00 per year in rehabilitative alimony for five years subject to review after the sale of the parties' real and personal property. Although the precise nature of Mr. Mathis's objection is not entirely clear, he appears to assert that the trial court's award of token rehabilitative alimony was improper in light of its award of alimony in solido as well as temporary spousal support of $800 per week through the date of the sale. Ms. Mathis asserts that, in light of the duration of the parties' marriage and the difference in their earnings, the trial court should have awarded alimony in futuro.

The trial court explained the reasoning behind this award of a token amount of rehabilitative alimony:

> Since the business is to be sold, alimony is not appropriate. If [Ms. Mathis] buys the business, no alimony is needed. If the business is sold for the amount she claims it is worth, then no alimony is needed. If it sells for less than the appraised value, Mr. Mathis may be without employment and not have the ability to pay alimony. There are too many uncertainties with regard to need and ability to pay for other than token rehabilitative alimony to be awarded.

The court also ordered that Ms. Mathis receive, for the years beginning in 2007 through the date of the sale of the parties' real and personal property, half of "[a]ny amount [of salary and rental income] in excess of $145,000.00 annually." For the years 2003 through 2006, Ms. Mathis was to receive $85,568.00. These figures are based upon the trial court's determination that $85,000.00 was a reasonable annual salary for Mr. Mathis to receive for operating MRSI, that Mr. Mathis had taken

more than $85,000.00 out of the company in 2005 and 2006 to pay personal expenses, and that he received rental income from marital property.

A trial court has broad discretion to determine the need for spousal support as well as the appropriate nature, amount, and duration of that support. *Garfinkel*, 945 S.W.2d at 748; Tenn. Code Ann. § 36-5-121. Mr. Mathis generally argues that Ms. Mathis had ample opportunity to rehabilitate herself during the pendency of the divorce and could have earned substantially more income. Ms. Mathis counters that she is entitled to alimony in futuro to enable her to "more closely approach the parties' former economic position." Mr. Mathis also asserts that it is inequitable for the court to award Ms. Mathis alimony in solido based upon a retroactive evaluation of his income during the same period when he was paying temporary support of $800.00 per week. Mr. Mathis has not, however, addressed in any detail the trial court's conclusions concerning his use of company moneys for personal expenses, which conclusions are part of the basis for its award of alimony in solido.

We cannot conclude that the trial court abused its discretion in awarding both token rehabilitative alimony and alimony in solido and in declining to award alimony in futuro. These determinations hinged in part on the trial court's assessment of the relative credibility of the parties. On remand, after valuing and dividing the marital property, the trial court shall reevaluate the amount and type of alimony needed.

We decline to find this appeal to be frivolous.

CONCLUSION

The trial court's judgment is affirmed in part and vacated in part and remanded. Costs of the appeal shall be assessed equally against the parties.

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ANDY D. BENNETT, JUDGE