

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
July 14, 2006 Session

**VIRGINIA M. FITZGERALD v. CLAUDE A. FITZGERALD**

**Appeal from the Chancery Court for Maury County  
No. 02-271 Jim T. Hamilton, Judge**

---

**No. M2005-00440-COA-R3-CV - Filed on August 7, 2006**

---

Wife appeals from a final decree of divorce challenging the trial court's distribution of property. Because the wife raises factual issues and there is no transcript of the evidence in the record, we must presume the record would have supported the factual findings of the trial court and accordingly affirm.

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

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., JJ, joined.

Robert C. Richardson, Jr., Columbia, Tennessee, for the appellant, Virginia M. Fitzgerald.

Joseph Ward Henry, Jr., Pulaski, Tennessee, for the appellee, Claude A. Fitzgerald.

**MEMORANDUM OPINION**

Virginia Fitzgerald [hereinafter "Wife"] appeals the trial court's final judgment in this divorce to ask this Court to modify the trial court's ruling that (1) a mobile home and approximately twenty acres are the husband's separate property, (2) that two five-acre tracts of real estate were part of a family inheritance of the husband's and thus separate property, and (3) that Husband's social security benefits were separate property.

The trial court issued a final decree of divorce containing detailed findings of fact regarding the parties' contributions during this short marriage. The parties agreed that the matter would be submitted to the trial court on briefs, various financial documents and each party's respective proposals for division of marital assets and the trial court would make a determination of the assets based upon these submissions.

The trial court found that the marriage was of short duration and that Wife came into the marriage with very little assets.

The trial court found that the marital home and a twenty-acre tract of land was purchased by the husband three years prior to the marriage for \$28,000.00. After the marriage, a mobile home valued at \$39,484.80 was purchased by the husband who traded another mobile home toward this purchase for which he received \$3,000.00. The deed to this property was in the husband's name alone. The court found that the real estate was separate property. The trial court found that Wife had contributed \$8,000.00 toward the purchase of the mobile home but that the husband had paid a pre-marital debt of \$7,200.00 owed by Wife. The trial court found that Wife did not provide any assets towards the purchase of the mobile home.

The court further found that the two five-acre tracts were purchased with funds that the husband had inherited. The court found that the husband receives social security disability benefits based upon an application made in 1994, three years prior to the marriage. The husband did not receive these benefits until August 2003. The court found that these benefits were not marital property pursuant to 42 USC Section 407(a).

The record before us contains neither a transcript of the hearing nor a Tennessee Rules Appellate Procedure 24(c) statement of the evidence. By consent of the parties, no testimonial evidence was presented to the trial court. The matter was submitted upon written briefs, documents, and the parties' proposed division of property. In such a situation, this Court cannot perform a Rule 13(d) review. Where factual issues are raised without an appellate record containing the evidence, this Court cannot perform a de novo review or determine the preponderance of the evidence. *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992).

The Wife, as appellant, had the primary responsibility to prepare a factual record containing a full, accurate and complete account of what transpired at trial with regard to the issues she planned to raise on appeal so as to allow meaningful appellate review. Tenn. R. App. P. 24(b); *State v. Bunch*, 646 S.W.2d 158, 160 (Tenn. 1983); *Davis v. The Tennessean*, 83 S.W.3d 125, 127 (Tenn. Ct. App. 2001).

The procedure adopted by the parties by consent effectively precludes any meaningful appellate review. Without an adequate record on appeal, we must assume that the record contains sufficient evidence to support the trial court's factual findings. Accordingly, we affirm the judgment of the trial court. Costs of this appeal are taxed against Wife, and her surety.

---

JON KERRY BLACKWOOD, SENIOR JUDGE